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Act) : [March 9, 2000, Trenton, New Jersey] Trenton, N.J.: The Unit, [2000]

NEWSPAPER ARTICLES: Yes

"School construction bill becomes law" 7-19-00 Home News& Tribune, p.A3
"School construction cleared by Whitman," 7-19-00 The Inquirer, p. A3
"Billions for schools," 7-14-00 The Record, p.A1
"Let the \$12 billion overhaul of schools begin," 7-19-00 Star Ledger, p.15

SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 17, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

As introduced.



S200 GORMLEY, LYNCH

2

1 AN ACT concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30 of this act shall be known
9 and may be cited as the “Educational Facilities Construction and
10 Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning and located as far
18 as possible in economically and socially viable communities.

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the
40 requirements of a thorough and efficient education, the State must also
41 protect the interests of taxpayers who will bear the burden of this
42 obligation. Design of school facilities should incorporate maximum
43 operating efficiencies and new technologies to advance the energy

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 efficiency of school facilities and the efficiency of other school
2 building systems, construction should be achieved in as efficient a
3 manner as possible, and a mechanism to assure proper maintenance of
4 new facilities should be established and implemented, in order to
5 reduce the overall cost of the program and to preserve this
6 infrastructure investment.

7 e. At the same time, the location of school facilities in the context
8 of the communities which they serve is important to both the
9 educational success of the schools and the development of those
10 communities. It is highly desirable, particularly in urban communities
11 where the State has indicated a particular concern respecting local
12 development efforts, that the planning and construction of schools be
13 integrated where possible into the economic and community
14 development efforts of local governments and community
15 redevelopment entities in order to promote more effective and efficient
16 use of land, resources and expertise and to better assure the future
17 viability of local neighborhoods and communities.

18

19 3. (New section) As used in sections 1 through 30 of this act,
20 unless the context clearly requires a different meaning:

21 "Abbott district" means an Abbott district as defined in section 3 of
22 P.L.1996, c.138 (C.18A:7F-3);

23 "Area cost allowance" means \$131 per square foot for the school
24 year 1999-2000 and shall be inflated by an appropriate cost index for
25 the 2000-2001 school year. For subsequent school years, the area
26 cost allowance shall be as established in the biennial Report on the
27 Cost of Providing a Thorough and Efficient Education and inflated by
28 an appropriate cost index for the second year to which the report
29 applies. The area cost allowance used in determining preliminary
30 eligible costs of school facilities projects shall be that of the year of
31 application for approval of the project;

32 "Building authority" means the New Jersey Building Authority
33 established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.);

34 "Commissioner" means the Commissioner of Education;

35 "Community development project" means a redevelopment project
36 undertaken as part of a redevelopment plan adopted or proposed to
37 be adopted by the municipal governing body pursuant to the "Local
38 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
39 seq.), which contains a school facilities project;

40 "Community redevelopment entity" means a redevelopment entity
41 authorized by a municipal governing body to implement redevelopment
42 plans and to carry out redevelopment projects in the municipality
43 pursuant to the "Local Redevelopment and Housing Law," P.L.1992,
44 c.79 (C.40A:12A-1 et seq.), a county improvement authority
45 designated by the municipality to implement redevelopment plans or
46 carry out redevelopment projects pursuant to section 34 of P.L.1979,

1 c.275 (C.40:37A-55.1), or the New Jersey Redevelopment Authority,
2 where the municipality has designated that authority as its
3 redevelopment agency pursuant to subsection y. of section 5 of
4 P.L.1996, c.62 (C.55:19-24);

5 "Core curriculum content standards" means the standards
6 established pursuant to the provisions of subsection a. of section 4 of
7 P.L.1996, c.138 (C.18A:7F-4);

8 "Cost index" means the average annual increase, expressed as a
9 decimal, in actual construction cost factors for the New York City and
10 Philadelphia areas during the second fiscal year preceding the budget
11 year as determined pursuant to regulations promulgated by the
12 building authority pursuant to section 26 of this act;

13 "Debt service" means and includes payments of principal and
14 interest upon school bonds issued to finance the acquisition of school
15 sites and the purchase or construction of school facilities, additions to
16 school facilities, or the reconstruction, remodeling, alteration,
17 modernization, renovation or repair of school facilities, including
18 furnishings, equipment, architect fees and the costs of issuance of such
19 obligations and shall include payments of principal and interest upon
20 school bonds heretofore issued to fund or refund such obligations, and
21 upon municipal bonds and other obligations which the commissioner
22 approves as having been issued for such purposes. Debt service
23 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
24 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
25 (C.18A:58-33.2 et seq.) is excluded;

26 "District" means a local or regional school district established
27 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
28 Statutes, a county special services school district established pursuant
29 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
30 county vocational school district established pursuant to article 3 of
31 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
32 operated school district established pursuant to P.L.1987, c.399
33 (C.18A:7A-34 et seq.);

34 "District aid percentage" means the number expressed as a
35 percentage derived from dividing the district's core curriculum
36 standards aid calculated pursuant to section 15 of P.L.1996, c.138
37 (C.18A:7F-15) by the district's T & E budget calculated pursuant to
38 subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-13);

39 "Excess costs" means the additional costs, if any, which shall be
40 borne by the district, of a school facilities project which result from
41 design factors that are either not required to meet the facilities
42 efficiency standards and not approved pursuant to paragraph (1) of
43 subsection g. of section 5 of this act or are not authorized as
44 community design features included in final eligible costs pursuant to
45 subsection c. of section 6 of this act;

46 "Facilities authority" means the New Jersey Educational Facilities

1 Authority created pursuant to N.J.S.18A:72A-1 et seq.;

2 "Facilities efficiency standards" means the standards promulgated
3 by the commissioner pursuant to subsection c. of section 4 of this act;

4 "Final eligible costs" means for school facilities projects to be
5 constructed by the building authority, the final eligible costs of the
6 school facilities project as determined by the commissioner, in
7 consultation with the building authority, pursuant to section 5 of this
8 act; for community development school projects to be constructed by
9 a community redevelopment entity, the final eligible costs of the
10 community development school project as determined by the
11 commissioner and reviewed by the building authority plus community
12 design feature costs as approved by the Urban Coordinating Council
13 pursuant to section 6 of this act and reviewed by the building authority
14 pursuant to section 6 of this act; and for districts whose district aid
15 percentage is less than 50% and which elect not to have the building
16 authority construct a school facilities project, final eligible costs shall
17 equal preliminary eligible costs;

18 "FTE" means a full-time equivalent student which shall be
19 calculated as follows: in districts that qualify for early childhood
20 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
21 each student in grades kindergarten through 12 shall be counted at
22 100% of the actual count of students, and each preschool student
23 approved by the commissioner to be served in the district shall be
24 counted at 50% or 100% of the actual count of preschool students for
25 an approved half-day or full-day program, respectively; in districts that
26 do not qualify for early childhood program aid pursuant to section 16
27 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
28 12 shall be counted at 100% of the actual count of students, in the
29 case of districts which operate a half-day kindergarten program each
30 kindergarten student shall be counted at 50% of the actual count of
31 kindergarten students, in the case of districts which operate a full-day
32 kindergarten program or which currently operate a half-day
33 kindergarten program but propose to build facilities to house a full-
34 day kindergarten program each kindergarten student shall be counted
35 at 100% of the actual count of kindergarten students, and preschool
36 students shall not be counted. In addition, each preschool
37 handicapped child who is entitled to receive a full-time program
38 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
39 count of these students in the district;

40 "Functional capacity" means the number of students that can be
41 housed in a building in order to have sufficient space for it to be
42 educationally adequate for the delivery of programs and services
43 necessary for student achievement of the core curriculum content
44 standards. Functional capacity is determined by dividing the existing
45 gross square footage of a school building by the minimum area
46 allowance per FTE student pursuant to subsection b. of section 8 of

1 this act for the grade level students contained therein. The difference
2 between the projected enrollment determined pursuant to subsection
3 a. of section 8 of this act and the functional capacity is the unhoused
4 students that are the basis upon which the additional costs of space to
5 provide educationally adequate facilities for the entire projected
6 enrollment are determined. The existing gross square footage for the
7 purposes of defining functional capacity is exclusive of existing spaces
8 that are not contained in the facilities efficiency standards but which
9 are used to deliver programs and services aligned to the core
10 curriculum content standards, used to provide support services directly
11 to students, or other existing spaces that the district can demonstrate
12 would be structurally or fiscally impractical to convert to other uses
13 contained in the facilities efficiency standards;

14 "Lease purchase payment" means and includes payment of principal
15 and interest for lease purchase agreements in excess of five years
16 approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to the
17 effective date of P.L. , c. (C.) (now pending before the
18 Legislature as this bill) to finance the purchase or construction of
19 school facilities, additions to school facilities, or the reconstruction,
20 remodeling, alteration, modernization, renovation or repair of school
21 facilities, including furnishings, equipment, architect fees and issuance
22 costs. Approved lease purchase agreements in excess of five years
23 shall be accorded the same accounting treatment as school bonds;

24 "Level II district" means a district which is directed by the
25 commissioner to enter level II monitoring pursuant to the provisions
26 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

27 "Local share" means, in the case of a school facilities project to be
28 constructed by the building authority or a community redevelopment
29 entity, the total costs less the State share as determined pursuant to
30 sections 5 and 6 of this act; and in the case of a school facilities
31 project not to be constructed by the building authority or a community
32 redevelopment entity, the total costs less State debt service aid;

33 "Local unit" means a county, municipality, board of education or
34 any other political subdivision or instrumentality authorized to
35 construct, operate and maintain a school facilities project and to
36 borrow money for those purposes pursuant to law;

37 "Local unit obligations" means bonds, notes, refunding bonds,
38 refunding notes, lease obligations and all other obligations of a local
39 unit which are issued or entered into for the purpose of paying for all
40 or a portion of the costs of a school facilities project, including
41 moneys payable to the authority;

42 "Long-range facilities plan" means the plan required to be submitted
43 to the commissioner and where appropriate to the Urban Coordinating
44 Council by a district pursuant to section 4 of this act;

45 "Maintenance" means expenditures which are approved for repairs
46 and replacements for the purpose of keeping a school facility open and

1 safe for use or in its original condition, including repairs and
2 replacements to a school facility's heating, lighting, ventilation,
3 security and other fixtures to keep the facility or fixtures in effective
4 working condition. Maintenance shall not include contracted custodial
5 or janitorial services, expenditures for the cleaning of a school facility
6 or its fixtures, the care and upkeep of grounds or parking lots, and the
7 cleaning of, or repairs and replacements to, movable furnishings or
8 equipment, or other expenditures which are not required to maintain
9 the original condition over the school facility's useful life. Approved
10 maintenance expenditures shall be as determined by the commissioner
11 pursuant to regulations to be adopted by the commissioner pursuant
12 to section 25 of this act;

13 "Preliminary eligible costs" means the initial eligible costs of a
14 school facilities project as calculated pursuant to the formulas set forth
15 in section 7 of this act;

16 "Report on the Cost of Providing a Thorough and Efficient
17 Education" or "Report" means the report issued by the commissioner
18 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

19 "School bonds" means, in the case of a school facilities project
20 which is to be constructed by the building authority or a community
21 redevelopment entity, bonds, notes or other obligations issued by a
22 district to finance the local share; and, in the case of a school facilities
23 project which is not to be constructed by the building authority or a
24 community redevelopment entity, bonds, notes or other obligations
25 issued by a district to finance the total costs;

26 "School enrollment" means the number of FTE students other than
27 evening school students, including post-graduate students and post-
28 secondary vocational students, who, on the last school day prior to
29 October 16 of the current school year, are recorded in the registers of
30 the school;

31 "School facility" means and includes any structure, building or
32 facility used wholly or in part for academic purposes by a district, but
33 shall exclude athletic stadiums, grandstands, and any structure,
34 building or facility used solely for school administration;

35 "School facilities project" means the acquisition, demolition,
36 construction, improvement, repair, alteration, modernization,
37 renovation, reconstruction or maintenance of all or any part of a
38 school facility or of any other personal property necessary for, or
39 ancillary to, any school facility, and shall include fixtures, furnishings
40 and equipment, and shall also include, but is not limited to, site
41 acquisition, site development, services of design professionals, such as
42 engineers and architects, construction management, legal services,
43 financing costs and administrative costs and expenses incurred in
44 connection with the project;

45 "Special education services pupil" means a pupil receiving specific
46 services pursuant to chapter 46 of Title 18A of the New Jersey

1 Statutes;

2 "State aid" means State municipal aid and State school aid;

3 "State debt service aid" means for school bonds issued for school
4 facilities projects approved by the commissioner after the effective
5 date of P.L. , c. (C.) (now pending before the Legislature as this
6 bill) of districts which elect not to have the building authority or a
7 community redevelopment entity construct the project, the amount of
8 State aid determined pursuant to section 9 of this act; and for school
9 bonds or certificates of participation issued for school facilities
10 projects approved by the commissioner prior to the effective date of
11 P.L. , c. (C.) (now pending before the Legislature as this bill)
12 the amount of State aid determined pursuant to section 10 of this act;

13 "State municipal aid" means business personal property tax
14 replacement revenues, State urban aid and State revenue sharing, as
15 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
16 other similar forms of State aid payable to the local unit and to the
17 extent permitted by federal law, federal moneys appropriated or
18 apportioned to the municipality or county by the State;

19 "State school aid" means the funds made available to school
20 districts pursuant to sections 15 and 17 of P.L.1996, c.138
21 (C.18A:7F-15 and 17);

22 "State share" means the State's proportionate share of the final
23 eligible costs of a school facilities project to be constructed by the
24 building authority as determined pursuant to section 5 of this act, and
25 in the case of a community development school project the State's
26 proportionate share of the final eligible costs of the community
27 development school project as determined pursuant to sections 5 and
28 6 of this act;

29 "Total costs" means, in the case of a school facilities project which
30 is to be constructed by the building authority or a community
31 redevelopment entity, the final eligible costs plus excess costs if any;
32 and in the case of a school facilities project which is not to be
33 constructed by the building authority or a community redevelopment
34 entity, the total cost of the project as determined by the district;

35 "Urban Coordinating Council" means the Urban Coordinating
36 Council established pursuant to section 45 of P.L.1996, c.62 (C.55:19-
37 60);

38 "Urban development municipality" means a municipality qualifying
39 for assistance from the Urban Coordinating Council.

40

41 4. (New section) a. (1) Beginning in the 1999-2000 school year
42 and in every school year thereafter ending with a "0" or a "5", each
43 district shall prepare and submit to the commissioner a long-range
44 facilities plan that details the district's school facilities needs and the
45 district's plan to address those needs for the ensuing five years. The
46 long-range facilities plan shall incorporate the facilities efficiency

1 standards and shall be filed with the commissioner no later than
2 October 1, 2000 and no later than October 1 of the other filing years
3 for approval in accordance with those standards. For all Abbott
4 districts that have submitted long-range facilities plans to the
5 commissioner prior to the effective date of P.L. , c. (C.)(now
6 pending before the Legislature as this bill), the commissioner shall
7 within 10 days of the effective date of P.L. , c. (C.)(now pending
8 before the Legislature as this bill) submit the plan to the appropriate
9 local planning board for review pursuant to subsection b. of this
10 section and the 90-day review period established by that subsection
11 shall begin on the date of the planning board's receipt of the plan. For
12 those Abbott districts, this paragraph shall not be read to require an
13 additional filing by October 1, 2000.

14 (2) Notwithstanding any other law or regulation to the contrary,
15 an application for a school facilities project pursuant to section 5 of
16 this act shall not be approved unless the district has filed a long-range
17 facilities plan that is consistent with the application and the plan has
18 been approved by the commissioner; except that prior to October 1,
19 2000, the commissioner may approve an application if the project is
20 necessary to protect the health or safety of occupants of the school
21 facility, or is related to required early childhood education programs,
22 or is related to a school facility in which the functional capacity is less
23 than 90% of the facilities efficiency standards based on current school
24 enrollment, or the district received bids on the school facilities project
25 prior to the effective date of P.L. , c. (C.) (now pending before
26 the Legislature as this bill) and the district demonstrates that further
27 delay will negatively affect the cost of the project.

28 (3) An amendment to a long-range facilities plan may be submitted
29 at any time to the commissioner for review and approval. An
30 amendment to include a community development school project in the
31 plan shall be appropriate at any time unless construction or acquisition
32 of the school facilities project affected by the amendment has been
33 initiated by the building authority pursuant to section 5 of this act.

34 (4) Each long-range facilities plan shall include a cohort survival
35 methodology or other methodology approved by the commissioner,
36 accompanied by a certification by a qualified demographer retained by
37 the district that serves as the basis for identifying the capacity and
38 program needs detailed in the long-range facilities plan.

39 (5) The long-range facilities plan shall include an educational
40 adequacy inventory of all existing school facilities in the district, the
41 identification of all deficiencies in the district's current inventory of
42 school facilities, which includes the identification of those deficiencies
43 that involve emergent health and safety concerns, and the district's
44 proposed plan for future construction and renovation. The long-range
45 facilities plan submissions shall conform to the guidelines, criteria and
46 format prescribed by the commissioner.

1 (6) Each district shall determine the number of "unhoused
2 students" for the ensuing five-year period calculated pursuant to the
3 provisions of section 8 of this act.

4 b. (1) Notwithstanding subsection a. of this section, prior to the
5 submission of a long-range facilities plan to the commissioner pursuant
6 to subsection a. of this section, a district located in an urban
7 development municipality and any district which is a Level II district
8 on the effective date of P.L. , c. (C.) (now pending before the
9 Legislature as this bill) shall submit the long-range facilities plan to
10 the planning board of the municipality pursuant to section 22 of
11 P.L.1975, c.291 (C.40:55D-31) for the planning board's review, which
12 shall include an assessment of the extent to which the plan takes
13 account of the land use and development proposals contained within
14 the municipal master plan adopted pursuant to section 19 of P.L.1975,
15 c.291 (C.40:55D-28) and recommendations as to the community
16 development impact of individual school facilities projects contained
17 in the long-range facilities plan. The commissioner shall not approve
18 any long-range facilities plan submitted by a district located in an
19 urban development municipality or by a Level II district, whether
20 submitted before or after the effective date of P.L. , c. (C.)
21 (now pending before the Legislature as this bill), unless the plan
22 submitted for approval includes a resolution of the municipal planning
23 board reviewed by the Urban Coordinating Council, setting forth the
24 board's findings respecting the coordination of land use and
25 development proposals for the municipality and school facilities
26 planning and the anticipated impact of the school facilities projects
27 contained in the plan on community development and redevelopment
28 efforts and plans in the municipality or the period established by
29 paragraph (2) of this subsection has expired. The commissioner shall
30 not consider any resolution that is not submitted to him in accordance
31 with the requirements established by paragraph (2) of this subsection.
32 The requirements of this subsection shall not bar the commissioner
33 from approving individual school projects in urban development
34 municipalities or in any district which is a Level II district on the
35 effective date of P.L. , c. (C.) (now pending before the
36 Legislature as this bill) if those projects could otherwise be approved
37 without the commissioner's approval of a long-range facilities plan as
38 provided in paragraph (2) of subsection a. of this section.

39 (2) Within 90 days following submission of a long-range facilities
40 plan to the municipality's planning board, the planning board shall
41 adopt a resolution setting forth:

42 (a) a description of the actions taken by the municipal planning
43 board respecting the long-range facilities plan pursuant to section 22
44 of P.L.1975, c.291 (C.40:55D-31);

45 (b) the board's findings as to the extent to which the long-range
46 facilities plan is informed by, and consistent with, the land use and

1 development proposals contained within the municipal master plan
2 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28);

3 (c) the board's findings respecting the anticipated impact of the
4 school facilities projects contained in the long-range facilities plan on
5 community development and redevelopment efforts and plans in the
6 municipality;

7 (d) the board's recommendations with respect to any school
8 facilities project contained in the plan which the board finds to be
9 appropriate for undertaking as a community development school
10 project consistent with existing or proposed community development
11 and redevelopment plans and projects in the municipality. The
12 municipal planning board shall transmit the adopted resolution to the
13 district as an attachment to the long-range facilities plan.

14 (3) On the first business day following adoption of the resolution,
15 the planning board shall transmit copies of the plan and the resolution
16 to the council and to the commissioner.

17 (4) Any district which is not located in an urban development
18 municipality or which is not a Level II district on the effective date of
19 P.L. , c. (C.) (now pending before the Legislature as this bill)
20 may elect to have its long-range facilities plan reviewed by the
21 municipal planning board pursuant to this subsection, and the
22 municipal planning board shall undertake that review and adopt a
23 resolution as set forth in paragraphs (1) and (2) of this subsection.

24 (5) The Urban Coordinating Council shall provide technical
25 assistance to municipal planning boards in urban development
26 municipalities and in Level II district municipalities to assist in their
27 review of long-range facilities plans and in formulating
28 recommendations pursuant to this subsection. The council shall
29 facilitate cooperative efforts of districts and planning boards by
30 identifying or suggesting opportunities for community development
31 school projects in the municipality.

32 (6) Within 45 days of the council's receipt of a long-range facilities
33 plan with an accompanying resolution of the municipal planning board
34 pursuant to this subsection, the council shall review the resolution to
35 determine if the findings of the municipal planning board demonstrate
36 a good faith effort to consult with the district with regard to the
37 coordination of land use and educational facilities planning and with
38 pertinent redevelopment entities with respect to the anticipated impact
39 of school facilities projects on community development and
40 redevelopment efforts and plans in the municipality.

41 c. The commissioner shall develop, for the March 2002 and
42 subsequent Reports on the Cost of Providing a Thorough and Efficient
43 Education, facilities efficiency standards for elementary, middle, and
44 high schools consistent with the core curriculum school delivery
45 assumptions in the report and sufficient for the achievement of the
46 core curriculum content standards, and for the provision of required

1 programs in Abbott districts and early childhood education programs
2 in the districts in which these programs are required by the State. The
3 area allowances per FTE student in each class of the district shall be
4 derived from these facilities efficiency standards.

5 The facilities efficiency standards developed by the commissioner
6 shall not be construction design standards but rather shall represent the
7 instructional spaces, specialized instructional areas, and administrative
8 spaces that are determined by the commissioner to be educationally
9 adequate to support the achievement of the core curriculum content
10 standards and for the provision of required programs in Abbott
11 districts and early childhood education programs in the districts in
12 which these programs are required. A district may design, at its
13 discretion, the educational and other spaces to be included within the
14 school facilities project. The design of the project may eliminate
15 spaces in the facilities efficiency standards, include spaces not in the
16 facilities efficiency standards, or size spaces differently than in the
17 facilities efficiency standards upon a demonstration of the adequacy of
18 the school facilities project to deliver the core curriculum content
19 standards pursuant to paragraph (2) of subsection g. of section 5 of
20 this act.

21 Within a reasonable period of time after the effective date of P.L. ,
22 c. (C.) (now pending before the Legislature as this bill), the
23 commissioner shall publish the facilities efficiency standards developed
24 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
25 New Jersey Register. Within a reasonable period of time after 30 days
26 after publication in the New Jersey Register, the commissioner shall
27 file the facilities efficiency standards with the Office of Administrative
28 Law and those standards shall become effective immediately upon
29 filing with the Office of Administrative Law. During the 30-day
30 period the commissioner shall provide an opportunity for public
31 comment on the proposed facilities efficiency standards.

32 d. Within 90 days of the commissioner's receipt of a long-range
33 facilities plan for review, the commissioner shall determine whether the
34 plan is fully and accurately completed and whether all information
35 necessary for a decision on the plan has been filed by the district.
36 Where pertinent, this 90-day period shall commence at the same time
37 as the 45-day period for council review provided in paragraph (6) of
38 subsection b. of this section. If the commissioner determines that the
39 plan is complete, the commissioner shall promptly notify the district in
40 writing and shall have 60 days from the date of that notification to
41 determine whether to approve the plan or not. If the commissioner
42 determines that the plan is not complete, the commissioner shall notify
43 the district in writing. The district shall provide to the commissioner
44 whatever information the commissioner determines is necessary to
45 make the plan accurate and complete. The district shall submit that
46 information to the commissioner, and the commissioner shall have 60

1 days from the date of receipt of accurate and complete information to
2 determine whether to approve the plan or not.

3 e. Notwithstanding any provision in subsection d. of this section,
4 if at any time the number of long-range facilities plans filed by school
5 districts with the commissioner and pending review exceeds 20 % of
6 the number of school districts in New Jersey, the commissioner may
7 extend by 60 days the deadline for reviewing each plan pending at that
8 time.

9
10 5. (New section) a. The building authority shall construct and the
11 facilities authority shall finance the school facilities projects of Abbott
12 districts, level II districts, and districts with a district aid percentage
13 equal to or greater than 50%.

14 b. (1) Any district whose district aid percentage is less than 50%
15 may elect to have the facilities authority undertake the financing and
16 the building authority undertake the construction of a school facilities
17 project in the district and the State share shall be determined pursuant
18 to this section. In the event that the district elects not to have the
19 building authority undertake the construction of the project, State debt
20 service aid for the project shall be determined pursuant to section 9 of
21 this act.

22 (2) A district whose district aid percentage is less than 50% may
23 enter into an agreement with a county, municipality, other political
24 entity, or public agency authorized to construct a school facilities
25 project to undertake the design, planning, and construction of a school
26 facilities project provided that the entity is subject to the "Local Public
27 Contracts Law," P.L.1971, c.79 (C.40A:11-1 et seq.), the "Local
28 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
29 seq.), or the "Public School Contracts Law, N.J.S.18A:18A-1 et
30 seq.)."

31 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
32 contrary, the procedures for obtaining approval of a school facilities
33 project shall be as set forth in this act; provided that any district
34 whose district aid percentage is less than 50%, which elects not to
35 have the building authority or a community redevelopment entity
36 undertake the construction of the project, shall also be required to
37 comply with the provisions of N.J.S.18A:18A-16.

38 d. Any district seeking to initiate a school facilities project shall
39 apply to the commissioner for approval of the project. The application
40 shall, at a minimum, contain the following information: a description
41 of the school facilities project; a schematic drawing of the project or,
42 at the option of the district, preliminary plans and specifications; a
43 delineation and description of each of the functional components of the
44 project; the number of unhoused students to be housed in the project;
45 the area allowances per FTE student as calculated pursuant to section
46 8 of this act; and the estimated cost to complete the project as

1 determined by the district.

2 e. The commissioner shall review each proposed school facilities
3 project to determine whether it is consistent with the district's long-
4 range facilities plan and whether it complies with the facilities
5 efficiency standards and the area allowances per FTE student derived
6 from those standards. The commissioner shall make a decision on a
7 district's application within 90 days from the date he determines that
8 the application is fully and accurately completed and that all
9 information necessary for a decision has been filed by the district, or
10 from the date of the last revision made by the district. If the
11 commissioner is not able to make a decision within 90 days, he shall
12 notify the district in writing explaining the reason for the delay and
13 indicating the date on which a decision on the project will be made.
14 If the decision is not made by the subsequent date indicated by the
15 commissioner, then the project shall be deemed approved and the
16 preliminary eligible costs shall equal the proposed cost of the project.

17 f. If the commissioner determines that the school facilities project
18 complies with the facilities efficiency standards and the district's long-
19 range facilities plan and does not exceed the area allowance per FTE
20 student derived from those standards, the commissioner shall calculate
21 the preliminary eligible costs of the project pursuant to the formulas
22 set forth in section 7 of this act; except that in the case of a county
23 special services school district or a county vocational school district,
24 the commissioner shall calculate the preliminary eligible costs to equal
25 the amount determined by the board of school estimate and approved
26 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
27 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate. The
28 preliminary eligible costs for all school facilities projects shall also
29 include, in addition to the capital costs of construction, other
30 allowable costs associated with the project.

31 g. If the commissioner determines that the school facilities project
32 is inconsistent with the facilities efficiency standards or exceeds the
33 area allowances per FTE student derived from those standards, the
34 commissioner shall notify the district.

35 (1) The commissioner may approve area allowances in excess of
36 the area allowances per FTE student derived from the facilities
37 efficiency standards if the board of education or State district
38 superintendent, as appropriate, demonstrates that school facilities
39 needs related to required programs cannot be addressed within the
40 facilities efficiency standards and that all other proposed spaces are
41 consistent with those standards. The commissioner shall approve area
42 allowances in excess of the area allowances per FTE student derived
43 from the facilities efficiency standards if the additional area allowances
44 are necessary to accommodate centralized facilities to be shared
45 among two or more school buildings within the district and the
46 centralized facilities represent a more cost effective alternative.

1 (2) The commissioner may waive a facilities efficiency standard if
2 the board of education or State district superintendent, as appropriate,
3 demonstrates to the commissioner's satisfaction that the waiver will
4 not adversely affect the educational adequacy of the school facility,
5 including the ability to deliver the programs and services necessary to
6 enable all students to achieve the core curriculum content standards.

7 (3) To house the district's central administration, a district may
8 request an adjustment to the approved areas for unhoused students of
9 2.17 square feet for each FTE student in the projected total district
10 school enrollment if the proposed administrative offices will be housed
11 in a school facility and the district demonstrates either that the existing
12 central administrative offices are obsolete or that it is more practical
13 to convert those offices to instructional space. To the extent that
14 existing administrative space will continue to be used for
15 administrative purposes, the space shall be included in the formulas set
16 forth in section 7 of this act.

17 If the commissioner approves excess facilities efficiency standards
18 or additional area allowances pursuant to paragraphs (1), (2), or (3)
19 of this subsection, the commissioner shall calculate the preliminary
20 eligible costs based upon the additional area allowances or excess
21 facilities efficiency standards pursuant to the formulas set forth in
22 section 7 of this act. In the event that the commissioner does not
23 approve the excess facilities efficiency standards or additional area
24 allowances, the district may either: modify its submission so that the
25 school facilities project meets the facilities efficiency standards; or pay
26 for the excess costs.

27 (4) The commissioner shall approve spaces in excess of, or
28 inconsistent with, the facilities efficiency standards, hereinafter
29 referred to as nonconforming spaces, upon a determination by the
30 district that the spaces are necessary to comply with State or federal
31 law concerning individuals with disabilities. A district may apply for
32 additional State aid for nonconforming spaces that will permit pupils
33 with learning disabilities to be educated to the greatest extent possible
34 in the same buildings or classes with their nondisabled peers. The
35 nonconforming spaces may: (a) allow for the return of pupils with
36 learning disabilities from private facilities; (b) permit the retention of
37 pupils with learning disabilities who would otherwise be placed in
38 private facilities; (c) provide space for regional programs in a host
39 school building that houses both disabled and nondisabled pupils; and
40 (d) provide space for the coordination of regional programs by a
41 county special services school district, educational services
42 commission, jointure commission, or other agency authorized by law
43 to provide regional educational services in a school building that
44 houses both disabled and nondisabled pupils. A district's State support
45 ratio shall be adjusted to equal the lesser of the sum of
46 CCSAID/TEBUD as defined in section 9 of this act plus 0.25, or

1 100% for any nonconforming spaces approved by the commissioner
2 pursuant to this paragraph.

3 h. Upon approval of a school facilities project and determination
4 of the preliminary eligible costs:

5 (1) In the case of a district whose district aid percentage is less
6 than 50% and which has elected not to have the building authority
7 undertake the construction of the school facilities project, the
8 commissioner shall notify the district whether the school facilities
9 project is approved and, if so approved, the preliminary eligible costs
10 and the excess costs, if any. Following the determination of
11 preliminary eligible costs and the notification of project approval, the
12 district may appeal to the commissioner for an increase in those costs
13 if the detailed plans and specifications completed by a design
14 professional for the school facilities project indicate that the cost of
15 constructing that portion of the project which is consistent with the
16 facilities efficiency standards and does not exceed the area allowances
17 per FTE student exceeds the preliminary eligible costs as determined
18 by the commissioner for the project by 10% or more. The district shall
19 file its appeal within 30 days of the preparation of the plans and
20 specifications. The appeal shall outline the reasons why the
21 preliminary eligible costs calculated for the project are inadequate and
22 estimate the amount of the adjustment which needs to be made to the
23 preliminary eligible costs. The commissioner shall forward the appeal
24 information to the building authority for its review and
25 recommendation. If the additional costs are the result of factors that
26 are within the control of the district or are the result of design factors
27 that are not required to meet the facilities efficiency standards, the
28 building authority shall recommend to the commissioner that the
29 preliminary eligible costs be accepted as the final eligible costs. If the
30 building authority determines the additional costs are not within the
31 control of the district or are the result of design factors required to
32 meet the facilities efficiency standards, the building authority shall
33 recommend to the commissioner a final eligible cost based on its
34 experience for districts with similar characteristics. The commissioner
35 shall make a determination on the appeal within 30 days of its receipt.
36 If the commissioner does not approve an adjustment to the school
37 facilities project's preliminary eligible costs, the commissioner shall
38 issue his findings in writing on the reasons for the denial and on why
39 the preliminary eligible costs as originally calculated are sufficient.

40 (2) In all other cases, the commissioner shall promptly prepare and
41 submit to the building authority a preliminary project report which
42 shall consist, at a minimum, of the following information: a complete
43 description of the school facilities project; the actual location of the
44 project; the total square footage of the project together with a
45 breakdown of total square footage by functional component; the
46 preliminary eligible costs of the project; the project's priority ranking

1 determined pursuant to subsection m. of this section; any other
2 factors to be considered by the building authority in undertaking the
3 project; and the name and address of the person from the district to
4 contact in regard to the project.

5 i. Upon receipt by the building authority of the preliminary project
6 report, the building authority, upon consultation with the district, shall
7 prepare detailed plans, schedules and specifications which contain the
8 building authority's estimated cost and schedule to complete the school
9 facilities project. The building authority shall transmit to the
10 commissioner the building authority's recommendations in regard to
11 the project which shall, at a minimum, contain the detailed plans and
12 specifications; whether the school facilities project can be completed
13 within the preliminary eligible costs; and any other factors which the
14 building authority determines should be considered by the
15 commissioner.

16 (1) In the event that the building authority advises the commissioner
17 that the school facilities project can be completed within the
18 preliminary eligible costs, the commissioner shall: calculate the final
19 eligible costs to equal the preliminary eligible costs; give final approval
20 to the project; and issue a final project report to the building authority
21 pursuant to subsection j. of this section.

22 (2) In the event that the building authority determines that the
23 school facilities project cannot be completed within the preliminary
24 eligible costs, prior to the submission of the building authority's
25 recommendations to the commissioner, the building authority shall, in
26 consultation with the district and the commissioner, determine
27 whether changes can be made in the project which will result in a
28 reduction in costs while at the same time meeting the facilities
29 efficiency standards approved by the commissioner.

30 (a) If the building authority determines that changes in the school
31 facilities project are possible so that the project can be accomplished
32 within the scope of the preliminary eligible costs while still meeting the
33 facilities efficiency standards, the building authority shall so advise the
34 commissioner, whereupon the commissioner shall: calculate the final
35 eligible costs to equal the preliminary eligible costs; give final
36 approval to the project with the changes noted; and issue a final
37 project report to the building authority pursuant to subsection j. of this
38 section.

39 (b) If the building authority determines that it is not possible to
40 make changes in the school facilities project so that it can be
41 completed within the preliminary eligible costs either because the
42 additional costs are the result of factors outside the control of the
43 district or the additional costs are required to meet the facilities
44 efficiency standards, the building authority shall recommend to the
45 commissioner that the preliminary eligible costs be increased
46 accordingly, whereupon the commissioner shall: calculate the final

1 eligible costs to equal the sum of the preliminary eligible costs plus the
2 increase recommended by the building authority; give final approval
3 to the project; and issue a final project report to the building authority
4 pursuant to subsection j. of this section.

5 (c) If the additional costs are the result of factors that are within
6 the control of the district or are the result of design factors that are
7 not required to meet the facilities efficiency standards, the building
8 authority shall recommend to the commissioner that the preliminary
9 eligible costs be accepted, whereupon the commissioner shall:
10 calculate the final eligible costs to equal the preliminary eligible costs
11 and specify the excess costs which are to be borne by the district; give
12 final approval to the school facilities project; and issue a final project
13 report to the building authority pursuant to subsection j. of this
14 section; provided that the commissioner may approve final eligible
15 costs which are in excess of the preliminary eligible costs if, in his
16 judgment, the action is necessary to meet the educational needs of the
17 district.

18 (d) For a school facilities project constructed by the building
19 authority, the building authority shall be responsible for any costs of
20 construction, but only from the proceeds of bonds issued by the
21 facilities authority pursuant to this act, which exceed the amount
22 originally projected by the building authority and approved for
23 financing by the facilities authority, provided that the excess is the
24 result of an underestimate of labor or materials costs by the building
25 authority. After receipt by the building authority of the final project
26 report, the district shall be responsible only for the costs associated
27 with changes, if any, made at the request of the district to the scope
28 of the school facilities project.

29 j. The building authority shall not commence the acquisition or
30 construction of a school facilities project unless the commissioner
31 transmits to the building authority a final project report and the district
32 complies with the approval requirements for the local share, if any,
33 pursuant to section 11 of this act. The final project report shall
34 contain all of the information contained in the preliminary project
35 report and, in addition, shall contain: the final eligible costs; the excess
36 costs, if any; the total costs which equals the final eligible costs plus
37 excess costs, if any; the State share; and the local share.

38 k. For the Abbott districts, the State share shall be 100% of the
39 final eligible costs. For all other districts, the State share shall be an
40 amount equal to 115% of the district aid percentage; except that the
41 State share shall not be less than 10% of the final eligible costs.

42 l. The local share for school facilities projects constructed by the
43 building authority or a community redevelopment entity shall equal
44 the final eligible costs plus any excess costs less the State share.

45 m. The commissioner shall establish, in consultation with the
46 Abbott districts, a priority ranking of all school facilities projects in the

1 Abbott districts based upon his determination of critical need, and shall
2 establish priority categories for all school facilities projects in non-
3 Abbott districts. The commissioner shall rank projects from Tier I to
4 Tier IV in terms of critical need according to the follow prioritization:

5 Tier I: health and safety, including electrical system upgrades;
6 required early childhood education programs; unhoused students/class
7 size reduction as required to meet the standards of the
8 "Comprehensive Educational Improvement and Financing Act of
9 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

10 Tier II: educational adequacy - specialized instructional spaces,
11 media centers, cafeteriums, and other non-general classroom spaces
12 contained in the facilities efficiency standards; special education spaces
13 to achieve the least restrictive environment.

14 Tier III: technology projects; regionalization/consolidation projects.

15 Tier IV: other local objectives.

16 n. Except as otherwise provided in paragraph (2) of subsection b.
17 of this section, the provisions of the "Public School Contracts Law,"
18 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
19 project constructed by a district but shall not be applicable to projects
20 constructed by the building authority or a community redevelopment
21 entity pursuant to the provisions of this act.

22 o. In the event that a district whose district aid percentage is less
23 than 50% elects not to have the building authority undertake
24 construction of a school facilities project, any proceeds of school
25 bonds issued by the district for the purpose of funding the project
26 which remain unspent upon completion of the project shall be used
27 by the district to reduce the outstanding principal amount of the school
28 bonds.

29 p. Upon completion by the building authority of a school facilities
30 project, if the cost of construction and completion of the project is less
31 than the total costs, the district shall be entitled to receive a portion of
32 the local share based on a pro rata share of the difference based on the
33 ratio of the State share to the local share.

34 q. The building authority shall determine the cause of any costs of
35 construction which exceed the amount originally projected by the
36 building authority and approved for financing by the facilities
37 authority.

38 r. In the event that a district has engaged architectural services
39 that have been prequalified by the building authority to prepare the
40 documents required for initial proposal of a school facilities project,
41 the district shall, if permitted by the terms of the district's contract for
42 architectural services, assign the contract for architectural services to
43 the building authority, provided that the fees for the architectural
44 services shall not exceed the fees normally paid by the building
45 authority for such services.

1 6. (New section) The provisions of section 5 of P.L. , c.
2 (C.) (now pending before the Legislature as this bill) shall pertain
3 to community development school projects except as otherwise
4 provided in this section.

5 a. A district and municipality may request that the Urban
6 Coordinating Council designate as a community development school
7 project a school facilities project contained in a long-range facilities
8 plan for which a planning board resolution was reviewed by the
9 council pursuant to subsection b. of section 4 of P.L. , c. (C.)
10 (now pending before the Legislature as this bill) and determined by the
11 council to demonstrate a good faith effort as provided in that
12 subsection or which was added to the long-range facilities plan by
13 amendment approved by the commissioner subsequent to adoption of
14 the plan. The request shall set forth: (1) a project plan for carrying
15 out the redevelopment project as a whole, including the construction
16 of the school facility; (2) the name of the community redevelopment
17 entity to undertake the project; and (3) a description of how the
18 project fits into a redevelopment plan adopted or to be adopted by the
19 municipal governing body pursuant to section 7 of P.L.1992, c.79
20 (C.40A:12A-7). The council shall designate the project as a
21 community development school project if it determines that:

22 (a) the project furthers definite local objectives as to appropriate
23 land uses, density of population, and improved traffic and public
24 transportation, public utilities, recreational and community facilities
25 and other public improvements;

26 (b) the project provides significant social and economic benefits to
27 the municipality, its neighborhoods and residents;

28 (c) based upon the past experience of the community
29 redevelopment entity in undertaking similar projects and the financial
30 capability of that redevelopment entity, there is a high degree of
31 assurance that the project will be undertaken and completed
32 successfully by the community redevelopment entity.

33 With the agreement of the district and the municipality, the council
34 may designate the building authority as the redevelopment entity which
35 shall undertake the community development school project. The
36 designation shall be made if the council determines that neither the
37 community redevelopment entity proposed by the district and
38 municipality or any other redevelopment entity authorized to
39 undertake redevelopment projects in the municipality is financially
40 capable to do so, or possesses appropriate experience in undertaking
41 similar projects.

42 In the event that the council designates the building authority as the
43 redevelopment entity which shall undertake the community
44 development school project, the building authority shall operate under
45 the "Local Redevelopment and Housing Law," P.L.1992, c.79
46 (C.40A:12A-1 et seq.) in undertaking the project.

1 The council's review of the proposed community development
2 school project for designation under this section shall proceed at the
3 same time as the commissioner's review of the school facilities project
4 for approval under section 5 of P.L. , c. (C.) (now pending
5 before the Legislature as this bill). The council's designation or
6 decision not to make a designation shall precede approval by the
7 commissioner.

8 b. Designation of a community development school project shall
9 entitle an urban development municipality and a municipality in which
10 a Level II district is located on the effective date of P.L. , c.
11 (C.) (now pending before the Legislature as this bill) to higher
12 priority for receipt of State assistance for the project as determined by
13 the Urban Coordinating Council in consultation with the community
14 redevelopment entity to undertake the project. The council shall
15 coordinate the provision of State assistance for the community
16 development school project which may include any or all of the
17 following, so long as the purposes for which the moneys are to be
18 expended are not inconsistent with the provisions of any other law:

19 (1) demolition grants or loans made available by the Department of
20 Community Affairs;

21 (2) priority for loans and loan guarantees allocated to "qualified
22 municipalities" by the New Jersey Economic Development Authority
23 pursuant to section 59 of P.L.1996, c.62 (C.55:19-73) or otherwise
24 made available for urban development purposes;

25 (3) priority for loans, loan guarantees and any other housing
26 assistance made available by the New Jersey Housing and Mortgage
27 Finance Agency pursuant to the "New Jersey Housing and Mortgage
28 Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-1 et seq.),
29 for which community development school projects may be eligible;

30 (4) priority for funding out of the "Neighborhood Preservation
31 Nonlapsing Revolving Fund" established pursuant to section 20 of
32 P.L.1985, c.222 (C.52:27D-320);

33 (5) priority for loans, loan guarantees, financing through tax exempt
34 bond financing or any other financial assistance available for these
35 projects by the New Jersey Redevelopment Authority established
36 pursuant to section 4 of P.L.1996, c.62 (C.55:19-23);

37 (6) priority for low-income housing tax credits administered by the
38 New Jersey Housing and Mortgage Finance Agency and made
39 available pursuant to Section 42(h)(4) of the Internal Revenue Code
40 for those projects which support the community development school
41 project within the district;

42 (7) priority for any transportation infrastructure funds administered
43 by the State for which the community development school project may
44 otherwise be eligible, including any moneys available through
45 reauthorization of the "New Jersey Transportation Trust Fund"
46 pursuant to the "New Jersey Transportation Trust Fund Authority Act

1 of 1984," P.L.1984, c.73 (C.27:1B-1 et al.);

2 (8) priority for funds to assist in site remediation which may be
3 made available pursuant to the "Hazardous Discharge Fund" created
4 pursuant to the "Hazardous Discharge Bond Act," P.L.1981, c.275,
5 the "Hazardous Discharge Site Cleanup Fund" established pursuant to
6 section 1 of P.L.1985, c.247 (C.58:10-23.34) or any other moneys
7 made available for purposes consistent with the implementation of a
8 community development school project;

9 (9) priority for any funds which may be made available for the
10 acquisition or development of lands by the State for recreation and
11 conservation purposes pursuant to: P.L.1961, c.46; P.L.1971, c.165;
12 P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265;
13 and P.L.1989, c.183, or any similar act for such purposes that may be
14 enacted; or any such funds administered pursuant to P.L.1961, c.45
15 (C.13:8A-1 et seq.), P.L.1971, c.419 (C.13:8A-19 et seq.), and
16 P.L.1975, c.155 (C.13:8A-35 et seq.), or any similar act for such
17 purposes that may be enacted to the extent that those moneys further
18 the implementation of a community development school project;

19 (10) priority for any State aid for a municipal library which
20 supports a community development school project which is otherwise
21 available pursuant to section 1 of P.L.1985, c.297 (C.18A:74-3.2) or
22 any other law; and

23 (11) priority for any State moneys which may be made available to
24 construct, maintain or operate recreational facilities or playgrounds in
25 order to further the implementation of a community development
26 school project.

27 c. In addition to the requirements set forth in section 5 of this act,
28 a community development school project may request inclusion in the
29 final eligible costs of the school facilities project, of all or any portion
30 of the cost of any community design features including any area,
31 rooms, equipment, recreational area or playground included in the
32 school facilities project which are to be used in common by students
33 of the district and by residents of the community, but there shall not
34 be included in the final eligible costs any portion of the cost of any
35 features which are not an integral part of the school building and
36 grounds. The Urban Coordinating Council shall approve the request
37 if it finds that the inclusion of the funding in the final eligible costs
38 would be conducive to the usefulness and success of the project for
39 both the students of the district and the residents of the community.
40 The council may condition its approval upon the adoption by the
41 school district of policies suitable for assuring continuing community
42 access to the community design features.

43 The cost of the community design features approved by the Urban
44 Coordinating Council shall be reviewed by the building authority. The
45 district shall submit the documentation required by the building
46 authority for the building authority to make its determination. The

1 building authority shall, in its recommendation to the commissioner
2 pursuant to section 5 of this act, include its recommendation with
3 respect to the cost of the community design features.

4 d. The facilities authority shall provide funding for the State's share
5 of the final eligible costs of a school facilities project to be constructed
6 as part of a designated community development school project as
7 approved by the Urban Coordinating Council. The facilities authority
8 shall provide the funding to the community redevelopment entity to
9 undertake construction of the project, or to the building authority
10 contracting for construction of the school facilities project, as
11 determined in the designation of the project by the council. Prior to
12 the provision of funding, the building authority shall review the
13 preliminary eligible costs of the school facilities project and certify to
14 the commissioner and the Urban Coordinating Council any increase or
15 other adjustment necessary to permit the school facilities project to be
16 constructed in a manner conducive to the success of the community
17 development school project. If a community development school
18 project is to be constructed by a community redevelopment entity, the
19 facilities authority shall provide funding for the State share pursuant
20 to an agreement among the facilities authority, the community
21 redevelopment entity, and the State Treasurer which shall, in addition
22 to any other terms and conditions, set forth the terms for disbursement
23 of the State share and provide for the monitoring of construction by
24 the State.

25 e. Upon completion of a community development school project by
26 a community redevelopment entity, the district shall submit to the
27 commissioner a plan to provide for the maintenance of the project and
28 shall enter into a contract which provides for that maintenance.

29
30 7. (New section) a. Preliminary eligible costs for construction of
31 new school facilities and additions to school facilities, characterized by
32 an increase in the square footage of the school facility, shall be
33 approved only if necessary for reasons of unhoused students.
34 Unhoused students are the number of students to be housed in a
35 school building, but which cannot be housed in an existing building
36 without additional space or a new building in order to maintain
37 educational adequacy. Unhoused students are calculated by
38 subtracting the projected enrollment for a school building from its
39 functional capacity.

40 Preliminary eligible costs = AU x C plus other allowable costs

41 where

42 AU is the approved area for unhoused students; and

43 C is the area cost allowance;

44 b. Preliminary eligible costs shall be calculated as follows for
45 reconstruction, remodeling, alteration, modernization, renovation or
46 repair of school facilities that were originally constructed by the

1 district or that the district purchased more than five years prior to the
 2 date of application for approval to the commissioner and that have not
 3 been previously approved by the commissioner pursuant to this act
 4 within the prior 10 years; provided that the 10-year requirement may
 5 be waived by the commissioner if the district satisfactorily
 6 demonstrates that extraordinary circumstances apply.

7 Preliminary eligible costs = $R \times A$ plus other allowable costs

8 where

9 R = the replacement costs of the facility = $GA \times C$

10 and where

11 GA is the gross area (square footage) of the existing school facility
 12 being reconstructed, remodeled, altered, modernized, renovated or
 13 repaired;

14 C is the area cost allowance; and

15 A is a factor determined by the age of the school facility, the
 16 measure of which commences with occupancy of the school facility,
 17 according to the following table:

18

19 Age of the School Facility	A
20 10 years or less	zero
21 11 years or more and less than 26 years	50%
22 26 years or more and less than 41 years	60%
23 41 years or more	85%

24

25 For the purposes of this section the age of the school facility shall be
 26 a composite measure of the age of individual sections of the building
 27 determined in accordance with a method approved by the
 28 commissioner. The commissioner may adjust "A" for a district that
 29 demonstrates that additional renovation expenditures are necessary to
 30 address health and safety conditions, the "Americans with Disabilities
 31 Act of 1990," Pub.L.101-336 (42 U.S.C. s.12101 et seq.), or
 32 obsolescence.

33 Notwithstanding the provisions of this subsection, all school
 34 facilities shall be deemed suitable for rehabilitation unless a pre-
 35 construction evaluation undertaken by the district demonstrates to the
 36 satisfaction of the commissioner that the structure might pose a risk to
 37 the safety of the occupants even after rehabilitation, or that
 38 rehabilitation is not cost-effective.

39 c. Preliminary eligible costs for new construction done in lieu of
 40 renovations shall be determined in accordance with the methodology
 41 for new construction, with preliminary eligible costs determined
 42 pursuant to subsection a. of this section, only when the decision to
 43 replace a school facility is supported by a feasibility study conducted
 44 by the district, and either the age of the building being replaced is 41
 45 years or greater or the commissioner determines that extraordinary
 46 circumstances apply. When new construction done in lieu of

1 renovations qualifies as new construction, the approved area for
2 unhoued students shall be determined by the commissioner, with
3 consideration of the existing school facilities in the district.

4 d. Preliminary eligible costs for new construction done in lieu of
5 renovations which does not meet the requirements of subsection c. of
6 this section shall be determined in accordance with the methodology
7 for aiding renovations, with the preliminary eligible costs determined
8 pursuant to subsection b. of this section.

9 e. Preliminary eligible costs for purchase of an existing facility to
10 be used as a school facility shall be determined in accordance with the
11 methodology for new construction, with preliminary eligible costs
12 determined pursuant to subsection a. of this section.

13 f. Preliminary eligible costs for any addition or reconstruction,
14 remodeling, alteration, modernization, renovation or repair made to a
15 purchased facility within five years of purchase shall be determined as
16 follows:

17 Preliminary eligible costs = $(ACP-PC) \times (C/CP)$ plus other
18 allowable costs

19 where

20 ACP is the preliminary eligible costs for the facilities purchase
21 pursuant to subsection e. of this section;

22 PC is the purchase cost for the facility;

23 C is the area cost allowance at the time of application for the
24 renovation; and

25 CP is the area cost allowance at the time of purchase of the
26 facility.

27 Preliminary eligible costs so calculated shall not be less than
28 zero.

29 g. Other allowable costs shall include the costs of site
30 development, acquisition of land or other real property interests
31 necessary to effectuate the school facilities project, fees for the
32 services of design professionals, including architects, engineers,
33 construction managers and other design professionals, legal fees, and
34 the costs associated with financing the school facilities project. Other
35 allowable costs for school facilities projects to be undertaken by the
36 building authority shall be determined by the building authority. Other
37 allowable costs for school facilities projects to be undertaken by a
38 district or a community redevelopment entity shall be equal to the
39 actual costs unless the commissioner, in consultation with the building
40 authority, determines these costs to be unreasonable in light of the
41 experience of similarly situated districts.

42

43 8. (New section) a. The number of unhoued students shall be
44 calculated as the number of FTE students who are projected to be
45 enrolled in preschool handicapped, preschool, kindergarten, grades 1
46 through 12, and special education services pupil educational programs

1 provided in a district within five years, which are in excess of the
2 functional capacity of the district's current school facilities or the
3 functional capacity of the school facilities which will be available
4 within five years other than the school facilities for which the
5 preliminary eligible costs are determined, based upon the district's
6 long-range facilities plan. The determination of unhoused capacity
7 shall separately consider projected enrollments and functional
8 capacities at the early childhood and elementary (preschool through
9 grade 5), middle (grades six through eight), and high school (grades
10 nine through 12) levels. For the purpose of calculating the district's
11 unhoused students, special education services students shall be
12 considered part of the grade level to which the students' chronological
13 age corresponds. In the event that the commissioner approves a
14 school facilities project which involves the construction of a new
15 school facility to replace an existing school facility, which shall
16 accommodate both the unhoused students and the students in the
17 existing school facility, the calculation of the number of unhoused
18 students shall include the number of students currently attending the
19 existing facility which is to be replaced.

20 b. Approved area for unhoused students (AU) shall be determined
21 according to the following formula:

22 $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$

23 where

24 UEC, UE, UM, UH are the numbers of unhoused students in the
25 early childhood, elementary, middle, and high school enrollment
26 categories, respectively; and

27 SEC, SE, SM, SH are the area allowances per FTE student in
28 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
29 and grades 9 through 12, respectively. Area allowances shall be
30 determined based on the grade level of a student regardless of the
31 grade configurations used in the school buildings of the district.

32 The minimum area allowance per FTE student shall be as follows:

33

34	Preschool through grade 5	125 sq. ft.
35	Grades 6 through 8	136 sq. ft.
36	Grades 9 through 12	151 sq. ft.

37

38 The commissioner, in consultation with the State Treasurer and the
39 Commissioner of the Department of Community Affairs, shall adopt
40 regulations that establish a process for the consideration of special
41 circumstances, in addition to those provided in section 5 of this act, in
42 which the area allowances per FTE student established pursuant to this
43 subsection may be exceeded. Any decision made by the commissioner
44 pursuant to those regulations shall be made in consultation with the
45 State Treasurer and the Commissioner of the Department of
46 Community Affairs.

1 9. (New section) a. State debt service aid for capital investment
2 in school facilities for a district whose district aid percentage is less
3 than 50% and which elects not to have the building authority construct
4 a school facilities project, shall be distributed upon a determination of
5 preliminary eligible costs by the commissioner, according to the
6 following formula:

7 Aid is the sum of A for each issuance of school bonds issued for a
8 school facilities project approved by the commissioner after the
9 effective date of P.L. , c. (C.) (now pending before the
10 Legislature as this bill)

11 where

12 $A = B \times AC/P \times (CCSAID/TEBUD \times 1.15) \times M$, with $AC/P = 1$
13 whenever AC/P would otherwise yield a number greater than one,
14 and where:

15 B is the district's debt service for the individual issuance for the
16 fiscal year;

17 AC is the preliminary eligible costs determined pursuant to section
18 7 of this act;

19 P is the principal of the individual issuance plus any other funding
20 sources approved for the school facilities project;

21 CCSAID is the district's core curriculum standards aid amount
22 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15)
23 as of the date of the commissioner's determination of the preliminary
24 eligible costs;

25 TEBUD is the district's T&E budget determined pursuant to section
26 13 of P.L.1996, c.138 (C.18A:7F-13) as of the date of the
27 commissioner's determination of the preliminary eligible costs; and

28 M is a factor representing the degree to which a district has fulfilled
29 maintenance requirements for a school facilities project determined
30 pursuant to subsection b. of this section.

31 For county special services school districts, CCSAID/TEBUD shall
32 be that of the county vocational school district in the same county.
33 Notwithstanding any provision of this subsection to the contrary, State
34 debt service aid shall not be less than 10% of the preliminary eligible
35 costs.

36 b. The maintenance factor (M) shall be 1.0 except when one of the
37 following conditions applies, in which case the maintenance factor
38 shall be as specified:

39 (1) Effective ten years from the date of the enactment of P.L. ,
40 c. (C.) (now pending before the Legislature as this bill), the
41 maintenance factor for aid for reconstruction, remodeling, alteration,
42 modernization, renovation or repair, or for an addition to a school
43 facility, shall be zero for all school facilities projects for which the
44 district fails to demonstrate over the ten years preceding issuance a net
45 investment in maintenance of the related school facility of at least 2%
46 of the replacement cost of the school facility, determined pursuant to

1 subsection b. of section 7 of this act using the area cost allowance of
 2 the year ten years preceding the year in which the school bonds are
 3 issued.

4 (2) For new construction, additions, and school facilities aided
 5 under subsection b. of section 7 of this act supported by financing
 6 issued for projects approved by the commissioner after the effective
 7 date of P.L. , c. (C.) (now pending before the Legislature as
 8 this bill), beginning in the fourth year after occupancy of the school
 9 facility, the maintenance factor shall be reduced according to the
 10 following schedule for all school facilities projects for which the
 11 district fails to demonstrate in the prior fiscal year an investment in
 12 maintenance of the related school facility of at least two-tenths of 1 %
 13 of the replacement cost of the school facility, determined pursuant to
 14 subsection b. of section 7 of this act.

16 Maintenance Percentage	Maintenance Factor (M)
17 .199% - .151%	75%
18 .150% - .100%	50%
19 Less than .100%	Zero

20
 21 (3) Within one year of the enactment of P.L. , c. (C.) (now
 22 pending before the Legislature as this bill), the commissioner shall
 23 promulgate rules requiring districts to develop a long-range
 24 maintenance plan and specifying the expenditures that qualify as an
 25 appropriate investment in maintenance for the purposes of this
 26 subsection.

27 Any district which obtained approval from the commissioner for
 28 a school facilities project since September 1, 1998 and prior to the
 29 effective date of P.L. , c. (C.) (now pending before the
 30 Legislature as this bill) may elect to have the commissioner re-
 31 calculate its State aid as if the project were subject to the provisions
 32 of this act; provided that a district which received approval from the
 33 commissioner for a school facilities project prior to the effective date
 34 of P.L. , c. (C.) (now pending before the Legislature as this
 35 bill), but has not issued debt, other than short term notes, or entered
 36 into construction contracts, shall not be precluded from deciding not
 37 to proceed with the project and instead submitting an application
 38 pursuant to section 5 of this act.

39
 40 10. (New section) For each issuance of school bonds or
 41 certificates of participation issued for a school facilities project
 42 approved by the commissioner prior to the effective date of P.L. ,
 43 c. (C.) (now pending before the Legislature as this bill):

44 Aid is the sum of A

45 where

46 $A = B \times \text{CCSAID/TEBUD}$

1 and where

2 B is the district's total debt service or lease purchase payment for
3 the individual issuance for the fiscal year, provided that for the
4 purpose of determining debt service or lease purchase payment under
5 this section the cost of site acquisition may be included;

6 CCSAID is the district's core curriculum standards aid amount
7 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
8 and

9 TEBUD is the district's T&E budget determined pursuant to section
10 13 of P.L.1996, c.138(C.18A:7F-13).

11 For county special services school districts, CCSAID/TEBUD shall
12 be that of the county vocational school district in the same county.

13

14 11. (New section) A school facilities project shall not be
15 constructed unless the local share of the project, if any, is approved
16 in accordance with the provisions for the approval of capital projects
17 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
18 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

19

20 12. (New section) A district, other than a State-operated school
21 district, that sought approval pursuant to section 11 of this act of a
22 school facilities project without excess costs but failed to receive that
23 approval, and within the three years prior to that, sought and failed to
24 receive approval of that school facilities project with or without excess
25 costs, may submit the project to the commissioner and request that the
26 commissioner approve the project and authorize the issuance of school
27 bonds for the local share of the project. Upon receipt of the request,
28 the commissioner shall review the school facilities project and
29 determine whether the project is necessary for the provision of a
30 thorough and efficient system of education in the district. If the
31 commissioner concludes that the project is necessary, the
32 commissioner may approve the project without excess costs and
33 authorize the issuance of school bonds to fund the local share. In
34 addition to the amount of taxes determined by the legal voters of the
35 district at the annual school election, the secretary of the board of
36 education shall certify the amount required for the repayment of the
37 interest and principal of the bonds required to fund the local share
38 amount approved by the commissioner in the same manner required
39 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
40 and the amount so certified shall be included in the taxes assessed,
41 levied and collected in the municipality or municipalities comprising
42 the school district for those purposes.

43 Any school facilities project authorized pursuant to this section
44 shall be constructed by the building authority. Nothing in this section
45 shall preclude a State-operated school district from using the process
46 established pursuant to section 2 of P.L.1991, c.139 (C.18A:7A-46.2)

1 to obtain the approval of the commissioner to undertake a school
2 facilities project.

3

4 13. (New section) a. The facilities authority shall be responsible
5 for the financing of school facilities projects and the building authority
6 shall be responsible for the planning, design, construction
7 management, acquisition, construction, and completion of school
8 facilities projects. Upon submission to the building authority of a final
9 project report and financing by the facilities authority, the building
10 authority shall undertake the acquisition, construction, and all other
11 appropriate actions necessary to complete the project. When the final
12 eligible costs of a school facilities project are less than or equal to
13 \$250,000, the building authority may, in its discretion, authorize a
14 district to undertake the acquisition, construction and all other
15 appropriate actions necessary to complete the project and enter into
16 a grant agreement with the district for the payment of the State share.

17 b. The facilities authority shall undertake the financing of school
18 facilities projects pursuant to the provisions of this act. The facilities
19 authority may, in its discretion and upon consultation with the district,
20 finance only the State share of the school facilities project or the State
21 share and the local share of the project. In the event that the facilities
22 authority finances only the State share of a project, the building
23 authority shall not commence acquisition or construction of the project
24 until the building authority receives the local share from the district.

25 c. In order to implement the construction and finance arrangements
26 established for school facilities projects which are to be constructed by
27 the building authority and financed by the facilities authority pursuant
28 to this section, a district shall enter into an agreement with the building
29 authority, the facilities authority, and the commissioner containing the
30 terms and conditions determined by the parties to be necessary to
31 effectuate the project.

32 d. Upon completion by the building authority of a school facilities
33 project, the district shall enter into an agreement with the building
34 authority to provide for the maintenance of the project by the district.
35 In the event that the school facilities project is constructed by a
36 district, upon the completion of the project, the district shall submit to
37 the commissioner a plan to provide for the maintenance of the project
38 by the district. Any agreement or plan shall contain, in addition to any
39 other terms and provisions, a requirement for the establishment of a
40 maintenance reserve fund, the funding levels of which shall be as set
41 forth in regulations adopted by the commissioner pursuant to section
42 25 of this act.

43 e. There is hereby established a separate fund entitled the "School
44 Facilities Construction Fund." This fund shall be maintained by the
45 building authority separate and apart from any other funds of the
46 building authority and may be held in depositaries as may be selected

1 by the building authority and invested and reinvested as other funds in
2 the custody of the building authority, subject to the approval of the
3 State Treasurer. All interest or other income or earnings derived from
4 the investment or reinvestment of moneys in the fund shall be credited
5 to the fund. Any grants, contributions, donations and reimbursements
6 from federal aid programs and from other public or private sources as
7 may be used lawfully for the purposes of this act shall also be held in
8 the fund, but shall be expended in accordance with any conditions or
9 requirements attached thereto. The moneys in the fund are specifically
10 dedicated and shall be applied to the cost of school facilities projects
11 undertaken by the building authority pursuant to this act. The fund
12 shall be credited with the proceeds of bonds issued pursuant to section
13 14 of this act; any moneys appropriated or otherwise made available
14 to it by the Legislature; net earnings received from the investment or
15 deposit of monies in the fund, and any other moneys which the
16 building authority determines to deposit therein.

17 f. Upon the issuance by the facilities authority of bonds pursuant
18 to section 14 of this act, the proceeds of the bonds less costs of
19 issuance shall be transferred to the building authority for deposit into
20 the School Facilities Construction Fund.

21 g. In order to implement the arrangements provided for in this act,
22 the State Treasurer, the facilities authority and the building authority
23 are hereby authorized to enter into one or more contracts. The
24 contracts shall provide, in addition to other terms and conditions, for
25 the payment by the facilities authority to the building authority
26 pursuant to subsection f. of this section in order for the building
27 authority to carry out its responsibilities as set forth in this act. The
28 contract or contracts shall be on terms and conditions as determined
29 by the parties, provided that the incurrence of any obligations of the
30 State under the contract or contracts, if any, shall be subject to and
31 dependent upon appropriations being made from time to time by the
32 Legislature for the purposes of this act.

33

34 14. (New section) Notwithstanding any other provisions of law
35 to the contrary:

36 a. The facilities authority shall have the power, pursuant to the
37 provisions of this act and N.J.S.18A:72A-1 et seq., to issue bonds and
38 refunding bonds, incur indebtedness and borrow money secured, in
39 whole or in part, by monies received pursuant to sections 17, 18 and
40 19 of this act for the purposes of: financing all or a portion of the
41 costs of school facilities projects and any costs related to the issuance
42 thereof, including, but not limited to, the administrative, insurance,
43 operating and other expenses of the facilities authority to undertake
44 the financing of school facilities projects and the administrative,
45 insurance and operating expenses of the building authority to
46 undertake the design, construction and maintenance of school facilities

1 projects; lending moneys to local units to pay the costs of all or a
2 portion of school facilities projects and any costs related to the
3 issuance thereof; funding the school facilities project revolving loan
4 fund pursuant to the provisions of section 15 of this act; and financing
5 the acquisition of school facilities projects to permit the refinancing of
6 debt by the district pursuant to section 16 of this act.

7 The facilities authority may establish reserve funds to further secure
8 bonds and refunding bonds issued pursuant to this section and may
9 issue bonds to pay for the administrative, insurance and operating
10 costs of the facilities authority and the building authority in carrying
11 out the provisions of this act. In addition to its bonds and refunding
12 bonds, the facilities authority shall have the power to issue
13 subordinated indebtedness, which shall be subordinate in lien to the
14 lien of any or all of its bonds or refunding bonds as the facilities
15 authority may determine.

16 b. The facilities authority shall issue the bonds or refunding bonds
17 in such manner as it shall determine in accordance with the provisions
18 of this act and N.J.S.18A:72A-1 et seq.; provided that notwithstanding
19 any other law to the contrary, no resolution adopted by the facilities
20 authority authorizing the issuance of bonds or refunding bonds
21 pursuant to this section shall be adopted or otherwise made effective
22 without the approval in writing of the State Treasurer; and refunding
23 bonds issued to refund bonds issued pursuant to this section shall be
24 issued on such terms and conditions as may be determined by the
25 facilities authority and the State Treasurer. The facilities authority
26 may, in any resolution authorizing the issuance of bonds or refunding
27 bonds issued pursuant to this section, pledge the contract with the
28 State Treasurer provided for pursuant to section 18 of this act, or any
29 part thereof, or may pledge all or any part of the repayments of loans
30 made to local units pursuant to section 19 of this act for the payment
31 or redemption of the bonds or refunding bonds, and covenant as to the
32 use and disposition of money available to the facilities authority for
33 payment of the bonds and refunding bonds. All costs associated with
34 the issuance of bonds and refunding bonds by the facilities authority
35 for the purposes set forth in this act may be paid by the facilities
36 authority from amounts it receives from the proceeds of the bonds or
37 refunding bonds, and from amounts it receives pursuant to sections
38 17, 18, and 19 of this act. The costs may include, but shall not be
39 limited to, any costs relating to the issuance of the bonds or refunding
40 bonds, administrative costs of the facilities authority attributable to the
41 making and administering of loans to fund school facilities projects,
42 and costs attributable to the agreements entered into pursuant to
43 subsection d. of this section.

44 c. Each issue of bonds or refunding bonds of the facilities authority
45 shall be special obligations of the facilities authority payable out of
46 particular revenues, receipts or funds, subject only to any agreements

1 with the holders of bonds or refunding bonds, and may be secured by
2 other sources of revenue, including, but not limited to, one or more of
3 the following:

4 (1) Pledge of the revenues and other receipts to be derived from
5 the payment of local unit obligations and any other payment made to
6 the facilities authority pursuant to agreements with any local unit, or
7 a pledge or assignment of any local unit obligations, and the rights and
8 interest of the authority therein;

9 (2) Pledge of rentals, receipts and other revenues to be derived
10 from leases or other contractual arrangements with any person or
11 entity, public or private, including one or more local units, or a pledge
12 or assignment of those leases or other contractual arrangements and
13 the rights and interests of the facilities authority therein;

14 (3) Pledge of all moneys, funds, accounts, securities and other
15 funds, including the proceeds of the bonds;

16 (4) Pledge of the receipts to be derived from payments of State aid
17 to the facilities authority pursuant to section 21 of this act;

18 (5) Pledge of the contract or contracts with the State Treasurer
19 pursuant to section 18 of this act;

20 (6) Pledge of any sums remitted to the local unit by donation from
21 any person or entity, public or private, subject to the approval of the
22 State Treasurer;

23 (7) A mortgage on all or any part of the property, real or personal,
24 comprising a school facilities project then owned or thereafter to be
25 acquired, or a pledge or assignment of mortgages made to the facilities
26 authority by any person or entity, public or private, including one or
27 more local units and rights and interests of the facilities authority
28 therein; and

29 (8) The receipt of any grants, reimbursements or other payments
30 from the federal government.

31 d. The resolution authorizing the issuance of bonds or refunding
32 bonds pursuant to this section may also provide for the facilities
33 authority to enter into any revolving credit agreement, agreement
34 establishing a line of credit or letter of credit, reimbursement
35 agreement, interest rate exchange agreement, currency exchange
36 agreement, interest rate floor or cap, options, puts or calls to hedge
37 payment, currency, rate, spread or similar exposure or similar
38 agreements, float agreements, forward agreements, insurance
39 contracts, surety bonds, commitments to purchase or sell bonds,
40 purchase or sale agreements, or commitments or other contracts or
41 agreements and other security agreements approved by the facilities
42 authority in connection with the issuance of the bonds or refunding
43 bonds pursuant to this section. In addition, the facilities authority
44 may, in anticipation of the issuance of the bonds or the receipt of
45 appropriations, grants, reimbursements or other funds, including,
46 without limitation, grants from the federal government for school

1 facilities projects, issue notes, the principal of or interest on which, or
2 both, shall be payable out of the proceeds of notes, bonds or other
3 obligations of the facilities authority or appropriations, grants,
4 reimbursements or other funds or revenues of the facilities authority.

5 e. The facilities authority is authorized to engage, subject to the
6 approval of the State Treasurer and in such manner as the State
7 Treasurer shall determine, the services of financial advisors and
8 experts, placement agents, underwriters, appraisers, and other
9 advisors, consultants and agents as may be necessary to effectuate the
10 financing of school facilities projects.

11 f. Bonds and refunding bonds issued by the facilities authority
12 pursuant to this section shall be special and limited obligations of the
13 facilities authority payable from, and secured by, funds and moneys
14 determined by the facilities authority in accordance with this section.
15 Notwithstanding any other provision of law or agreement to the
16 contrary, any bonds and refunding bonds issued by the facilities
17 authority pursuant to this section shall not be secured by the same
18 property as bonds and refunding bonds issued by the facilities
19 authority to finance projects other than school facilities projects.
20 Neither the members of the facilities authority nor any other person
21 executing the bonds or refunding bonds shall be personally liable with
22 respect to payment of interest and principal on these bonds or
23 refunding bonds. Bonds or refunding bonds issued pursuant to this
24 section shall not be a debt or liability of the State or any agency or
25 instrumentality thereof, except as otherwise provided by this
26 subsection, either legal, moral or otherwise, and nothing contained in
27 this act shall be construed to authorize the facilities authority to incur
28 any indebtedness on behalf of or in any way to obligate the State or
29 any political subdivision thereof, and all bonds and refunding bonds
30 issued by the facilities authority shall contain a statement to that effect
31 on their face.

32 g. The State hereby pledges and covenants with the holders of any
33 bonds or refunding bonds issued pursuant to this act that it will not
34 limit or alter the rights or powers vested in the facilities authority by
35 this act, nor limit or alter the rights or powers of the State Treasurer
36 in any manner which would jeopardize the interest of the holders or
37 any trustee of the holders, or inhibit or prevent performance or
38 fulfillment by the facilities authority or the State Treasurer with
39 respect to the terms of any agreement made with the holders of the
40 bonds or refunding bonds or agreements made pursuant to subsection
41 d. of this section; except that the failure of the Legislature to
42 appropriate moneys for any purpose of this act shall not be deemed a
43 violation of this section.

44 h. The facilities authority and the building authority may charge to
45 and collect from local units, districts, the State and any other person,
46 any fees and charges in connection with the facilities authority's or

1 building authority's actions undertaken with respect to school facilities
2 projects, including, but not limited to, fees and charges for the
3 facilities authority's administrative, organization, insurance, operating
4 and other expenses incident to the financing of school facilities
5 projects and the building authority's administrative, organization,
6 insurance, operating and other expenses incident to the planning,
7 design, construction management, acquisition, construction,
8 completion and placing into service and maintenance of school
9 facilities projects. Notwithstanding any provision of this act to the
10 contrary, no Level II district or a district whose district aid percentage
11 is greater than or equal to 50% but less than 100% shall be responsible
12 for the payment of any fees and charges related to the building
13 authority's operating expenses.

14

15 15. (New section) a. The facilities authority shall establish and
16 maintain a special nonlapsing revolving loan fund to be known as the
17 "School Facilities Project Revolving Loan Fund," hereinafter referred
18 to as the "loan fund," which shall be credited with: (1) the proceeds of
19 the sale of bonds pursuant to subsection b. of this section; (2) any
20 moneys that shall be received by the facilities authority from the
21 repayment of loans made from the fund; (3) any moneys appropriated
22 or otherwise made available to it by the Legislature; (4) net earnings
23 received from the investment or deposit of monies in the fund; and (5)
24 any other moneys which the facilities authority determines to deposit
25 therein.

26 b. In addition to any bonds which the facilities authority is
27 authorized to issue pursuant to this act, the facilities authority is
28 authorized to issue bonds in an aggregate principal amount not
29 exceeding \$1,000,000,000 the proceeds from which shall be deposited
30 into the loan fund. The bonds shall be secured in whole or in part by
31 monies received pursuant to sections 17, 18 and 19 of this act.

32 c. The facilities authority shall use the monies in the loan fund
33 exclusively for making loans to local units for the purposes of
34 financing the final eligible costs of school facilities projects in
35 accordance with the provisions of this section. The amount of loans
36 that may be made in the first fiscal year shall not exceed
37 \$400,000,000, in the second fiscal year, \$300,000,000, and in the third
38 fiscal year, \$200,000,000. In any fiscal year in which the dollar value
39 of the loans made is less than the amount permitted herein, the excess
40 amount shall be carried forward and shall be available for loans in the
41 following fiscal year. Each loan to a local unit from the loan fund shall
42 be evidenced by local unit obligations and shall be authorized and
43 issued as provided by law. Notwithstanding the provisions of any law
44 to the contrary, the local unit obligations may be sold at private sale
45 to the facilities authority at any price, whether or not less than par
46 value, and shall be subject to redemption prior to maturity at any times

1 and at any prices as the facilities authority and the local unit may
2 agree.

3 d. Loans from the fund may be made to districts whose district aid
4 percentage is less than 50% and which have elected not to have the
5 building authority construct a school facilities project. Loans from the
6 fund shall be for time periods that are customary for the financing of
7 the construction of school facilities. The facilities authority shall
8 establish other terms of the loan which shall include, but not be limited
9 to, a schedule for drawing down the loan, and a repayment schedule;
10 provided that the interest rate shall be 2% per annum for a minimum
11 period of two years following the effective date of this act, or such
12 other rate as the State Treasurer may, from time to time, approve
13 following the minimum two-year period. Any loan interest rate
14 approved by the State Treasurer pursuant to this subsection shall be
15 no greater than 4% below The Bond Buyer Municipal Bond Index
16 Rate on the date of the establishment of the new loan interest rate.
17 Each loan by the facilities authority, and the terms and conditions of
18 the loan, shall be subject to approval by the State Treasurer.

19 In the event that the dollar value of the loan applications in any
20 fiscal year exceeds the amount of loan funds available, the facilities
21 authority may apportion the loan funds among eligible school facilities
22 projects to finance such percentage as determined by the State
23 Treasurer of each project's final eligible costs, and the district shall
24 be eligible to receive State debt service aid pursuant to section 9 of
25 this act on that portion of the school facilities project's final eligible
26 costs for which loan funds are not available.

27 e. Loans made from the fund to finance school facilities projects
28 shall be allocated to districts in accordance with the critical need for
29 the project. The commissioner shall rank school facilities projects
30 from Tier I to Tier IV in terms of critical need according to the
31 following prioritization:

32 Tier I: health and safety, including electrical system upgrades;
33 required early childhood education programs; unhoused students/class
34 size reduction as required to meet the standards of the
35 "Comprehensive Educational Improvement and Financing Act of
36 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

37 Tier II: educational adequacy - specialized instructional spaces,
38 media centers, cafeteriums, and other non-general classroom spaces
39 contained in the facilities efficiency standards; special education spaces
40 to achieve the least restrictive environment.

41 Tier III: technology projects; regionalization/consolidation projects.

42 Tier IV: other local objectives.

43 f. Except as otherwise provided in subsection d. of this section, if
44 a district obtains a loan from the facilities authority for a school
45 facilities project pursuant to this section, the district shall not receive
46 State debt service aid for the project pursuant to section 9 of this act.

1 g. All repayments of the loans and interest thereon shall be
2 deposited by the facilities authority into the loan fund for use as
3 provided for in this section.

4 h. Any district shall be eligible to receive additional loans pursuant
5 to this section even if the district has received a previous loan;
6 provided that the additional loans are in conformance with the
7 selection criteria established pursuant to this section.

8 i. The facilities authority shall promulgate as part of the regulations
9 adopted pursuant to subsection b. of section 26 of this act, the
10 procedures to be followed by districts in submitting loan applications,
11 which shall include the dates within each fiscal year by which a district
12 is required to submit its application in order to be eligible to receive
13 loan funds.

14
15 16. (New section) In addition to the other powers and duties
16 which have been granted to the facilities authority, whenever any local
17 unit finances the construction or acquisition of a school facilities
18 project which would otherwise qualify under this act except that the
19 debt was issued prior to the effective date of this act, the facilities
20 authority may refinance the debt issued by the local unit through the
21 issuance of bonds secured by repayments of loans made to the local
22 units and may purchase the work or improvement and lease the same
23 to the district, subject to the approval of the State Treasurer; except
24 that the amount of the purchase price for a school facilities project
25 shall not exceed the original cost. Each loan to a local unit pursuant
26 to this section shall be evidenced by local unit obligations and shall be
27 authorized and issued as provided by law. Notwithstanding the
28 provisions of any law to the contrary, the local unit obligations may be
29 sold at private sale to the facilities authority at any price, whether or
30 not less than par value, and shall be subject to redemption prior to
31 maturity at any times and at any prices as the facilities authority and
32 the local unit may agree. All powers, rights, obligations and duties
33 granted to or imposed upon the facilities authority, districts, State
34 departments and agencies or others by this act in respect to school
35 facilities projects shall apply to the same extent with respect to any
36 refinance of debt pursuant to this section; except that any action
37 otherwise required to be taken at a particular time in the
38 implementation of a school facilities project may, when the
39 circumstances require in connection with a refinance of debt pursuant
40 to this section, be taken with the same effect as if taken at that
41 particular time. Upon repayment of the bonds or provision for
42 repayment of bonds issued by the facilities authority to refinance the
43 debt of the local unit, the school facilities project shall be transferred
44 to the district.

45
46 17. (New section) In each fiscal year the State Treasurer shall pay

1 from the General Fund to the facilities authority and the building
2 authority, in accordance with a contract among the State Treasurer,
3 the facilities authority and the building authority as authorized
4 pursuant to section 18 of this act, an amount equal to the debt service
5 amount due to be paid in the State fiscal year on the bonds or
6 refunding bonds of the facilities authority issued or incurred pursuant
7 to section 14 of this act and any additional costs authorized pursuant
8 to that section; provided that all such payments from the General Fund
9 shall be subject to and dependent upon appropriations being made
10 from time to time by the Legislature for those purposes, and provided
11 further that all payments shall be used only to pay for the costs of
12 school facilities projects and the costs of financing those projects.

13

14 18. (New section) The State Treasurer, the facilities authority and
15 the building authority are authorized to enter into one or more
16 contracts to implement the payment arrangement provided for in
17 section 17 of this act. The contract shall provide for payment by the
18 State Treasurer of the amounts required pursuant to section 17 of this
19 act and shall set forth the procedure for the transfer of monies for the
20 purpose of that payment. The contract shall contain terms and
21 conditions as determined by the parties and shall, where appropriate,
22 contain terms and conditions necessary and desirable to secure any
23 bonds or refunding bonds of the facilities authority issued or incurred
24 pursuant to this act; provided that notwithstanding any other provision
25 of law or regulation of the facilities authority to the contrary, the
26 facilities authority and the building authority shall be paid only such
27 funds as shall be determined by the contract, and the incurrence of any
28 obligation of the State under the contract, including any payments to
29 be made thereunder from the General Fund, shall be subject to and
30 dependent upon appropriations being made from time to time by the
31 Legislature for the purposes of this act.

32

33 19. (New section) a. In addition to loans authorized pursuant to
34 section 15 of this act, the facilities authority may make and contract
35 to make loans to local units in accordance with and subject to the
36 provisions of this act to finance all or any portion of the cost of a
37 school facilities project which the local unit may lawfully undertake or
38 acquire and for which the local unit is authorized by law to borrow
39 money; or to refund obligations of the local unit which were issued to
40 provide funds to pay for the cost of a school facilities project. The
41 loans may be made subject to the terms and conditions the facilities
42 authority determines to be consistent with the purposes of this act.
43 Each loan by the facilities authority and the terms and conditions
44 thereof shall be subject to approval by the State Treasurer.

45 b. Each loan to a local unit shall be evidenced by local unit
46 obligations and shall be authorized and issued as provided by law.

1 Notwithstanding the provisions of any other law to the contrary, the
2 local unit obligations may be sold at private sale to the facilities
3 authority at any price, whether or not less than par value, and shall be
4 subject to redemption prior to maturity at any times and at any prices
5 as the facilities authority and the local unit may agree. Each loan to
6 a local unit and the local unit obligations issued to evidence the loan
7 shall bear interest at a rate or rates per annum, including zero interest,
8 and shall be repaid in whole or in part, as the facilities authority and
9 the local unit may agree, with the approval of the State Treasurer.

10

11 20. (New section) A local unit may purchase, lease, rent, sublease
12 or otherwise acquire any school facilities project or any space within
13 a project and pay the amounts as may be agreed upon between the
14 local unit and the facilities authority as the purchase price, rent or
15 other charge therefor; provided that the terms and conditions of the
16 agreement between the facilities authority and the local unit relating
17 to the purchase, lease, rental or sublease shall be subject to the
18 approval of the State Treasurer.

19

20 21. (New section) a. In the event that a local unit has failed or is
21 unable to pay to the facilities authority in full when due any local unit
22 obligations issued by the local unit to the facilities authority, including,
23 but not limited to, any lease or sublease obligations, or any other
24 monies owed by the district to the facilities authority, to assure the
25 continued operation and solvency of the facilities authority, the State
26 Treasurer shall pay directly to the facilities authority an amount
27 sufficient to satisfy the deficiency from State aid payable to the local
28 unit; provided that if the local unit is a school district, the State aid
29 shall not include any State aid which may otherwise be restricted
30 pursuant to the provisions of P.L.1996, c.138 (C.18A:7F-1 et seq.).
31 As used in this section, local unit obligations include the principal or
32 interest on local unit obligations or payment pursuant to a lease or
33 sublease of a school facilities project to a local unit, including the
34 subrogation of the facilities authority to the right of the holders of
35 those obligations, any fees or charges payable to the facilities
36 authority, and any amounts payable by a local unit under a service
37 contract or other contractual arrangement the payments under which
38 are pledged to secure any local unit obligations issued to the facilities
39 authority by another local unit.

40 b. If the facilities authority requires, and if there has been a failure
41 or inability of a local unit to pay its local unit obligations to the
42 facilities authority for a period of 30 days, the chairman or the
43 executive director of the facilities authority shall certify to the State
44 Treasurer, with written notice to the fiscal officer of the local unit, the
45 amount remaining unpaid, and the State Treasurer shall pay that
46 amount to the facilities authority; or if the right to receive those

1 payments has been pledged or assigned to a trustee for the benefit of
2 the holders of bonds or refunding bonds of the facilities authority, to
3 that trustee, out of the State aid payable to the local unit, until the
4 amount so certified has been paid. Notwithstanding any provision of
5 this act to the contrary, the State Treasurer's obligation to pay the
6 facilities authority pursuant to this section shall not extend beyond the
7 amount of State aid payable to the local unit.

8 c. The amount paid to the facilities authority pursuant to this
9 section shall be deducted from the appropriation or apportionment of
10 State aid payable to the local unit and shall not obligate the State to
11 make, nor entitle the local unit to receive, any additional appropriation
12 or apportionment. The obligation of the State Treasurer to make
13 payments to the facilities authority or trustee and the right of the
14 facilities authority or trustee to receive those payments shall be subject
15 and subordinate to the rights of holders of qualified bonds issued prior
16 to the effective date of this act pursuant to P.L.1976, c.38 (C.40A:3-1
17 et seq.) and P.L.1976, c.39 (C.18A:24-85 et seq.).

18

19 22. (New section) a. The facilities authority and the building
20 authority shall have the power to accept and use any funds
21 appropriated and paid by the State to the facilities authority and the
22 building authority, for the purposes for which the appropriations are
23 made. The facilities authority and the building authority shall have the
24 power to apply for and receive and accept appropriations or grants of
25 property, money, services or reimbursements for money previously
26 spent and other assistance offered or made available to it by or from
27 any person, government agency, public authority or any public or
28 private entity whatever for any lawful corporate purpose of the
29 facilities authority, including, without limitation, grants, appropriations
30 or reimbursements from the federal government, and to apply and
31 negotiate for the same upon such terms and conditions as may be
32 required by any person, government agency, authority or entity as the
33 facilities authority and the building authority may determine to be
34 necessary, convenient or desirable.

35 b. The facilities authority shall establish a financial incentive program
36 for the purpose of promoting donations to school facilities projects.
37 Any entity which makes a donation approved by the State Treasurer
38 to the preliminary eligible costs of a school facilities project shall
39 receive an incentive payment pursuant to the provisions of this
40 subsection. The amount of the incentive payment shall equal 50% of
41 the fair market value of the donation but shall not in any one year
42 exceed one-half of the amount of taxes paid or otherwise due from the
43 donor pursuant to the provisions of the "New Jersey Gross Income
44 Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation
45 Business Tax Act," P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable,
46 for the tax year in which the donation is made. The fair market value

1 of a non-cash donation shall be determined by the State Treasurer. The
2 carry-forward for incentive payments shall not be inconsistent with
3 that allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a
4 donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in
5 the case of a donation by a corporation.

6 All incentive payments made pursuant to this section shall be funded
7 by and shall be subject to annual appropriations to the facilities
8 authority for this purpose, and shall in no way rely upon funds raised
9 by the issuance of bonds for school facilities projects.

10
11 23. (New section) Not less than the prevailing wage rate
12 determined by the Commissioner of Labor and Industry pursuant to
13 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid
14 to workers employed in the performance of construction contracts in
15 connection with any school facilities project that is undertaken by the
16 building authority, a community redevelopment entity, a district, or
17 a county, municipality, other political entity or public agency
18 designated by a school district.

19
20 24. (New section) The commissioner, in consultation with the State
21 Treasurer, shall annually submit to the Governor and the Legislature
22 a report on the school facilities construction program established
23 pursuant to the provisions of this act. The report shall be submitted
24 no later than August 1 of each year and shall include, but not be
25 limited to, the following information for the prior fiscal year: the
26 number of school facilities projects approved by the commissioner
27 pursuant to section 5 of this act; the number of projects constructed
28 by the building authority and the amount of time that it has taken the
29 building authority to complete those projects; the number of projects
30 constructed by districts; the number of projects constructed by entities
31 designated by districts; the number of community development school
32 projects approved; the number of loans made to districts from the
33 School Facilities Project Revolving Loan Fund; the percentage of the
34 final eligible costs of each project which was supported through loan
35 funding; the number, if any, of eligible school facilities projects for
36 which loan funds were requested but not available; the number of
37 approved projects which exceeded the facilities efficiency standards,
38 the components of those projects which exceeded the standards, and
39 the amount of construction by individual districts and Statewide
40 estimated to have exceeded the standards; and recommendations for
41 changes in the school facilities construction program established
42 pursuant to this act.

43
44 25. (New section) Notwithstanding the provisions of P.L.1999,
45 c.138 to the contrary concerning the conditions on the appropriation
46 and reappropriation of the balance in the School Construction and

1 Renovation Fund, the unexpended balance in the School Construction
2 and Renovation Fund on the effective date of this act is appropriated
3 to the building authority for deposit in the School Facilities
4 Construction Fund established pursuant to subsection e. of section 13
5 of this act.

6
7 26. (New section) a. The commissioner shall adopt, pursuant to the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
9 seq.), rules and regulations necessary to implement the provisions of
10 sections 1 through 12 of this act; except that notwithstanding any
11 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
12 commissioner may adopt, immediately upon filing with the Office of
13 Administrative Law, such rules and regulations as the commissioner
14 deems necessary to implement the provisions of sections 1 through 12
15 of this act which shall be effective for a period not to exceed 12
16 months. Determinations made by the commissioner pursuant to this
17 act and the rules and regulations adopted by the commissioner to
18 implement this act shall be considered to be final agency action and
19 appeal of that action shall be directly to the Appellate Division of the
20 Superior Court. The regulations shall thereafter be amended, adopted
21 or re-adopted by the State Board of Education in accordance with the
22 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

23 b. The facilities authority shall adopt, pursuant to the
24 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et
25 seq.), and in consultation with the State Treasurer, rules and
26 regulations necessary to implement the provisions of sections 13
27 through 22 of this act; except that notwithstanding any provision of
28 P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the facilities
29 authority may adopt, immediately upon filing with the Office of
30 Administrative Law, such rules and regulations as the facilities
31 authority deems necessary to implement the provisions of sections 13
32 through 22 of this act which shall be effective for a period not to
33 exceed six months and shall thereafter be amended, adopted or re-
34 adopted by the facilities authority, in accordance with the provisions
35 of P.L.1968, c.410 (C.52:14B-1 et seq.).

36 c. The building authority shall adopt, pursuant to the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.), and in consultation with the State Treasurer, rules and
39 regulations necessary to implement the provisions of this act as they
40 apply to the building authority; except that notwithstanding any
41 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
42 building authority may adopt, immediately upon filing with the Office
43 of Administrative Law, such rules and regulations as the building
44 authority deems necessary to implement the provisions of this act as
45 they apply to the building authority which shall be effective for a
46 period not to exceed six months and shall thereafter be amended,

1 adopted or readopted by the building authority in accordance with the
2 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

3 d. Any regulations adopted to implement this act shall include
4 provisions to ensure that all programs necessary to comply with
5 Abbott V are approved.

6
7 27. (New section) All property of the facilities authority and the
8 building authority shall be exempt from levy and sale by virtue of an
9 execution and no execution of other judicial process shall issue against
10 the same nor shall any judgment against the facilities authority and the
11 building authority be a charge or lien upon their property; provided
12 that nothing herein contained shall apply to or limit the rights of the
13 holder of any bonds, notes or other obligations to pursue any remedy
14 for the enforcement of any pledge or lien given by the facilities
15 authority and building authority on or with respect to any project,
16 school facilities project, or any revenues or other moneys.

17
18 28. (New section) If any clause, sentence, paragraph, section or
19 part of this act shall be adjudged by any court of competent
20 jurisdiction to be invalid, the judgment shall not affect, impair or
21 invalidate the remainder thereof, but shall be confined in its operation
22 to the clause, sentence, paragraph, section or part thereof directly
23 involved in the controversy in which the judgment shall have been
24 rendered.

25
26 29. (New section) This act shall be construed liberally to effectuate
27 the legislative intent and the purposes of this act as complete and
28 independent authority for the performance of each act and thing herein
29 authorized and all powers herein granted shall be broadly interpreted
30 to effectuate the intent and purposes and not as a limitation of
31 powers.

32
33 30. (New section) There shall be appropriated annually for the
34 purposes of this act up to \$100,000,000 from monies made available
35 to the State from tobacco companies under the nationwide settlement
36 of the respective actions by the various states against those companies,
37 entered into by this State in the Master Settlement Agreement in State
38 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
39 Court, Chancery Division, Middlesex County, No.C.254-96.

40
41 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
42 read as follows:

43 11. Each school district and county vocational school district shall
44 make an annual report of its progress in conforming to the standards
45 for the evaluation of school performance adopted pursuant to section
46 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
47 shall include but not be limited to:

- 1 a. Demographic data related to each school;
- 2 b. Results of designated assessment programs, including Statewide
3 assessment programs established pursuant to law and regulation;
- 4 c. Information on each school's fiscal operation, including the
5 budget of each school;
- 6 d. (Deleted by amendment, P.L.1996, c.138).
- 7 e. Plans and programs for professional improvement;
- 8 f. Plans to carry out innovative educational programs designed to
9 improve the quality of education;
- 10 g. Recommendations for school improvements during the ensuing
11 year; and
- 12 h. Such additional information as may be prescribed by the
13 commissioner.

14 [Additionally, the State Board of Education may require each district
15 to submit a facilities survey, including current use practices and
16 projected capital project needs.]

17 The district reports shall be submitted to the commissioner annually
18 on a date to be prescribed by the commissioner, who shall make them
19 the basis for an annual report to the Governor and the Legislature,
20 describing the condition of education in New Jersey, the efforts of
21 New Jersey schools in meeting the standards of a thorough and
22 efficient education, the steps underway to correct deficiencies in
23 school performance, and the progress of New Jersey schools in
24 comparison to other state education systems in the United States.

25 (cf: P.L.1996, c.138, s.36)

26

27 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
28 read as follows:

29 1. a. In any State-operated school district created pursuant to the
30 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
31 established a Capital Project Control Board, hereinafter the board,
32 which shall be responsible for the review of any capital project
33 proposed by the State district superintendent provided that the State
34 district superintendent proposes that the capital project be financed in
35 whole or in part by school bonds or notes, or through a lease purchase
36 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
37 shall also be responsible for the certification to the State district
38 superintendent of schools and the Commissioner of Education of the
39 necessity for the capital project and the certification of the
40 appropriation to be made by the governing body of the municipality.

41 b. The board shall consist of five voting members. One member
42 shall be appointed by the Commissioner of Education and two
43 members shall be appointed by the chief executive officer with the
44 consent of a majority of the full membership of the local governing
45 body of the municipality or municipalities in which the school district
46 is located. If the school district is comprised of two municipalities,

1 each municipality shall be entitled to one member, appointed by the
2 executive officer with the consent of the governing body. If the school
3 district is comprised of more than two municipalities, each of the two
4 municipalities with the largest population according to the most recent
5 federal decennial census shall be entitled to one member, appointed by
6 the executive officer with the consent of the governing body.
7 However, if a local governing body fails to agree upon the selection of
8 either board member appointed by an executive officer, then the
9 Commissioner of Education shall make the appointment. One member
10 shall be appointed by the Director of the Division of Local
11 Government Services in the Department of Community Affairs who
12 shall have experience in the area of local finance and capital projects.
13 The fifth member shall be the State district superintendent of schools
14 who shall serve ex-officio and shall act as chairperson of the board.
15 The board members, except for the State district superintendent, shall
16 each serve for a term of one year commencing on July 1 of each year
17 and expiring on June 30 of the following year. Any vacancy in the
18 membership of the board shall be filled for the unexpired term in the
19 manner provided by the original appointment. Members of the board
20 may be employees of the State or any subdivision thereof. All
21 members of the board shall serve without compensation.

22 c. The board shall meet from time to time upon the request of the
23 State district superintendent. All meetings of the board shall be
24 conducted pursuant to the provisions of the "Open Public Meetings
25 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
26 superintendent, or his designee, shall be charged with the responsibility
27 of preparing a transcript of the proceedings and all votes shall be
28 recorded in writing.

29 (cf: P.L.1991, c.139, s.1)

30

31 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
32 read as follows:

33 2. The board shall hear the recommendation of the State district
34 superintendent concerning any proposed capital project, which is to be
35 financed in whole or in part by school bonds or notes, or through a
36 lease purchase agreement pursuant to subsection f. of
37 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
38 the proposed capital project to determine whether the project will
39 assist the State-operated school district in providing a thorough and
40 efficient system of education in that district. In making this
41 determination it may take into consideration factors such as the
42 conditions in the school district, any applicable educational goals, the
43 objectives and standards established by the State, the need for the
44 capital project, the reasonableness of the amount to be expended for
45 the capital project, the estimated time for the undertaking and
46 completion of the capital project, and any other factors which the

1 board may deem necessary including the relationship of the capital
2 project to the long-term capital budget or plan of the school district
3 and the fiscal implications thereof.

4 Following its review and within 60 days of the date on which the
5 State district superintendent submits the recommendation to the board,
6 the board shall adopt a resolution as to whether the State-operated
7 school district should undertake the capital project and providing its
8 reasons therefor. The board shall adopt a resolution indicating the
9 necessity for the capital project and shall also fix and determine by
10 resolution the amount necessary to be raised locally for the capital
11 project. If the board fails to act within 60 days of the submission date,
12 the State district superintendent shall submit the recommendation to
13 the commissioner who shall approve or disapprove the capital project.
14 If the board makes a decision which is contrary to the recommendation
15 of the superintendent, the superintendent may, within 30 days from the
16 date of the board's action, submit the matter to the commissioner for
17 final decision. If the commissioner determines that a capital project
18 should be undertaken, the commissioner shall so notify the board and
19 shall indicate the amount necessary to be raised locally for the capital
20 project. Upon notification, the board shall adopt a resolution
21 indicating the necessity for the capital project and shall also fix and
22 determine by resolution the amount necessary for the capital project
23 as indicated by the commissioner. Certified copies of any resolution
24 requesting the authorization and issuance of bonds and notes or the
25 authorization of a lease purchase agreement shall be delivered to the
26 State district superintendent, the Commissioner of Education, the
27 Director of the Division of Local Government Services in the
28 Department of Community Affairs and the governing body of the
29 municipality or municipalities in which the school district is located.
30 The board shall not approve or recommend any capital project which
31 is inconsistent with the provisions of N.J.S.18A:21-1.

32 (cf: P.L.1991, c.139, s.2)

33

34 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
35 read as follows:

36 3. Notwithstanding the provisions of any law to the contrary, the
37 cost of any capital project authorized pursuant to this act which is to
38 be funded by bonds or notes and certified by the board to the State
39 district superintendent, the Commissioner of Education, the Director
40 of the Division of Local Government Services in the Department of
41 Community Affairs and the governing body of the municipality or
42 municipalities in which the school district is located shall be financed
43 by the issuance of school bonds or notes pursuant to the provisions of
44 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
45 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
46 other obligations shall be authorized, issued, sold and delivered in the

1 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).
2 (cf: P.L.1991, c.139, s.3)

3

4 35. N.J.S.18A:20-4.2 is amended to read as follows:

5 18A:20-4.2 The board of education of any school district may, for
6 school purposes:

7 (a) Purchase, take and condemn lands within the district and lands
8 not exceeding 50 acres in extent without the district but situate in a
9 municipality or municipalities adjoining the district, but no more than
10 25 acres may be so acquired in any one such municipality, without the
11 district, except with the consent, by ordinance, of such municipality;

12 (b) Grade, drain and landscape lands owned or to be acquired by it
13 and improve the same in like manner;

14 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
15 repair or furnish buildings;

16 (d) Borrow money therefor, with or without mortgage; in the case
17 of a type II district without a board of school estimate, when
18 authorized so to do at any annual or special school election; and in the
19 case of a type II district having a board of school estimate, when the
20 amount necessary to be provided therefor shall have been fixed,
21 determined and certified by the board of school estimate; and in the
22 case of a type I district, when an ordinance authorizing expenditures
23 for such purpose is finally adopted by the governing body of a
24 municipality comprised within the district; provided, however, that no
25 such election shall be held nor shall any such resolution of a school
26 estimate board or ordinance of a municipal governing body be
27 introduced to authorize any lease of any building for a term exceeding
28 one year, until the proposed terms of such lease have been reviewed
29 and approved by the Commissioner of Education and the Local
30 Finance Board in the Department of Community Affairs;

31 (e) Construct, purchase, lease or otherwise acquire a building with
32 the federal government, the State, a political subdivision thereof or any
33 other individual or entity properly authorized to do business in the
34 State; provided that: (1) the noneducational uses of the building are
35 compatible with the establishment and operation of a school, as
36 determined by the Commissioner of Education; (2) the portion of the
37 building to be used as a school meets regulations of the Department of
38 Education; (3) the board of education has complied with the
39 provisions of law and regulations relating to the selection and approval
40 of sites; and (4) in the case of a lease, that any lease in excess of five
41 years shall be approved by the Commissioner of Education and the
42 Local Finance Board in the Department of Community Affairs;

43 (f) Acquire [by lease purchase agreement a site and school
44 building; provided that the site and building meet guidelines and
45 regulations of the Department of Education and that any lease
46 purchase agreement in excess of five years shall be approved by the

1 Commissioner of Education as in the best interest of the school district
2 after determining that the relationship of the proposed lease purchase
3 project to the district's goals and objectives established pursuant to
4 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
5 provided that for any lease purchase agreement in excess of five years
6 the Local Finance Board in the Department of Community Affairs shall
7 determine within 30 days that the cost and the financial terms and
8 conditions of the agreement are reasonable], with the approval of
9 either the commissioner, or voters or board of school estimate, as
10 applicable, equipment or improvements or additions to school
11 buildings through lease purchase agreements not in excess of five
12 years. The agreement shall be recorded as an expenditure of the
13 General Fund of the district. The commissioner shall approve the
14 agreement only upon a demonstration by the district that the lease
15 purchase payments and any operating expenses related to the
16 agreement can be included within the district's net budget spending
17 growth limitation and will not result in the need for approval by the
18 voters or board of school estimate, as appropriate, of additional
19 spending proposals to maintain existing instructional programs and
20 extracurricular activities. If the commissioner cannot approve the
21 agreement, the board of education may frame a separate question to
22 authorize the lease purchase agreement and obtain voter or board of
23 school estimate approval to enter into the agreement. A lease
24 purchase agreement for equipment shall not require approval by the
25 commissioner unless the aggregate value of the agreement exceeds in
26 any school year 1% of the district's net budget or \$250,000, whichever
27 is less. As used herein, a "lease purchase agreement" refers to any
28 agreement which gives the board of education as lessee the option of
29 purchasing the leased [premises] equipment or improvements or
30 additions to existing school buildings during or upon termination of
31 the lease, with credit toward the purchase price of all or part of rental
32 payments which have been made by the board of education in
33 accordance with the lease. As part of such a transaction [approved by
34 the Commissioner of Education], the board of education may transfer
35 or lease land or rights in land, including any building thereon, after
36 publicly advertising for proposals for the transfer for nominal or fair
37 market value, to the party selected by the board of education, by
38 negotiation or otherwise, after determining that the proposal is in the
39 best interest of the taxpayers of the district, to construct or to improve
40 and to lease or to own or to have ownership interests in the site and
41 the school building to be leased pursuant to such lease purchase
42 agreement, notwithstanding the provisions of any other law to the
43 contrary. The land and any building thereon which is described in a
44 lease purchase agreement entered into pursuant to this amendatory act,
45 shall be deemed to be and treated as property of the school district,
46 used for school purposes pursuant to R.S.54:4-3.3, and shall not be

1 considered or treated as property leased to another whose property is
2 not exempt, and shall not be assessed as real estate pursuant to section
3 1 of P.L.1949, c.177 (C.54:4-2.3). Any lease purchase agreement
4 authorized by this section shall contain a provision making payments
5 thereunder subject to the annual appropriation of funds sufficient to
6 meet the required payments or shall contain an annual cancellation
7 clause and shall require all construction contracts let by public school
8 districts or let by developers or owners of property used for school
9 purposes to be competitively bid, pursuant to P.L.1977, c.114
10 (N.J.S.18A:18A-1 et seq.);

11 (g) Establish with an individual or entity authorized to do business
12 in the State a tenancy in common, condominium, horizontal property
13 regime or other joint ownership arrangement on a site contributed by
14 the school district; provided the following conditions are met:

15 (1) The individual or entity agrees to construct on the site, or
16 provide for the construction thereon, a building or buildings for use of
17 the board of education separately or jointly with the individual or
18 entity, which shall be subject to the joint ownership arrangement;

19 (2) The provision of the building shall be at no cost or at a reduced
20 cost to the board of education;

21 (3) The school district shall not make any payment for use of the
22 building other than its pro rata share of costs of maintenance and
23 improvements;

24 (4) The noneducational uses of the building are compatible with the
25 establishment and operation of a school, as determined by the
26 Commissioner of Education;

27 (5) The portion of the building to be used as a school, and the site,
28 meet regulations of the Department of Education; and

29 (6) Any such agreement shall be approved by the Commissioner
30 of Education and the Local Finance Board in the Department of
31 Community Affairs;

32 (h) Acquire through sale and lease-back textbooks and
33 non-consumable instructional materials provided that the sale price and
34 principal amount of the lease-back do not exceed the fair market value
35 of the textbooks and instructional materials and that the interest rate
36 applied in the lease-back is consistent with prevailing market rates or
37 is less.

38 (cf: P.L.1998, c.55, s.1)

39

40 36. N.J.S.18A:22-18 is amended to read as follows:

41 18A:22-18. When a board of education of a type I district shall
42 determine by resolution that it is necessary to sell school bonds to
43 raise money for any capital project authorized by law, it shall prepare
44 and deliver to each member of the board of school estimate a
45 statement of the amount of money estimated to be necessary for such
46 purpose. The statement shall include the amount needed to be raised

1 by school bonds, the final eligible costs of the project as approved by
2 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
3 pending before the Legislature as this bill) and in the case of a
4 community development school project by the Urban Coordinating
5 Council pursuant to section 6 of P.L. , c. (C.) (now pending
6 before the Legislature as this bill), and, if applicable, the amount of
7 any costs of the project which are in addition to the final eligible costs.
8 (cf: P.L.1993, c.83, s.6)

9

10 37. N.J.S.18A:22-19 is amended to read as follows:

11 18A:22-19. The board of school estimate shall fix and determine the
12 local share amount necessary for said purpose and shall certify such
13 amount separately to the board of education and to the governing body
14 of the municipality.

15 (cf: N.J.S.18A:22-19)

16

17 38. N.J.S.18A:22-27 is amended to read as follows:

18 18A:22-27. Whenever the board of education in a type II school
19 district having a board of school estimate shall, by resolution adopted
20 by recorded roll call affirmative vote of two thirds of its full
21 membership, determine that it is necessary to sell school bonds to raise
22 money for any capital project, it shall, by such resolution, estimate the
23 amount necessary to be raised for such project or projects, itemizing
24 such estimate so as to make it readily understandable, and the
25 secretary of the board of education shall certify a copy of such
26 resolution to each member of the board of school estimate of the
27 district. The resolution shall include the amount needed to be raised
28 by school bonds, the final eligible costs of the project as approved by
29 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
30 pending before the Legislature as this bill) and in the case of a
31 community development school project by the Urban Coordinating
32 Council pursuant to section 6 of P.L. , c. (C.) (now pending
33 before the Legislature as this bill), and, if applicable, the amount of
34 any costs of the project which are in addition to the final eligible costs.

35 (cf: P.L.1993, c.83, s.8)

36

37 39. N.J.S.18A:22-28 is amended to read as follows:

38 18A:22-28. The board of education of such district shall also, upon
39 delivery of such certificate to the members of the board of school
40 estimate, fix a date, place and time for the holding of a public hearing
41 by the board of school estimate with respect to the amount of money
42 to be raised locally for such project or projects, which date shall be not
43 less than 15 nor more than 30 days after the date of such delivery, and
44 shall cause notice of such public hearing and such resolution, including
45 a statement that said resolution will be on file and open to
46 examination to the public between reasonable hours to be fixed and at

1 a place to be named therein from the date of such notice until the date
2 of said public hearing, to be published at least once and not less than
3 seven days before such public hearing in at least one newspaper,
4 published in each municipality comprised within the school district,
5 and if no newspaper is published in any such municipality, then, as to
6 such municipality, in at least one newspaper circulating in the
7 municipality, and said board of education shall cause said resolution
8 to be on file and open to the examination of the public accordingly and
9 to be produced at said public hearing for the information of those
10 attending the same.

11 (cf: N.J.S.18A:22-28)

12

13 40. N.J.S.18A:22-29 is amended to read as follows:

14 18A:22-29. On the date and at the time and place so fixed for such
15 public hearing, the board of school estimate shall grant the taxpayers
16 and other interested persons an opportunity to present objections and
17 to be heard with respect to said resolution and the amount of money
18 necessary to be raised locally for such project or projects and with
19 respect to the various items and projects for which the same is to be
20 raised.

21 (cf: N.J.S.18A:22-29)

22

23 41. N.J.S.18A:22-30 is amended to read as follows:

24 18A:22-30. At or after such hearing the board of school estimate
25 shall fix and determine the amount of money necessary to be raised
26 locally for said project or projects, and the secretary of said board
27 shall certify said amount to the board of education of the district and
28 to the board or body of each municipality comprised therein which has
29 power to make appropriations of money to be raised by taxes in such
30 municipality. The board of education of the district and the governing
31 body of each such municipality comprising the district shall apportion
32 the amount so to be appropriated, assessed, levied and raised in each
33 of such municipalities, as nearly as may be, on the same basis and by
34 the application of the same standards as are provided by law for
35 apportionment of appropriations by county tax boards.

36 (cf: N.J.S.18A:22-30)

37

38 42. N.J.S.18A:22-39 is amended to read as follows:

39 18A:22-39. Whenever the undertaking of any capital project or
40 projects to be paid for from the proceeds of an issue or issue of bonds
41 is submitted to the voters of a type II district at an annual or special
42 school election for their approval or disapproval, the board shall frame
43 and adopt by a recorded roll call majority vote of its full membership
44 the question or questions to be submitted so that each project is
45 submitted in a separate question, or all or any number of them are
46 submitted in one question, which shall state the project or projects so

1 submitted and the amounts to be raised for each of the projects so
2 separately submitted or for each or for all of the projects so jointly
3 submitted, as the case may be, but any proposal for the purchase of
4 land shall be sufficient to authorize the taking and condemning of such
5 land. If the project is to be constructed by the New Jersey Building
6 Authority or a community redevelopment entity, the referendum shall,
7 when framed as a single question, request approval for the local share
8 and shall disclose the final eligible costs of the project as approved by
9 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
10 pending before the Legislature as this bill) and in the case of a
11 community development school project by the Urban Coordinating
12 Council pursuant to section 6 of P.L. , c. (C.) (now pending
13 before the Legislature as this bill), and, if applicable, the amount of
14 any costs of the project which are in addition to the final eligible costs.
15 If the school facilities project is not to be constructed by the New
16 Jersey Building Authority or a community redevelopment entity, the
17 referendum shall, when framed as a single question, request approval
18 for the total costs of the project, shall disclose State debt service aid
19 for the project and, if applicable, the amount of any costs of the
20 project which are in addition to the final eligible costs of the project.
21 When a project is framed in more than one question, a summary shall
22 be included in the explanatory statement which accompanies the
23 questions that includes the total costs of the project, total State debt
24 service aid, and, if applicable, the amount of the costs of the project
25 which are in addition to the final eligible costs of the project, and any
26 individual question containing costs in addition to the final eligible
27 costs shall include the amount of those additional costs.

28 The statement of additional costs in any ballot question and in any
29 explanatory statement that accompanies a ballot question shall describe
30 the additional costs as follows: "This project includes \$(insert
31 amount) for school facility construction elements in addition to the
32 facilities efficiency standards developed by the Commissioner of
33 Education."

34 (cf: P.L.1993, c.83, s.12)

35

36 43. N.J.S.18A:72A-1 is amended to read as follows:

37 18A:72A-1. [It is hereby declared] The Legislature finds and
38 declares that a serious public emergency exists affecting and
39 threatening the welfare, comfort, health, safety and prosperity of the
40 people of the state and resulting from the fact that financial resources
41 are lacking with which to construct required dormitory and other
42 educational facilities at public and private institutions of higher
43 education and to construct public elementary and secondary school
44 facilities; that it is essential that this and future generations of youth
45 be given the fullest opportunity to learn and to develop their
46 intellectual and mental capacities; that it is essential that institutions

1 for higher education and school districts within the state be provided
2 with appropriate additional means to assist such youth in achieving
3 the required levels of learning and development of their intellectual
4 and mental capacities; that it is essential that all resources of the state
5 be employed in order to meet the tremendous demand for higher
6 educational opportunities and public school facilities; that all
7 institutions of higher education in the state, both public and private,
8 and all public elementary and secondary educational institutions, are
9 an integral part of the total educational effort in the state for
10 providing higher educational opportunities, and that it is the purpose
11 of this chapter and P.L. , c. (C.) (now pending before the
12 Legislature as this bill) to provide a measure of assistance and an
13 alternative method of financing to enable institutions of higher
14 education and public school districts in the state to provide the
15 facilities which are sorely needed to accomplish the purposes of this
16 chapter and P.L. , c. (C.) (now pending before the Legislature as
17 this bill), all to the public benefit and good, to the extent and manner
18 provided herein and in P.L. , c. (C.) (now pending before the
19 Legislature as this bill).

20 The Legislature further finds that the inventory of public
21 elementary and secondary school buildings and the equipment and
22 capital resources currently available are aging, both chronologically
23 and technologically; that the current funding at the federal, State, and
24 local levels and the current mechanisms for construction of these
25 capital projects is inadequate to meet the demonstrated need for public
26 school facilities and these inadequacies necessitate additional sources
27 of funding and the coordination of construction activities at the State
28 level to meet those needs; that while the credit status of New Jersey's
29 school districts is sound, it can be economically more reasonable to
30 finance the costs of developing the educational infrastructure of the
31 State's public elementary and secondary schools, by providing for the
32 funding of capital projects through the issuance of bonds, notes or
33 other obligations by the New Jersey Educational Facilities Authority,
34 to be retired through annual payments made by the State subject to
35 appropriation by the State Legislature, and to provide for the use of
36 the proceeds of those bonds, notes or other obligations to pay for
37 educational infrastructure projects; that such a structure would
38 substantially reduce the costs of financing and provide for a more
39 efficient use of the funds available for the development of the
40 educational infrastructure; that the New Jersey Building Authority has
41 substantial and significant experience in undertaking major capital
42 construction projects, has a system of internal controls and procedures
43 to ensure the integrity of construction activities, and is therefore the
44 appropriate entity to undertake the planning, design, construction and
45 operation of elementary and secondary educational infrastructure
46 projects; and that by authorizing the New Jersey Educational Facilities

1 Authority and the New Jersey Building Authority to undertake these
2 activities, there will be achieved economies of scale, better
3 coordination of resources, effective financial management and
4 reporting, and increased monitoring and quality control of school
5 district instruction.

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

7
8 44. N.J.S.18A:72A-3 is amended to read as follows:

9 18A:72A-3. As used in this act, the following words and terms
10 shall have the following meanings, unless the context indicates or
11 requires another or different meaning or intent:

12 "Authority" means the New Jersey Educational Facilities Authority
13 created by this chapter or any board, body, commission, department
14 or officer succeeding to the principal functions thereof or to whom the
15 powers conferred upon the authority by this chapter and P.L. , c.
16 (C.) (now pending before the Legislature as this bill) shall be given
17 by law;

18 "Bond" means bonds [or] , notes or other obligations and refunding
19 bonds of the authority issued pursuant to this chapter and P.L. , c.
20 (C.) (now pending before the Legislature as this bill);

21 "Cost" means in connection with a school facilities project, all costs
22 and expenses necessary or incident to all or part of a school facilities
23 project, including the costs associated with financing and
24 administrative fees and expenses;

25 "County college capital project" means any capital project of a
26 county college certified pursuant to section 2 of P.L.1971, c.12
27 (C.18A:64A-22.2) and approved by the State Treasurer for funding
28 pursuant to the "County College Capital Projects Fund Act,"
29 P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

30 "District" means a local or regional school district established
31 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
32 Statutes, a county special services school district established pursuant
33 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
34 county vocational school district established pursuant to article 3 of
35 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
36 operated school district established pursuant to P.L.1987, c.399
37 (C.18A:7A-34);

38 "Dormitory" means a housing unit with necessary and usual
39 attendant and related facilities and equipment;

40 "Educational facility" means a structure suitable for use as a
41 dormitory, dining hall, student union, administration building,
42 academic building, library, laboratory, research facility, classroom,
43 athletic facility, health care facility, teaching hospital, and parking
44 maintenance storage or utility facility and other structures or facilities
45 related thereto or required or useful for the instruction of students or
46 the conducting of research or the operation of an institution for higher

1 education, and public libraries, and the necessary and usual attendant
2 and related facilities and equipment, but shall not include any facility
3 used or to be used for sectarian instruction or as a place for religious
4 worship;

5 "Emerging needs program" means a program at one or more public
6 or private institutions of higher education directed to meeting new and
7 advanced technology needs or to supporting new academic programs
8 in science and technology;

9 "Higher education equipment" means any property consisting of, or
10 relating to, scientific, engineering, technical, computer,
11 communications or instructional equipment;

12 "Local unit" means a county, municipality, board of education or
13 any other political entity authorized to construct, operate and maintain
14 a school facilities project and to borrow money for those purposes
15 pursuant to Title 18A of the New Jersey Statutes;

16 "Participating college" means a public institution of higher
17 education or private college which, pursuant to the provisions of this
18 chapter, participates with the authority in undertaking the financing
19 and construction or acquisition of a project;

20 "Project" means a dormitory or an educational facility or any
21 combination thereof, or a county college capital project, but shall not
22 include a school facilities project;

23 "Private college" means an institution for higher education other
24 than a public college, situated within the State and which, by virtue of
25 law or charter, is a nonprofit educational institution empowered to
26 provide a program of education beyond the high school level;

27 "Private institution of higher education" means independent colleges
28 or universities incorporated and located in New Jersey, which by virtue
29 of law or character or license, are nonprofit educational institutions
30 authorized to grant academic degrees and which provide a level of
31 education which is equivalent to the education provided by the State's
32 public institutions of higher education as attested by the receipt of and
33 continuation of regional accreditation by the Middle States Association
34 of Colleges and Schools, and which are eligible to receive State aid;

35 "Public institution of higher education" means Rutgers, The State
36 University, the State colleges, the New Jersey Institute of Technology,
37 the University of Medicine and Dentistry of New Jersey, the county
38 colleges and any other public university or college now or hereafter
39 established or authorized by law;

40 "School facilities project" means the acquisition, demolition,
41 construction, improvement, repair, alteration, modernization,
42 renovation, reconstruction or maintenance of all or any part of any
43 school facility or of any other personal property necessary for or
44 ancillary to any school facility, and shall include fixtures, furnishings
45 and equipment, and shall include, but is not limited to, site
46 acquisition, site development, the services of design professionals such

1 as engineers and architects, construction management, legal services,
2 financing costs and administrative fees and expenses incurred in
3 connection with the school facilities project.

4 "School facility" means and includes any structure, building or
5 facility used wholly or in part for academic purposes by a district, but
6 shall exclude athletic stadiums, grandstands, and any structure,
7 building or facility used solely for school administration.

8 "Refunding bonds" means bonds, notes, or other obligations issued
9 to refinance bonds previously issued by the authority pursuant to this
10 chapter and P.L. , c. (C.) (now pending before the Legislature as
11 this bill).

12 "University" means Rutgers, The State University.
13 (cf: P.L.1999, c.184, s.6)

14

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

16 18A:72A-4. (a) There is hereby established in but not of the
17 Department of the Treasury a public body corporate and politic, with
18 corporate succession to be known as the "New Jersey educational
19 facilities authority." Notwithstanding this allocation, the authority shall
20 be independent of any supervision or control by the department or any
21 officer thereof. The authority shall constitute a political subdivision of
22 the State established as an instrumentality exercising public and
23 essential governmental functions, and the exercise by the authority of
24 the powers conferred by this chapter and P.L. , c. (C.) (now
25 pending before the Legislature as this bill) shall be deemed and held
26 to be an essential governmental function of the State.

27 (b) The authority shall consist of seven members, two of whom
28 shall be the chairman of the Commission on Higher Education, ex
29 officio, and the State Treasurer, ex officio, or when so designated by
30 them, their deputies; one person to be appointed by the Governor upon
31 the recommendation of the President of the Senate and one person
32 appointed by the Governor upon the recommendation of the Speaker
33 of the General Assembly who shall serve during the two year
34 legislative term in which they are appointed and until their successors
35 are appointed and qualified; and [five] three citizens of the State to be
36 appointed by the Governor [with the advice and consent of the Senate]
37 no more than two of whom shall be of the same political party for
38 terms of five years[; provided that the terms of the members first
39 appointed shall be arranged by the Governor so that one of such terms
40 shall expire on April 30 in each successive year ensuing after such
41 appointments]. Each member shall hold office for the term of his
42 appointment and shall continue to serve during the term of his
43 successor unless and until his successor shall have been appointed and
44 qualified. Any vacancy among the members appointed by the
45 Governor shall be filled by appointment for the unexpired term only.
46 A member of the authority shall be eligible for reappointment.

1 The terms of office of members of the authority appointed by the
2 Governor who are serving on the effective date of P.L. , c. (C.)
3 (now pending before the Legislature as this bill) shall expire upon the
4 appointment by the Governor of five members of the authority as
5 provided by this section. The five members initially appointed by the
6 Governor pursuant to this section shall be as follows: one member
7 upon the recommendation of the President of the Senate and one
8 member upon the recommendation of the Speaker of the General
9 Assembly, who shall serve during the two-year legislative term in
10 which they are appointed; and three members whose terms shall be
11 arranged so that a term of one of the members expires on April 30 in
12 each successive year ensuing after the appointments.

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

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

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

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

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

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

7 (h) Notwithstanding any other law to the contrary, it shall not be
8 or constitute a conflict of interest for a trustee, director, officer or
9 employee of a participating college or a member or employee of a
10 board of education to serve as a member of the authority; provided
11 such trustee, director, officer, member or employee shall abstain from
12 discussion, deliberation, action and vote by the authority under this
13 chapter or P.L. , c. (C.) (now pending before the Legislature as
14 this bill) in specific respect to such participating college or board of
15 education of which such member is a trustee, director, officer,
16 member or employee.

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

31 Notwithstanding the foregoing provisions of this subsection (i),
32 with regard to the authorization or sale of bonds of the authority, the
33 authority shall furnish to the Governor a certified copy of the minutes
34 of the meeting at which the bonds are authorized or sold and the
35 Governor shall indicate approval or disapproval of the action upon
36 receipt of the certified copy of the minutes.

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

46 (cf: P.L.1999, c.217, s.11)

- 1 46. N.J.S.18A:72A-5 is amended to read as follows:
2 18A:72A-5. The authority shall have power:
3 (a) To adopt bylaws for the regulation of its affairs and the conduct
4 of its business;
5 (b) To adopt and have an official common seal and alter the same
6 at pleasure;
7 (c) To maintain an office at such place or places within the State
8 as it may designate;
9 (d) To sue and be sued in its own name, and plead and be
10 impleaded;
11 (e) To borrow money and to issue bonds and notes and other
12 obligations of the authority and to provide for the rights of the holders
13 thereof as provided in this chapter and P.L. , c. (C.) (now
14 pending before the Legislature as this bill);
15 (f) To acquire, lease as lessee, hold and dispose of real and
16 personal property or any interest therein, in the exercise of its powers
17 and the performance of its duties under this chapter and P.L. , c.
18 (C.) (now pending before the Legislature as this bill);
19 (g) To acquire in the name of the authority by purchase or
20 otherwise, on such terms and conditions and in such manner as it may
21 deem proper, or by the exercise of the power of eminent domain, any
22 land or interest therein and other property which it may determine is
23 reasonably necessary for any project , including any lands held by any
24 county, municipality or other governmental subdivision of the State;
25 and to hold and use the same and to sell, convey, lease or otherwise
26 dispose of property so acquired, no longer necessary for the authority's
27 purposes;
28 (h) To receive and accept, from any federal or other public agency
29 or governmental entity, grants or loans for or in aid of the acquisition
30 or construction of any project or school facilities project, and to
31 receive and accept aid or contributions from any other source, of
32 either money, property, labor or other things of value, to be held, used
33 and applied only for the purposes for which such grants, loans and
34 contributions may be made consistent with this chapter and section 22
35 of P.L. , c. (C.) (now pending before the Legislature as this bill);
36 (i) To prepare or cause to be prepared plans, specifications, designs
37 and estimates of costs for the construction and equipment of projects
38 for participating colleges under the provisions of this chapter, and
39 from time to time to modify such plans, specifications, designs or
40 estimates;
41 (j) By contract or contracts or by its own employees to construct,
42 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
43 projects for participating colleges and, pursuant to the provisions of
44 P.L. ,c. (C.) (now pending before the Legislature as this bill), to
45 finance the planning, design, and construction of school facilities
46 projects; however, in any contract or contracts undertaken by the

1 authority for the construction, reconstruction, rehabilitation or
2 improvement of any public college project where the cost of such
3 work will exceed \$25,000, the contracting agent shall advertise for and
4 receive in the manner provided by law:

- 5 (1) separate bids for the following categories of work;
 - 6 (a) the plumbing and gas fitting work;
 - 7 (b) the heating and ventilating systems and equipment;
 - 8 (c) the electrical work, including any electrical power plants;
 - 9 (d) the structural steel and ornamental iron work;
 - 10 (e) all other work and materials required for the completion of the
11 project, or
- 12 (2) bids for all work and materials required to complete the entire
13 project if awarded as a single contract; or
- 14 (3) both (1) and (2) above.

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

19 Contracts shall be awarded to the lowest responsible bidder whose
20 bid, conforming to the invitation for bids, will be the most
21 advantageous to the authority;

22 (k) To determine the location and character of any project to be
23 undertaken pursuant to the provisions of this chapter and to
24 construct, reconstruct, maintain, repair, operate, lease, as lessee or
25 lessor, and regulate the same pursuant to this chapter in the case of
26 any project, and as authorized pursuant to the provisions of P.L. , c.
27 (C.) (now pending before the Legislature as this bill) in the case of
28 any school facilities project; to enter into contracts for any or all such
29 purposes; to enter into contracts for the management and operation of
30 a project and the financing of a school facilities project, and to
31 designate a participating college as its agent to determine the location
32 and character of a project undertaken by such participating college
33 under the provisions of this chapter and, as the agent of the authority,
34 to construct, reconstruct, maintain, repair, operate, lease, as lessee or
35 lessor, and regulate the same, and, as agent of the authority, to enter
36 into contracts for any and all such purposes including contracts for the
37 management and operation of such project;

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

42 (m) Generally to fix and revise from time to time and to charge and
43 collect rates, rents, fees and other charges for the use of and for the
44 services furnished or to be furnished by a project or, if applicable, a
45 school facilities project or any portion thereof and to contract with
46 holders of its bonds and with any other person, party, association,

- 1 corporation or other body, public or private, in respect thereof;
- 2 (n) To enter into any and all agreements or contracts, execute any
3 and all instruments, and do and perform any and all acts or things
4 necessary, convenient or desirable for the purposes of the authority or
5 to carry out any power expressly given in this chapter or in P.L. ,
6 c. (C.) (now pending before the Legislature as this bill);
- 7 (o) To invest any moneys held in reserve or sinking funds, or any
8 moneys not required for immediate use or disbursement, at the
9 discretion of the authority, in such obligations as are authorized by law
10 for the investment of trust funds in the custody of the State Treasurer;
- 11 (p) To enter into any lease relating to higher education equipment
12 with a public or private institution of higher education pursuant to the
13 provisions of P.L.1993, c.136 (C.18A:72A-40 et al.);
- 14 (q) To enter into loan agreements with any county, to hold bonds
15 or notes of the county evidencing those loans, and to issue bonds or
16 notes of the authority to finance county college capital projects
17 pursuant to the provisions of the "County College Capital Projects
18 Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);
- 19 (r) To enter into agreements or contracts, execute instruments, and
20 do and perform all acts or things necessary, convenient or desirable for
21 the purposes of the authority to carry out any power expressly
22 provided pursuant to this chapter and P.L. , c. (C.)(now
23 pending before the Legislature as this bill), including, but not limited
24 to, entering into contracts with the State Treasurer and the building
25 authority as authorized pursuant to section 18 of P.L. , c. (C.)
26 (now pending before the Legislature as this bill) and entering into
27 agreements with districts as may be authorized pursuant to P.L. , c.
28 (C.) (now pending before the Legislature as this bill);
- 29 (s) To enter into leases, rentals or other disposition of a real
30 property interest in and of any school facilities project to or from any
31 local unit, pursuant to P.L. , c. (C.)(now pending before the
32 Legislature as this bill);
- 33 (t) To make and contract to make loans or leases to local units to
34 finance the cost of school facilities projects and to acquire and
35 contract to acquire bonds, notes or other obligations issued or to be
36 issued by local units to evidence the loans or leases, all in accordance
37 with the provisions of this chapter and P.L. , c. (C.)(now
38 pending before the Legislature as this bill);
- 39 (u) Subject to any agreement with holders of its bonds issued to
40 finance a school facilities project, obtain as security or to provide
41 liquidity for payment of all or any part of the principal of and interest
42 and premium on the bonds of the authority or for the purchase upon
43 tender or otherwise of the bonds, lines of credit, letters of credit,
44 reimbursement agreements, interest rate exchange agreements,
45 currency exchange agreements, interest rate floors or caps, options,
46 puts or calls to hedge payment, currency, rate, spread or similar

1 exposure or similar agreements, float agreements, forward agreements,
2 insurance contract, surety bond, commitment to purchase or sell
3 bonds, purchase or sale agreement, or commitments or other contracts
4 or agreements and other security agreements or instruments in any
5 amounts and upon any terms as the authority may determine and pay
6 any fees and expenses required in connection therewith;

7 (v) To charge to and collect from local units, the State and any
8 other person, any fees and charges in connection with the authority's
9 actions undertaken with respect to projects and school facilities
10 projects, including, but not limited to, fees and charges for the
11 authority's administrative, organization, insurance, operating and other
12 expenses incident to the financing, construction and placing into
13 service and maintenance of projects and school facilities projects .

14 (cf: P.L.1997, c.360, s.6)

15

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

17 18A:72A-12. [All] With respect to projects, all moneys received
18 pursuant to the authority of this chapter, whether as proceeds from the
19 sale of bonds or as revenues, shall be deemed to be trust funds to be
20 held and applied solely as provided in this chapter. Any officer with
21 whom, or any bank or trust company with which, such moneys shall be
22 deposited shall act as trustee of such moneys and shall hold and apply
23 the same for the purposes hereof, subject to such regulations as this
24 chapter and the resolution authorizing the bonds of any issue or the
25 trust agreement securing such bonds may provide.

26 (cf: N.J.S.18A:72A-12)

27

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

29 18A:72A-15. Bonds and notes issued by the authority under the
30 provisions of this chapter and P.L. , c. (C.) (now pending before
31 the Legislature as this bill) are hereby made securities in which the
32 state and all political subdivisions of the state, their officers, boards,
33 commissions, departments or other agencies, all banks, bankers,
34 savings banks, trust companies, savings and loan associations,
35 investment companies and other persons carrying on a banking
36 business, all insurance companies, insurance associations, and other
37 persons carrying on an insurance business, and all administrators,
38 executors, guardians, trustees and other fiduciaries, and all other
39 persons whatsoever who now are or may hereafter be authorized to
40 invest in bonds or other obligations of the state, may properly and
41 legally invest any funds, including capital belonging to them or within
42 their control; and said bonds, notes or other securities or obligations
43 are hereby made securities which may properly and legally be
44 deposited with and received by any state or municipal officers or
45 agency of the state for any purpose for which the deposit of bonds or

1 other obligations of the state is now or may hereafter be authorized
2 by law.

3 (cf: N.J.S.18A:72A-15)

4

5 49. Section 2 of P.L.1981, c.120 (C.52:18A-78.2) is amended to
6 read as follows:

7 2. As used in this act, unless the context clearly indicates
8 otherwise:

9 a. "Authority" means the New Jersey Building Authority created
10 under this act.

11 b. "Bonds" means bonds, notes, other obligations and refunding
12 bonds issued by the authority pursuant to this act.

13 c. "Building" includes any portion thereof, such as an apartment
14 created under the "Horizontal Property Act," P.L.1963, c.168
15 (C.46:8A-1 et seq.) or a unit created under the "Condominium Act,"
16 P.L.1969, c.257 (C.46:8B-1 et seq.).

17 d. "Local governmental agency" means any municipality, county,
18 school district, or any agency, department or instrumentality of any of
19 the foregoing, or any other public body having local or regional
20 jurisdiction or powers and not constituting a State agency.

21 e. "Notes" means notes issued by the authority pursuant to this act.

22 f. "Project" means any building or buildings, including related
23 structures, parking facilities, improvements, real and personal property
24 or any interest therein, including lands under water, space rights and
25 air rights, and other appurtenances and facilities necessary or
26 convenient to the use or operation of the building or buildings,
27 acquired, owned, constructed, reconstructed, extended, rehabilitated,
28 renovated, preserved or improved by the authority for the purposes set
29 forth in section 8 of P.L.1992, c.174 (C.52:18A-78.5a), but shall not
30 include a school facilities project.

31 g. "State agency" means the Executive, Legislative or Judicial
32 branch of the State Government or any officer, department, board,
33 commission, bureau, division, public authority or corporation, agency
34 or instrumentality of the State.

35 h. "Historic public building" means a building that is owned by a
36 governmental agency and that is on or eligible for State or National
37 Registers of Historic Places.

38 i. "District" means a local or regional school district established
39 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
40 Statutes, a county special services school district established pursuant
41 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
42 county vocational school district established pursuant to article 3 of
43 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
44 operated school district established pursuant to P.L.1987, c.399
45 (C.18A:7A-34).

46 j. "Local unit" means a county, municipality, board of education or

1 any other political entity authorized to construct, operate and maintain
2 a school facilities project and to borrow money for those purposes
3 pursuant to Title 18A of the New Jersey Statutes.

4 k. "School facilities project" means the acquisition, demolition,
5 construction, improvement, repair, alteration, modernization,
6 renovation, reconstruction or maintenance of all or any part of a
7 school facility or of any other personal property necessary for or
8 ancillary to a school facility, and shall include fixtures, furnishings and
9 equipment, and shall include, but is not limited to, site acquisition, site
10 development, the services of design professionals such as engineers
11 and architects, construction management, legal services and financing
12 and administrative costs incurred in connection with the school
13 facilities project.

14 l. "School facility" means and includes any structure, building or
15 facility used wholly or in part for academic purposes by a district, but
16 shall exclude athletic stadiums, grandstands, and any structure,
17 building or facility used solely for school administration.

18 m. "Refunding bonds" means bonds, notes, or other obligations
19 issued to refinance bonds previously issued by the authority pursuant
20 to P.L.1981, c.120 (C.52:18A-78.1 et seq.).
21 (cf: P.L.1992, c.174, s.1)

22
23 50. Section 3 of P.L.1981, c.120 (C.52:18A-78.3) is amended to
24 read as follows:

25 3. The Legislature finds and declares the following:

26 a. That for many years the functions of the State Government have
27 grown and that during this period of rapid expansion no definite
28 program has been adopted for the housing and carrying out of the
29 operations of the many State agencies.

30 b. That many State agencies have their offices in privately owned
31 or inadequate State owned buildings and that these buildings are
32 inadequate to meet the needs of these State agencies and the needs of
33 the people of the State.

34 c. That it is to the economic benefit and general welfare of the
35 citizens of the State to provide sufficient office space and related
36 facilities for these State agencies and thus provide for a more efficient
37 and economic operation of State Government.

38 d. That projects for the construction of correctional facilities are
39 required because of a critical public need and a legal constraint.

40 e. That in order to provide for office space and related facilities at
41 a cost that these State agencies can afford, it is necessary to create and
42 establish a building authority for the purposes of constructing,
43 operating, selling and leasing office buildings and related facilities to
44 meet the needs of State agencies.

45 f. It is necessary and in the public interest that this building
46 authority have the necessary funds to provide for predevelopment

1 cost, temporary financing, land development expenses, construction
2 and operation of office buildings and related facilities for the use of,
3 and sale or rental to, State agencies.

4 g. That the renovation and preservation of historic public buildings
5 contribute to the preservation of the State's heritage, the promotion of
6 the cultural life of our people, and the development and redevelopment
7 of our municipalities.

8 h. For these purposes, there should be created a corporate
9 governmental agency to be known as the "New Jersey Building
10 Authority" which, through issuance of bonds and notes to the private,
11 investing public may provide or obtain the capital resources necessary
12 to acquire, construct, reconstruct, rehabilitate, renovate, preserve or
13 improve these office buildings and related facilities necessary or
14 convenient to the operation of any State agency, or historic public
15 buildings, as the case may be.

16 i. That the acquisition, construction, reconstruction, rehabilitation,
17 renovation, preservation or improvement of these office buildings and
18 related facilities necessary or convenient to the operation of any State
19 agency, and historic public buildings are public uses and public
20 purposes for which public money may be loaned and private property
21 may be acquired and tax exemptions granted, and that the powers and
22 duties of the New Jersey Building Authority as set forth in this act are
23 necessary and proper for the purpose of achieving the ends here
24 recited.

25 j. That the construction, reconstruction, rehabilitation, renovation,
26 preservation and improvement activities of the authority will provide
27 a much needed stimulus for the construction industry, and related
28 industries and professions, particularly in urban areas.

29 k. That the highest priority for the New Jersey Building shall be the
30 renovation and preservation of the following facilities in the State
31 Capital: the State House, the Old Barracks, the War Memorial, the
32 Kelsey Building, and the townhouses adjacent to the Kelsey Building.

33 The Legislature further finds and declares that:

34 l. It is essential that this and future generations of young people be
35 given the fullest opportunity to learn and develop their intellectual
36 capacities; that institutions of public elementary and secondary
37 education within the State be provided with the appropriate additional
38 means required to assist these young citizens in achieving the required
39 levels of learning and the complete development of their intellectual
40 abilities; and that the resources of the State be employed to meet the
41 tremendous demand for public elementary and secondary educational
42 opportunities.

43 m. Public elementary and secondary educational facilities are an
44 integral part of the effort in this State to provide educational
45 opportunities; it is the purpose of P.L. , c. (C.) (now pending
46 before the Legislature as this bill) to provide a measure of assistance

1 and an alternative method of financing to enable school districts to
2 provide the facilities which are so critically needed; the inventory of
3 public elementary and secondary school buildings and the equipment
4 and capital resources currently available are aging, both
5 chronologically and technologically; and the current funding at the
6 federal, State, and local levels and the current mechanisms for
7 construction of these capital projects is inadequate to meet the
8 demonstrated need for school facilities and these inadequacies
9 necessitate additional sources of funding and the coordination of
10 construction activities at the State level to meet those needs.

11 n. While the credit status of New Jersey's school districts is sound,
12 it can be economically more reasonable to finance the costs of
13 developing the educational infrastructure of the State's public
14 elementary and secondary schools, by providing for the funding of
15 capital projects through the issuance of bonds, notes or other
16 obligations by the New Jersey Educational Facilities Authority, to be
17 retired through annual payments made by the State subject to
18 appropriation by the State Legislature, and to provide for the use of
19 the proceeds of those bonds, notes or other obligations to pay for
20 educational infrastructure projects; and such a structure would
21 substantially reduce the costs of financing and provide for a more
22 efficient use of the funds available for the development of the
23 educational infrastructure.

24 o. The New Jersey Building Authority has substantial and significant
25 experience in undertaking major capital construction projects, has a
26 system of internal controls and procedures to ensure the integrity of
27 construction activities, and is therefore the appropriate entity to
28 undertake the planning, design, construction, and operation of
29 educational infrastructure projects; and by authorizing the New Jersey
30 Building Authority and the New Jersey Educational Facilities
31 Authority to undertake these activities, there will be achieved
32 economies of scale, better coordination of resources, effective
33 financial management and control and increased monitoring and quality
34 control of school district construction.

35 (cf: P.L.1992, c.174, s.2)

36

37 51. Section 4 of P.L.1981, c.120 (C.52:18A-78.4) is amended to
38 read as follows:

39 4. a. There is established in the Department of the Treasury a
40 public body corporate and politic, with corporate succession, to be
41 known as the "New Jersey Building Authority." The authority is
42 constituted an instrumentality of the State exercising public and
43 essential governmental functions, and the exercise by the authority
44 thereof of the powers conferred by this act shall be deemed and held
45 to be an essential governmental function of the State.

46 b. The membership of the authority shall consist of [12] 13

1 directors as follows: the State Treasurer, [the Comptroller of the
2 Treasury,] the Chairman of the Commission on Capital Budgeting
3 and Planning and the Commissioner of Education who shall be
4 members ex officio; two persons appointed by the Governor upon the
5 recommendation of the President of the Senate and two persons
6 appointed by the Governor upon the recommendation of the Speaker
7 of the General Assembly, of whom no more than one of each group
8 of two shall be of the same political party, and who shall serve during
9 the 2-year legislative term in which they are appointed and until their
10 successors shall have been appointed and qualified; and ~~[five]~~ six
11 directors appointed by the Governor [with the advice and consent of
12 the Senate] for terms of 4 years no more than ~~[three]~~ four of whom
13 shall be of the same political party. [The directors of the authority
14 first appointed by the Governor shall serve for terms of 1 year, 2
15 years, 3 years and two for 4 years, respectively, and thereafter
16 directors shall be appointed by the Governor for terms of 4 years.]
17 Each such director shall hold office for the term of his appointment
18 and until his successor shall have been appointed and qualified. A
19 director shall be eligible for reappointment. Any vacancy on the board
20 of directors occurring other than by expiration of term shall be filled
21 in the same manner as the original appointment but for the unexpired
22 term only.

23 The terms of office of the directors of the authority appointed by
24 the Governor who are serving on the effective date of P.L. , c.
25 (C.) (now pending before the Legislature as this bill) shall expire
26 upon the appointment by the Governor of ten directors pursuant to
27 this section. The ten directors appointed by the Governor pursuant to
28 the provisions of this section shall be as follows: two persons upon the
29 recommendation of the President of the Senate and two persons upon
30 the recommendation of the Speaker of the General Assembly, who
31 shall serve during the two-year legislative term in which they are
32 appointed; and six persons, one of whom shall serve for a term of one
33 year, two for terms of two years, two for terms of three years, and
34 one for a term on four years.

35 c. Each director appointed by the Governor, except those
36 appointed upon recommendation of the President of the Senate and
37 Speaker of the General Assembly, may be removed from office by the
38 Governor for cause, after a public hearing, and may be suspended by
39 the Governor pending the completion of the hearing. Each director
40 before entering upon his duties shall take and subscribe an oath to
41 perform the duties of his office faithfully, impartially and justly to the
42 best of his ability. A record of the oaths shall be filed in the office of
43 the Secretary of State.

44 d. The authority shall not be deemed to be constituted and shall not
45 take action or adopt motions or resolutions until all original authorized
46 members shall have been appointed and qualified in the manner

1 provided in this section. A chairman shall be appointed by the
2 Governor with the advice and consent of the Senate from the
3 directors of the authority other than the ex officio directors, and the
4 directors of the authority shall annually elect one of their number as
5 vice chairman thereof. The directors shall elect a secretary and a
6 treasurer who need not be directors, and the same person may be
7 elected to serve both as secretary and treasurer. The powers of the
8 authority shall be vested in the directors thereof in office from time to
9 time and seven directors of the authority shall constitute a quorum at
10 any meeting thereof. Action may be taken and motions and
11 resolutions adopted by the authority at any meeting thereof by the
12 affirmative vote of at least seven directors of the authority. No
13 vacancy on the board of directors of the authority shall impair the right
14 of a quorum of the directors to exercise all the powers and perform all
15 the duties of the authority.

16 e. Each director and the treasurer of the authority shall execute a
17 bond to be conditioned upon the faithful performance of the duties of
18 the director or treasurer, as the case may be, in such form and amount
19 as may be prescribed by the Comptroller of the Treasury. Bonds shall
20 be filed in the office of the Secretary of State. At all times thereafter,
21 the directors and treasurer of the authority shall maintain these bonds
22 in full effect. All costs of the bonds shall be borne by the authority.

23 f. The directors of the authority shall serve without compensation,
24 but the authority shall reimburse its directors for actual expenses
25 necessarily incurred in the discharge of their duties. Notwithstanding
26 the provisions of any other law, no officer or employee of the State
27 shall be deemed to have forfeited or shall forfeit his office or
28 employment or any benefits or emoluments thereof by reason of his
29 acceptance of the office of ex officio director of the authority or his
30 services therein.

31 g. The State Treasurer [and the Comptroller of the Treasury of the
32 State], as an ex officio [directors] director of the authority, may
33 [each] designate an officer or employee of the Department of the
34 Treasury to represent him at meetings of the authority, and the
35 Chairman of the Commission on Capital Budgeting and Planning, as
36 ex officio director of the authority, may designate a member or the
37 executive director of the Commission on Capital Budgeting and
38 Planning to represent him at meetings of the authority and the
39 Commissioner of Education, as an ex officio director of the authority,
40 may designate an officer or employee of the Department of Education
41 to represent him at meetings of the authority. Each designee may
42 lawfully vote and otherwise act on behalf of the director for whom he
43 constitutes the designee. The designation shall be in writing delivered
44 to the authority and shall continue in effect until revoked or amended
45 in writing delivered to the authority.

46 h. The authority may be dissolved by act of the Legislature on

1 condition that the authority has no debts or obligations outstanding or
2 that provision has been made for the payment or retirement of these
3 debts or obligations. Upon any dissolution of the authority all
4 property, funds and assets thereof shall be vested in the State. In
5 addition, subject to any property rights of a person, firm, partnership
6 [or], corporation or local unit resulting from the sale or leasing of a
7 project or a school facilities project by the authority to the person,
8 firm, partnership [or], corporation or local unit, any project or school
9 facilities project shall be vested in the State upon the payment or
10 retirement of all debts or obligations for the project or school
11 facilities project or upon the assumption by the State of liability for
12 any outstanding debts or obligations for the project or school facilities
13 project.

14 i. A true copy of the minutes of every meeting of the authority shall
15 be forthwith delivered by and under the certification of the secretary
16 thereof to the Governor and the presiding officers of both houses of
17 the Legislature. No action taken at any meeting by the authority shall
18 have effect until 15 days after a copy of the minutes has been so
19 delivered unless during the 15-day period the Governor shall approve
20 the same in which case the action shall become effective upon the
21 approval. If, in the 15-day period, the Governor returns the copy of
22 the minutes with veto of any action taken by the authority or any
23 member thereof at that meeting, the action shall be of no effect. The
24 powers conferred in this subsection upon the Governor shall be
25 exercised with due regard for the rights of the holders of bonds and
26 notes of the authority at any time outstanding; and nothing in, or
27 done pursuant to, this subsection shall in any way limit, restrict or
28 alter the obligation or powers of the authority or any representative
29 or officer of the authority to carry out and perform in every detail
30 each and every covenant, agreement or contract at any time made or
31 entered into by or on behalf of the authority with respect to its bonds
32 or notes or for the benefit, protection or security of the holders
33 thereof.

34 (cf: P.L.1983, c.138, s.3)

35

36 52. Section 5 of P.L.1981, c.120 (C.52:18A-78.5) is amended to
37 read as follows:

38 5. Except as otherwise limited by this act, the authority shall have
39 power:

40 a. To make and alter bylaws for its organization and internal
41 management and, subject to agreements with noteholders and
42 bondholders, to make rules and regulations with respect to its projects,
43 its school facilities projects, operations, properties and facilities.

44 b. To adopt an official seal and alter the same at pleasure.

45 c. To sue and be sued.

46 d. To make and enter into all contracts and agreements necessary

1 or incidental to the performance of its duties and the exercise of its
2 powers under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and
3 P.L. , c. (C.)(now pending before the Legislature as this bill).

4 e. To enter into agreements or other transactions with and accept
5 grants and the cooperation of the United States or any agency thereof
6 or any State agency in furtherance of the purposes of this act,
7 including but not limited to the development, maintenance, operation
8 and financing of any project or school facilities project, and to do any
9 and all things necessary in order to avail itself of this aid and
10 cooperation.

11 f. To receive and accept aid or contributions from any source of
12 money, property, labor or other things of value, to be held, used and
13 applied to carry out the purposes of [this act] P.L.1981, c.120
14 (C.52:18A-78.1 et seq. and P.L. , c. (C.)(now pending before the
15 Legislature as this bill) subject to such conditions upon which this aid
16 and these contributions may be made, including but not limited to,
17 gifts or grants from any department or agency of the United States or
18 any State agency for any purpose consistent with [this act] P.L.1981,
19 c.120 (C.52:18A-78.1 et seq. and P.L. , c. (C.)(now pending before
20 the Legislature as this bill).

21 g. To acquire, own, hold, sell, assign, exchange, lease, mortgage
22 or otherwise dispose of real and personal property or any interest
23 therein in the exercise of its powers and the performance of its duties
24 under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and P.L. ,
25 c. (C.)(now pending before the Legislature as this bill).

26 h. To appoint an executive director and such other officers,
27 employees and agents as it may require for the performance of its
28 duties, and to fix their compensation, promote and discharge them, all
29 without regard to the provisions of Title 11 of the Revised Statutes.

30 i. To acquire, construct, reconstruct, rehabilitate, renovate,
31 preserve, improve, alter or repair or provide for the demolition,
32 construction, reconstruction, improvement, alteration or repair of any
33 project or school facilities project and let, award and enter into
34 construction contracts, purchase orders and other contracts with
35 respect thereto in such manner as the authority shall determine.

36 j. To arrange or contract with a county or municipality and any
37 relevant utility for the planning, replanning, opening, grading or
38 closing of streets, roads, roadways, alleys or other places, or for the
39 furnishing of facilities or for the acquisition by a county or
40 municipality of property or property rights or for the furnishing of
41 property or services, in connection with a project or school facilities
42 project.

43 k. To sell, lease, assign, transfer, convey, exchange, mortgage or
44 otherwise dispose of or encumber any project or school facilities
45 project or other property no longer needed to carry out the public
46 purposes of the authority and, in the case of the sale of any project or

1 school facilities project or property, to accept a purchase money
2 mortgage in connection therewith; and to lease, repurchase or
3 otherwise acquire and hold any project or school facilities project or
4 property which the authority has theretofore sold, leased or otherwise
5 conveyed, transferred or disposed of.

6 l. To grant options to purchase any project or school facilities
7 project or to renew any leases entered into by it in connection with any
8 of its projects or school facilities project, on such terms and conditions
9 as it deems advisable.

10 m. To acquire by purchase, lease or otherwise, on such terms and
11 conditions and in such manner as it may deem proper, or by the
12 exercise of the power of eminent domain, except with respect to lands
13 owned by the State or any public lands reserved for recreation and
14 conservation purposes, any land and other property, including railroad
15 lands and land under water, which it may determine is reasonably
16 necessary for any of its projects or school facilities project or for the
17 relocation or reconstruction of any highway by the authority and any
18 and all rights, title and interest in that land and other property,
19 including public lands, highways or parkways, owned by or in which
20 a State agency or local governmental agency has any right, title or
21 interest, or parts thereof or rights therein and any fee simple absolute
22 or any lesser interest in private property, and any fee simple absolute
23 in, easements upon or the benefit of restrictions upon, abutting
24 property to preserve and protect any project or school facilities
25 project.

26 n. To prepare or cause to be prepared plans, specifications,
27 designs and estimates of costs for the construction, reconstruction,
28 rehabilitation, improvement, alteration or repair of any project or
29 school facilities project, and from time to time to modify these plans,
30 specifications, designs or estimates.

31 o. To sell, lease, rent, sublease or otherwise dispose of any project
32 or any space embraced in any project to any State agency or to any
33 person, firm, partnership or corporation for sale, leasing, rental or
34 subleasing to any State agency, and, where applicable, to establish and
35 revise the purchase price, rents or other charges therefor; provided,
36 however, that the incurrence of any liabilities by a State agency under
37 any agreement entered into with the authority pursuant to the
38 aforesaid authorization, including, without limitation, the payment of
39 any and all rentals or other amounts required to be paid by the agency
40 thereunder, shall be subject to and dependent upon appropriations
41 being made from time to time by the Legislature for that purpose and
42 approval by the presiding officers, or such other officers as may be
43 provided by law, of both houses of any such lease.

44 p. To sell, lease, rent, sublease or otherwise dispose of, to any
45 person, firm, partnership or corporation, any surplus space in any
46 project over and above that sold, leased, rented, subleased or

- 1 otherwise disposed of to State agencies and to establish and revise the
2 purchase price, rents or charges therefor.
- 3 q. To approve of the selection of any tenant not a State agency
4 under a lease or sublease agreement for the use or occupation of any
5 portion of a building in which a project is located.
- 6 r. To manage or operate any project or school facilities project or
7 real or personal property related thereto whether owned or leased by
8 the authority or any State agency or any person, firm, partnership or
9 corporation, and to enter into agreements with any State agency, or
10 any local governmental agency, or local unit or with any person, firm,
11 association, partnership or corporation, either public or private, for the
12 purpose of causing any project or school facilities project or related
13 property to be managed.
- 14 s. To provide advisory, consultative, training and educational
15 services, technical assistance and advice to any person, firm,
16 association, partnership or corporation, either public or private, in
17 order to carry out the purposes of [this act] P.L.1981, c.120
18 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
19 the Legislature as this bill).
- 20 t. Subject to the provisions of any contract with noteholders or
21 bondholders to consent to any modification, amendment or revision of
22 any kind of any contract, lease or agreement of any kind to which the
23 authority is a party.
- 24 u. To determine, after holding a public hearing in the municipality
25 in which the project is to be located, except as otherwise provided in
26 section 6 of [this act]P.L.1981, c.120 (C.52:18A-78.6), and at any
27 time, with respect to a school facilities project, the location, type and
28 character of the project or school facilities project or any part thereof
29 and all other matters in connection with all or any part of the project
30 or school facilities project notwithstanding any land use plan, zoning
31 regulation, [building code] or similar regulation heretofore or hereafter
32 adopted by any municipality, county, public body corporate and
33 politic, or any other political subdivision of the State.
- 34 v. To borrow money and to issue its bonds and notes and to secure
35 the same and provide for the rights of the holders thereof as provided
36 in this act.
- 37 w. Subject to any agreement with bondholders or noteholders, to
38 invest moneys of the authority not required for immediate use,
39 including proceeds from the sale of any bonds or notes, in those
40 obligations, securities and other investments as the authority shall
41 deem prudent.
- 42 x. To procure insurance against any loss in connection with its
43 property and other assets and operations in such amounts and from
44 such insurers as it deems desirable.
- 45 y. To engage the services of architects, engineers, attorneys,
46 accountants, building contractors, urban planners, landscape architects

1 and financial experts and such other advisors, consultants and agents
2 as may be necessary in its judgment and to fix their compensation.

3 z. To enter into agreements or contracts, execute instruments, and
4 do and perform all acts or things necessary, convenient or desirable for
5 the purposes of the authority or to carry out any power expressly
6 provided pursuant to P.L.1981, c.120 (C.52:18A-78.1 et. seq.) and
7 P.L. , c. (C.)(now pending before the Legislature as this bill).

8 aa. To enter into agreements with the State Treasurer, the
9 Commissioner of Education, districts, community redevelopment
10 entities, the educational facilities authority and any other entity which
11 may be required in order to carry out the provisions of P.L. , c.
12 (C.)(now pending before the Legislature as this bill).

13 bb. Notwithstanding any provision of law to the contrary, upon
14 resolution of a municipal governing body, following a determination
15 by the Urban Coordinating Council designating the authority as the
16 community redevelopment entity which shall undertake a community
17 development school project pursuant to paragraph (c) of subsection
18 a. of section 6 of P.L. , c. (C.)(now pending before the
19 Legislature as this bill), to act as the redevelopment entity of that
20 municipality pursuant to the "Local Redevelopment and Housing
21 Law," P.L.1992, c.79 (C.40A:12A-1 et seq.).

22 cc. To do any act necessary or convenient to the exercise of the
23 foregoing powers or reasonably implied therefrom.
24 (cf: P.L.1992, c.174, s.10)

25

26 53. Section 10 of P.L.1981, c.120 (C.52:18A-78.10) is amended
27 to read as follows:

28 10. a. No municipality shall modify or change the drawings, plans
29 or specifications for the construction, reconstruction, rehabilitation,
30 alteration or improvement of any project or school facilities project
31 of the authority, or the construction, plumbing, heating, lighting or
32 other mechanical branch of work necessary to complete the work in
33 question, nor to require that any person, firm or corporation employed
34 on any such work shall perform the work in any other or different
35 manner than that provided by the drawings, plans and specifications,
36 nor to require that any person, firm or corporation obtain any other
37 or additional authority, approval, permit or certificate from the
38 municipality in relation to the work being done, and the doing of the
39 work by any person, firm or corporation in accordance with the terms
40 of the drawings, plans, specifications or contracts shall not subject the
41 person, firm or corporation to any liability or penalty, civil or
42 criminal, other than as may be stated in the contracts or incidental to
43 the proper enforcement thereof; nor shall any municipality require the
44 authority or any State agency which leases or purchases the project,
45 or any person, firm, partnership or corporation which leases or
46 purchases the project for lease or purchase to a State agency, to

1 obtain any other or additional authority, approval, permit, certificate
2 or certificate of occupancy from the municipality as a condition of
3 owning, using, maintaining, operating or occupying any project
4 acquired, constructed, reconstructed, rehabilitated, altered or
5 improved by the authority or by any subsidiary thereof. The
6 foregoing provisions shall not preclude any municipality from
7 exercising the right of inspection for the purpose of requiring
8 compliance by any project with local requirements for operation and
9 maintenance, affecting the health, safety and welfare of the occupants
10 thereof, provided that the compliance does not require changes,
11 modifications or additions to the original construction of the project.

12 b. Each municipality in which any project or school facilities
13 project of the authority is located shall provide for the project or
14 school facilities project , whether then owned by the authority, any
15 subsidiary, any State agency or any person, firm, partnership or
16 corporation, police, fire, sanitation, health protection and other
17 municipal services of the same character and to the same extent as
18 those provided for other residents of the municipality.

19 c. In carrying out any project or school facilities project, the
20 authority may enter into contractual agreements with local
21 governmental agencies with respect to the furnishing of any
22 community, municipal or public facilities or services necessary or
23 desirable for the project or school facilities project , and any local
24 governmental agency may enter into these contractual agreements with
25 the authority and do all things necessary to carry out its obligations
26 under the same.

27 (cf: P.L.1983, c.138, s.7)

28

29 54. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is amended
30 to read as follows:

31 11. a. The authority, in the exercise of its authority to make and
32 enter into contracts and agreements necessary or incidental to the
33 performance of its duties and the execution of its powers, shall adopt
34 standing rules and procedures providing that no contract on behalf of
35 the authority shall be entered into for the doing of any work, or for the
36 hiring of equipment or vehicles, where the sum to be expended
37 exceeds the sum of \$7,500.00 unless the authority shall first publicly
38 advertise for bids therefor, and shall award the contract to the lowest
39 responsible bidder. Advertising shall not be required where the
40 contract to be entered into is one for the furnishing or performing of
41 services of a professional nature or for the supplying of any product
42 or the rendering of any service by a public utility subject to the
43 jurisdiction of the Board of Public Utilities and tariffs and schedules
44 of the charges made, charged, or exacted by the public utility for any
45 products to be supplied or services to be rendered are filed with the
46 board. This section shall not prevent the authority from having any
47 work done by its own employees, nor shall it apply to repairs, or to

1 the furnishing of materials, supplies or labor, or the hiring of
2 equipment or vehicles, when the safety or protection of its or other
3 public property or the public convenience requires, or the exigency of
4 the accomplishment of the projects or school facilities projects will not
5 allow advertisement. In that case, the board of directors of the
6 authority shall, by resolution, declare the exigency or emergency to
7 exist, and set forth in the resolution the nature thereof and the
8 approximate amount to be so expended.

9 b. (1) In undertaking any project or school facilities project where
10 the cost of construction, reconstruction, rehabilitation or improvement
11 will exceed \$25,000.00, the authority shall be subject to the rules and
12 regulations of the Division of Building and Construction concerning
13 procedural requirements for the making, negotiating or awarding of
14 purchases, contracts or agreements; and the authority, with the
15 assistance of the division, may prepare, or cause to be prepared,
16 separate plans and specifications for:

17 (a) The plumbing and gas fitting and all work and materials kindred
18 thereto,

19 (b) The steam and hot water heating and ventilating apparatus,
20 steam power plants and all work and materials kindred thereto,

21 (c) The electrical work,

22 (d) Structural steel and ornamental iron work and materials, and

23 (e) General construction, which shall include all other work and
24 materials required to complete the building.

25 (2) The authority shall receive (a) separate bids for each of the
26 branches of work specified in paragraph (1) of this subsection; or (b)
27 bids for all the work and materials required to complete the project or
28 school facilities projects to be included in a single overall contract, in
29 which case there shall be set forth in the bid the name or names of all
30 subcontractors to whom the bidder will subcontract for the furnishing
31 of any of the work and materials specified in branches (a) through (d)
32 in paragraph (1) of this subsection; or (c) both.

33 (3) Contracts shall be awarded to the lowest responsible bidder in
34 each branch of work in the case of separate bids and to the single
35 lowest responsible bidder in the case of single bids. In the event that
36 a contract is advertised in accordance with subparagraph (c) of
37 paragraph (2) of this subsection, the contract shall be awarded in the
38 following manner: If the sum total of the amounts bid by the lowest
39 responsible bidder for each branch is less than the amount bid by the
40 lowest responsible bidder for all of the work and materials, the
41 authority shall award separate contracts for each of branches to the
42 lowest responsible bidder therefor, but if the sum total of the amount
43 bid by the lowest responsible bidder for each branch is not less than
44 the amount bid by the lowest responsible bidder for all the work and
45 materials, the authority shall award a single over-all contract to the
46 lowest responsible bidder for all of the work and materials.

1 Whenever a contract is awarded under subparagraph (b) or (c) of
2 paragraph (2) of this subsection, all payments required to be made by
3 the authority under the contract for work and materials supplied by a
4 subcontractor may, upon the certification of the contractor of the
5 amount due to the subcontractor, be paid directly to the
6 subcontractor. Payments to a subcontractor for work and materials
7 supplied in connection with the contract shall be made within 10
8 calendar days of the receipt of payment for that work or the delivery
9 of those materials by the subcontractor in accordance with the
10 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
11 regulations promulgated thereunder.

12 (4) All construction, reconstruction, rehabilitation or improvement
13 undertaken by the authority pursuant to this act shall be subject during
14 such undertaking to the supervision of the Division of Building and
15 Construction to the same extent as any project undertaken by the
16 State.

17 c. With respect to the lease or sale of any project or portion thereof
18 to any person, firm, partnership or corporation, for subsequent lease
19 to or purchase by a State agency, no agreement for that lease or sale
20 shall be entered into, unless the authority shall first publicly advertise
21 for bids therefor. The authority shall employ a person, firm,
22 partnership or corporation, independent from any other aspect or
23 component of the financing of or any ownership or leasehold interest
24 in that project, to assist in the bid procedure and evaluation.

25 (cf: P.L.1999, c.280, s.2)

26

27 55. Section 12 of P.L.1981, c.120 (C.52:18A-78.12) is amended
28 to read as follows:

29 12. a. If the authority shall find it necessary in connection with the
30 undertaking of any of its projects or school facilities projects to
31 change the location of any portion of any public highway, or road, it
32 may contract with any government agency, or public or private
33 corporation which may have jurisdiction over the public highway or
34 road to cause the public highway or road to be constructed at such
35 location as the authority shall deem most favorable. The cost of the
36 reconstruction and any damage incurred in changing the location of
37 the highway shall be ascertained and paid by the authority as a part of
38 the cost of the project or school facilities project. Any public highway
39 affected by the construction of any project or school facilities project
40 may be vacated or relocated by the authority in the manner now
41 provided by law for the vacation or relocation of public roads, and
42 any damages awarded on account thereof shall be paid by the
43 authority as a part of the cost of the project or school facilities project.

44 In all undertakings authorized by the subsection, the authority shall
45 consult and obtain the approval of the Commissioner of
46 Transportation.

1 b. In addition to the foregoing powers, the authority and its
2 authorized agents and employees may enter upon any lands, waters
3 and premises for the purpose of making surveys, soundings, drillings
4 and examinations as it may deem necessary or convenient for the
5 purposes of this act, all in accordance with due process of law, and
6 this entry shall not be deemed a trespass nor shall an entry for this
7 purpose be deemed an entry under any condemnation proceedings
8 which may be then pending. The authority shall make reimbursement
9 for any actual damages resulting to the lands, waters and premises as
10 a result of these activities.

11 c. The authority shall also have power to make reasonable
12 regulations for the installation, construction, maintenance, repair,
13 renewal, relocation and removal of tracks, pipes, mains, conduits,
14 cables, wires, towers, poles and other equipment and appliances,
15 herein called "public utility facilities", or any public utility as defined
16 in R.S.48:2-13, in, on, along, over or under any project or school
17 facilities project. Whenever the authority shall determine that it is
18 necessary that any public utility facilities which now are, or hereafter
19 may be, located in, on, along, over or under any project or school
20 facilities project shall be relocated in the project or school facilities
21 project, or should be removed from the project or school facilities
22 project, the public utility owning or operating the facilities shall
23 relocate or remove the same in accordance with the order of the
24 authority. The cost and expenses of the relocation or removal,
25 including the cost of installing the facilities in a new location, or new
26 locations, and the cost of any lands, or any rights or interests in lands,
27 and any other rights, acquired to accomplish the relocation or
28 removal, shall be ascertained and paid by the authority as a part of the
29 cost of the project or school facilities project. In case of any
30 relocation or removal of facilities, as aforesaid, the public utility
31 owning or operating the same, its successors or assigns, may maintain
32 and operate the facilities, with the necessary appurtenances, in the
33 new location or new locations, for as long a period, and upon the
34 same terms and conditions, as it had the right to maintain and operate
35 the facilities in their former location or locations. In all undertakings
36 authorized by this subsection the authority shall consult and obtain the
37 approval of the Board of Public Utilities.

38 (cf: P.L.1981, c.120, s.12)

39

40 56. Section 28 of P.L.1981, c.120 (C.52:18A-78.28) is amended
41 to read as follows:

42 28. a. The authority shall adopt rules and regulations to establish
43 an affirmative action program for the hiring of minority workers
44 employed in the performance of construction contracts undertaken in
45 connection with any of its projects and school facilities projects, and
46 to expand the business opportunities of socially and economically

1 disadvantaged contractors and vendors seeking to provide materials
2 and services for those contracts, consistent with the provisions of the
3 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
4 The authority shall provide for the proper enforcement and
5 administration of these rules and regulations.

6 b. Within 180 days of the effective date of this act, but before
7 adoption of its rules and regulations concerning its affirmative action
8 program, the authority shall submit the proposed rules and regulations
9 to the presiding officers and the standing committees on state
10 government of both houses of the Legislature for their review.

11 (cf: P.L.1981, c.120, s.28)

12

13 57. Section 29 of P.L.1981, c.120 (C.52:18A-78.29) is amended
14 to read as follows:

15 29. The authority shall adopt rules and regulations requiring that
16 not less than the prevailing wage rate be paid to workers employed in
17 the performance of construction contracts undertaken in connection
18 with any of its projects or school facilities projects. The prevailing
19 wage rate shall be the rate determined by the Commissioner of Labor
20 and Industry pursuant to the provisions of P.L.1963, c.150
21 (C.34:11-56.25 et seq.).

22 (cf: P.L.1981, c.120, s.29)

23

24 58. Section 22 of P.L.1975, c.291 (C.40:55D-31) is amended to
25 read as follows:

26 22. a. Whenever the planning board shall have adopted any portion
27 of the master plan, the governing body or other public agency having
28 jurisdiction over the subject matter, before taking action necessitating
29 the expenditure of any public funds, incidental to the location,
30 character or extent of such project, shall refer the action involving
31 such specific project to the planning board for review and
32 recommendation in conjunction with such master plan and shall not act
33 thereon, without such recommendation or until 45 days have elapsed
34 after such reference without receiving such recommendation. This
35 requirement shall apply to action by a housing, parking, highway,
36 special district, or other authority, redevelopment agency, school
37 board or other similar public agency, State, county or municipal.

38 b. The planning board shall review and make recommendations
39 concerning any long-range facilities plan submitted to the board
40 pursuant to the "Educational Facilities Construction and Financing
41 Act," P.L. , c. (C.) (now pending before the Legislature
42 as this bill), for the purpose of review of the extent to which the long-
43 range facilities plan is informed by, and consistent with, the land use
44 and development proposals contained within the municipal master plan
45 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and
46 the anticipated impact of individual school facilities projects contained

1 in the plan on community development and redevelopment efforts and
2 plans in the municipality. Upon receipt of a long-range facilities plan
3 to be reviewed for this purpose, the planning board shall notify in
4 writing the Urban Coordinating Council established pursuant to
5 section 45 of P.L.1996, c.62 (C.55:19-60) and each public or private
6 development corporation and each community redevelopment entity
7 which is authorized to undertake projects in the municipality. The
8 planning board shall devote at least one full meeting of the board to
9 presentation and review of the long-range facilities plan prior to
10 adoption of a resolution setting forth the board's findings pursuant to
11 the "Educational Facilities Construction and Financing Act," P.L. ,
12 c. (C.) (now pending before the Legislature as this bill).
13 (cf: P.L.1975, c.291, s.22)

14

15 59. Section 46 of P.L.1996, c.62 (C.55:19-61) is amended to read
16 as follows:

17 46. The Urban Coordinating Council shall:

18 a. Ensure that State agencies coordinate responses and provide
19 assistance to projects and programs outlined in neighborhood
20 empowerment plans developed pursuant to section 49 of P.L.1996,
21 c.62 (C.55:19-64), and projects and programs established by the New
22 Jersey Redevelopment Authority, the New Jersey Economic
23 Development Authority, and development initiatives proposed by
24 municipal and county governments, including making available the
25 resources of the departments of the State in implementing those
26 programs;

27 b. Supervise and control the Office of Neighborhood Empowerment
28 created pursuant to section 48 of P.L.1996, c.62 (C.55:19-63);

29 c. Make available the resources of its member agencies to assist
30 local sponsors in implementing neighborhood empowerment plans;

31 d. Form interagency teams of State representatives. The
32 membership of each interagency team shall be determined by the needs
33 outlined in the neighborhood empowerment plan. Each interagency
34 team shall serve as the primary link between the neighborhood and
35 State government in responding to programming needs, shall be
36 co-chaired by a case manager from the Office of Neighborhood
37 Empowerment established pursuant to section 48 of P.L.1996, c.62
38 (C.55:19-63); and by the community director, and shall include at least
39 one representative of the council;

40 e. Have authority to adopt, amend and repeal rules relating to the
41 exercise by the council and the Office of Neighborhood Empowerment
42 established pursuant to section 48 of P.L.1996, c.62 (C.55:19-63), of
43 their respective functions and duties pursuant to this act;

44 f. Publish an annual report on the status of redevelopment activity
45 which shall describe the progress toward achieving the goals of this
46 act; [and]

1 g. Assist in coordinating the activities of the New Jersey
2 Redevelopment Authority, municipalities, counties, public or private
3 county and municipal development agencies, district management
4 corporations created pursuant to section 4 of P.L.1972, c.134
5 (C.40:56-68), and community action boards established pursuant to
6 section 4 of P.L.1991, c.51 (C.52:27D-398) that have developed
7 neighborhood empowerment plans pursuant to section 49 of P.L.1996,
8 c.62 (C.55:19-64) or comprehensive community development plans;

9 h. Review and make determinations regarding resolutions of
10 municipal planning boards adopted pursuant to the "Educational
11 Facilities Construction and Financing Act," P.L. , c. (C.)
12 (now pending before the Legislature as this bill.);

13 i. Provide assistance to municipal planning boards in urban
14 development municipalities and in Level II districts pursuant to
15 P.L. , c. (C.) in their review of long-range facilities plans of
16 school districts;

17 j. Compile information and provide technical assistance to
18 municipal planning boards and community redevelopment entities in
19 urban development municipalities and in Level II districts respecting
20 State projects and programs which are of consequence for the planning
21 and financing of community development school projects in urban
22 development municipalities and in Level II districts ; and

23 k. Designate community development school projects pursuant to
24 P.L. , c. (C.) and adopt rules and regulations necessary for
25 the execution of the council's duties under that act.

26 (cf: P.L.1996, c.62, s.46.)

27
28 60. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to
29 read as follows:

30 4. Notwithstanding the provisions of any other law to the contrary,
31 commencing July 1, 1998: after the deposit required pursuant to
32 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
33 of revenue collected annually from the cigarette tax imposed pursuant
34 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
35 revenue collected annually from the "Tobacco Products Wholesale
36 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
37 deposited in to the Health Care Subsidy Fund established pursuant to
38 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
39 \$50,000,000 of revenue collected annually from the cigarette tax
40 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
41 [deposited in the School Construction and Renovation Fund as shall
42 be established by law] appropriated annually to the New Jersey
43 Education Facilities Authority for payment of debt service incurred by
44 the authority for school facilities construction purposes.

45 (cf: P.L.1997, c.264, s.4)

1 61. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
2 as follows:

3 4. Tax bracket schedule. a. For the purpose of adding and
4 collecting the tax imposed by this act, or an amount equal as nearly as
5 possible or practicable to the average equivalent thereof, to be
6 reimbursed to the vendor by the purchaser, the following formula shall
7 be in force and effect:

8	Amount of Sale	Amount of Tax
9	\$0.01 to \$0.10	No Tax
10	0.11 to 0.22	\$0.01
11	0.23 to 0.38	0.02
12	0.39 to 0.56	0.03
13	0.57 to 0.72	0.04
14	0.73 to 0.88	0.05
15	0.89 to 1.10	0.06

16

17 In addition to a tax of \$0.06 on each full dollar, a tax shall be
18 collected on each part of a dollar in excess of a full dollar, in
19 accordance with the above formula.

20 b. For charges paid by inserting coins into a coin operated
21 telecommunications device available to the public the tax shall be
22 computed to the nearest multiple of five cents of the tax otherwise due
23 pursuant to subsection a. of this section, except that, if the amount of
24 the tax is midway between multiples of five cents, the next higher
25 multiple shall apply.

26 c. For the purpose of adding and collecting the sales and use tax at
27 the rate imposed pursuant to section 63 of P.L. , c. (C.)
28 (now pending before the Legislature as this bill) on and after August
29 1 of a fiscal year in which a certification is made to the Director of the
30 Division of Taxation pursuant to subsection b. of that section 63 of
31 P.L. , c. (C.) (now pending before the Legislature as this
32 bill), or an amount equal as nearly as possible or practicable to the
33 average equivalent thereof, the director shall promulgate tax collection
34 formulas for the purpose of collecting the tax for the rate established
35 pursuant to that section 63 of P.L. , c. (C.) (now pending
36 before the Legislature as this bill).

37 (cf: P.L.1993, c.10, s.2)

38

39 62. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended to
40 read as follows:

41 31. Receipts from sales of tangible personal property and services
42 taxable under any municipal ordinance which was adopted pursuant to
43 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,

1 1966 are exempt from the tax imposed under the Sales and Use Tax
2 Act, subject to the following conditions:

3 a. To the extent that the tax that is or would be imposed under
4 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
5 imposed by such ordinance, such sales shall not be exempt under this
6 section; and

7 b. Irrespective of the rate of tax imposed by such ordinance, such
8 sales shall be exempt only to the extent that the rate of taxation
9 imposed by the ordinance exceeds 6%, except that the combined rate
10 of taxation imposed under the ordinance and under this section shall
11 not exceed ~~[12%]~~ 11% on and after August 1 and through June 30 of
12 a fiscal year in which a certification is made to the Director of the
13 Division of Taxation pursuant to subsection b. of section 63 of P.L. ,
14 c. (C.) (now pending before the Legislature as this bill).
15 (cf: P.L.1992, c.11, s.5)

16

17 63. (New section) a. The annual appropriations act for each State
18 fiscal year commencing with fiscal year 2001 shall appropriate and
19 distribute during the fiscal year the amount determined by the
20 Department of Education to be the amount of State debt service aid
21 determined pursuant to section 9 and 10 of P.L. , c. (C.)
22 (now pending before the Legislature as this bill) for the purposes of
23 those sections.

24 b. If the provisions of subsection a. of this section are not met on
25 the effective date of an annual appropriations act for the State fiscal
26 year, or if an amendment or supplement to an annual appropriations
27 act for the State fiscal year should violate the provisions of subsection
28 a. of this section, the Director of the Division of Budget and
29 Accounting in the Department of the Treasury shall, not later than five
30 days after the enactment of the annual appropriations act, or an
31 amendment or supplement thereto, that violates the provisions of
32 subsection a. of this section, certify to the Director of the Division of
33 Taxation that the requirements of subsection a. of this section have not
34 been met.

35 c. Upon certification to the Director of the Division of Taxation
36 pursuant to subsection b. of this section, then, notwithstanding the rate
37 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
38 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
39 law to the contrary, the rate of tax imposed or paid on receipts from
40 sales or use within this State on or after August 1 of that fiscal year
41 through June 30 of that fiscal year shall be 5%.

42 d. The Director of the Division of Taxation, within 5 days of
43 receipt of a certification made pursuant to subsection b. of this section,
44 shall take such action as is necessary to notify all vendors of the rate
45 of tax on or after August 1 of that fiscal year through June 30 of that
46 fiscal year.

1 e. Any sales and use tax erroneously collected or paid at a rate of
2 6% instead of at a rate of 5% on receipts from sales or use within this
3 State on or after August 1 of that fiscal year through June 30 of that
4 fiscal year shall be subject to refund in the manner provided in section
5 20 of P.L.1966, c.30 (C.54:32B-20).

6
7 64. (New section) The Director of the Division of Taxation shall
8 promulgate regulations on or before August 1 of a fiscal year in which
9 a certification is made to the Director of the Division of Taxation
10 pursuant to subsection b. of that section 63 of P.L. , c. (C.)
11 (now pending before the Legislature as this bill) to provide tax rate
12 transitional provisions for the imposition of the appropriate rate of tax
13 for: sales made and property delivered or services performed,
14 occupancies pursuant to prior contracts, leases or other arrangements,
15 admission charges made for admissions, certain sales made pursuant
16 to certain contracts either of a fixed price not subject to change or
17 modification, or entered into pursuant to the obligation of a formal
18 written bid which cannot be altered or withdrawn; which involve dates
19 over periods both before and after August 1 of such a fiscal year.

20
21 65. This act shall take effect immediately.

22
23
24 STATEMENT

25
26 This bill establishes a school facilities construction and financing
27 program. The program will be operated through the coordinated
28 efforts of the Department of Education, the New Jersey Building
29 Authority, and the New Jersey Educational Facilities Authority.

30 The school construction program is intended, not only to address
31 the facilities needs in the Abbott districts as directed by the New
32 Jersey Supreme Court, but also to provide a mechanism for the
33 funding and construction of school facilities throughout the State.
34 Through this coordinated effort, the Commissioner of Education will
35 be charged with reviewing the need for the facility and ensuring that
36 State funding is provided in accordance with that need, while the New
37 Jersey Educational Facilities Authority will provide the funding
38 mechanism for the construction of the facility through the issuance of
39 its bonds. The facilities authority has extensive experience in financing
40 the projects of institutions of higher education and under this bill
41 would expand its mission to include the funding of K-12 facilities. The
42 New Jersey Building Authority will provide construction management
43 and project oversight services for certain school districts which are
44 required under the bill to utilize the building authority to construct
45 their projects. The services of the building authority would also be
46 available to other school districts which want to take advantage of the

1 building authority's construction expertise and realize the economies
2 which the bulk construction activities of the building authority may
3 offer the district.

4 Under the bill's provisions, any district which wants to undertake a
5 school construction project would be required to apply to the
6 commissioner for approval of that project. The commissioner would
7 review the proposed project to determine if: a. it is consistent with
8 the district's long range facilities plan (required under a separate
9 section of the bill); and, b. it is consistent with the facilities efficiency
10 standards and area allowances per student derived from those
11 standards.

12 If the commissioner determines that the proposed project does
13 comply with both of the above, the commissioner calculates the
14 preliminary eligible costs of the project which are the costs on which
15 the district will be aided. The preliminary eligible costs for all school
16 construction projects, whether constructed by the building authority
17 or the district, will include State support of "soft costs" including site
18 acquisition, site development, issuance costs, legal fees, and fees for
19 professional services. The commissioner does have the option of
20 approving area allowances in excess of those derived from the facilities
21 efficiency standards if the board of education demonstrates that
22 required programs cannot be addressed within the standards and that
23 all other proposed spaces are consistent with those standards. One
24 exception to this procedure is in the case of county special services
25 school districts and county vocational school districts. For those
26 districts the preliminary eligible costs will equal the amount
27 determined by the district's board of school estimate and approved by
28 the board of chosen freeholders. This exception recognizes the fact
29 that these districts often require unique classrooms to accommodate
30 the populations they serve and the programs they offer. Also the bill
31 requires the commissioner to approve area allowances in excess of
32 those derived from the facilities efficiency standards if the additional
33 allowances are necessary to accommodate centralized facilities to be
34 shared among two or more school buildings in the district and the
35 centralized facilities represent a more cost effective alternative.

36 If the commissioner determines that the project is not consistent
37 with both the area allowances and facilities efficiency standards and
38 does not approve any additions to those factors, then he will notify the
39 district of that fact. The district then has the choice of either
40 modifying its project so that it meets the facilities efficiency standards
41 or paying for the excess cost of the project on its own.

42 Following the approval of the project and the determination of
43 preliminary eligible costs, the bill outlines the finance and construction
44 options for the project depending on the type of school district.

45 The bill also includes provisions to ensure that in certain urban
46 communities, the construction and renovation of school facilities is

1 coordinated with the local redevelopment efforts which may be
2 occurring within the community. The bill establishes a mechanism
3 whereby a redevelopment project undertaken by a local redevelopment
4 entity which contains a school facilities project may be designated a
5 community development school project and the school could then be
6 constructed as part of the larger redevelopment project by a
7 community redevelopment entity. The procedures for the approval of
8 community development school projects would incorporate some of
9 the elements described above for the approval of school facilities
10 projects; however there would be some additions to those procedures
11 as well.

12

13 **Community Development School Projects**

14

15 Any school district located in an urban municipality which qualifies
16 for assistance from the Urban Coordinating Council or any district
17 which is in Level II monitoring on the bill's effective date will be
18 required to submit its long-range facilities plan to the planning board
19 of the municipality for the board's review and recommendations on
20 the community development impact of individual school facilities
21 projects contained within the plan. The municipal planning board will
22 have 90 days to conduct its review. The Commissioner of Education
23 may not approve the district's long-range facilities plan unless the plan
24 includes a resolution of the municipal planning board reviewed by the
25 Urban Coordinating Council which contains the board's findings on the
26 impact of the school facilities projects included in the plan on the
27 community development and redevelopment efforts of the municipality
28 and the recommendations of the board for undertaking a school
29 facilities project as a community development school project as part
30 of those efforts. The commissioner may, however, approve a long-
31 range facilities plan if the 90-day period for planning board review has
32 expired and the planning board has failed to adopt the required
33 resolution.

34 On the first business day following adoption of the required
35 resolution, the planning board must transmit copies of the long-range
36 facilities plan and the resolution to the Urban Coordinating Council
37 and to the commissioner. The council is currently composed of the
38 chief officers of each department of the executive branch, including
39 the Commissioner of Education, as well as the executive directors of
40 the State authorities engaged in planning and redevelopment efforts.

41 A school district and municipality may request that the council
42 designate as a community development school project a school
43 facilities project contained in its long-range facilities plan for which the
44 planning board adopted a resolution. The request must set forth: (1)
45 a project plan for carrying out the redevelopment project as a whole,
46 including the construction of the school facility; (2) the name of the

1 community redevelopment entity to undertake the project; and (3) a
2 description of how the project fits into a redevelopment plan adopted
3 or to be adopted by the municipal governing body.

4 The bill establishes criteria to be used by the Urban Coordinating
5 Council to designate a community development school project and
6 provides that such designation will entitle the municipality to higher
7 priority for receipt of State assistance for the project such as
8 demolition grants or loans and financing assistance from State agencies
9 or authorities. With the agreement of the district and the municipality,
10 the council may designate the building authority as the redevelopment
11 entity to undertake the community development school project. This
12 designation would be made if the council determines that neither the
13 community redevelopment entity proposed by the district and
14 municipality or any other redevelopment entity authorized to
15 undertake redevelopment projects in the municipality is financially
16 capable to undertake the community development school project, or
17 possesses appropriate experience in undertaking similar projects. In
18 the event that the building authority is so designated, the bill
19 authorizes the authority to operate under the "Local Redevelopment
20 and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.).

21 The facilities authority would provide funding for the State's share
22 of the final eligible costs of the community development school
23 project to the community redevelopment entity. Prior to the provision
24 of funding, the building authority would review the preliminary eligible
25 costs of the school facilities project and certify to the commissioner
26 and to the Urban Coordinating Council any increase or other
27 adjustment necessary to permit the school facilities project to be
28 constructed in a manner conducive to the success of the project.
29 Funding would be provided to the community redevelopment entity
30 pursuant to an agreement among the facilities authority, the
31 community redevelopment entity, and the State Treasurer which would
32 set forth the terms for disbursement of the State share of the project
33 and provide for the monitoring of construction by the State.

34 Also, a community development school project may make a request
35 to the council for inclusion in the final eligible costs of the school
36 facilities project of all or any portion of the cost of any community
37 design features which are to be used in common by the students of the
38 district and the residents of the community. The council would
39 approve that request if it found that the additional funding would be
40 conducive to the usefulness and success of the project for both
41 students and residents of the community.

42 Under the bill's provisions, districts other than urban development
43 municipalities and Level II districts may also submit their long-range
44 facilities plans to the municipal planning board, although they are not
45 required to do so, and may have school facilities projects designated
46 as community development school projects.

1 **Abbott Districts, Level II Districts, and Districts with a State Aid**
2 **Percentage of 50% or Greater**

3
4 Abbott districts will be required to use the building authority,
5 except as described above, for the construction of school facilities
6 projects and will have 100% of their approved costs paid by the State
7 through facilities authority financing. Districts in level II monitoring
8 and districts which have a State support ratio equal to or greater than
9 50%, except as described above, will also be required to use the
10 building authority for the construction of school facilities projects.
11 The State will fund an amount of the approved project costs equal to
12 115% of the district's State support ratio through the issuance of
13 facilities authority bonds.

14 For these groups of districts, once the commissioner determines the
15 project's preliminary eligible costs as previously described, the
16 commissioner submits to the building authority a preliminary project
17 report which describes the project, its preliminary eligible costs, and
18 its priority ranking. Upon review of the report, and in consultation
19 with the district, the building authority will prepare plans and
20 specifications which contain its estimate of the cost to complete the
21 project. The building authority then transmits to the commissioner its
22 recommendation on whether the project can be completed within the
23 preliminary eligible costs.

24 If the authority determines that the project can be completed within
25 the preliminary eligible costs, then the commissioner calculates the
26 project's final eligible costs and issues a final project report to the
27 building authority. If the building authority determines that the project
28 cannot be completed within the preliminary eligible costs, then prior
29 to making its recommendation to the commissioner, and in
30 consultation with the district, the building authority determines if
31 changes can be made to the project which will result in a reduction in
32 cost while still meeting the school facilities efficiency standards. If
33 that reduction is possible, then the building authority notifies the
34 commissioner of that fact and the commissioner calculates the final
35 eligible costs of the project to include the recommended changes and
36 issues a final project report to the building authority. If the building
37 authority determines that it is not possible to make such changes to the
38 project either because the additional costs are outside of the control
39 of the district or the additional costs are required to meet the facilities
40 efficiency standards, then the building authority will recommend to the
41 commissioner that the cost of the project be increased. The
42 commissioner will calculate the final eligible project costs to include
43 the additional costs recommended by the building authority and will
44 issue a final project report to the building authority.

45 If the building authority determines that the additional costs are the
46 result of factors which are within the control of the district or are the

1 result of design factors which are not required to meet the facilities
2 efficiency standards, the building authority will recommend to the
3 commissioner that the preliminary eligible costs be accepted. The
4 commissioner will then calculate the project's final eligible costs and
5 the project report which he issues will detail any excess costs which
6 are to be borne by the district. The bill does stipulate, however, that
7 despite the building authority's recommendation, the commissioner
8 may approve final eligible costs which are in excess of preliminary
9 eligible costs if the commissioner believes that approval is necessary
10 to meet the educational needs of the district.

11 For any project constructed by the building authority, the building
12 authority will be responsible for any costs of construction which
13 exceed the amount originally projected and approved for financing if
14 the excess is the result of an underestimate of labor and materials. The
15 district will be responsible only for the costs associated with changes,
16 if any, made at the request of the district to the scope of the school
17 facilities project.

18

19 **Districts with a State Aid Percentage of Less Than 50%**

20

21 A district which has a State support ratio of less than 50% has the
22 option of constructing the project on its own or using the services of
23 the New Jersey Building Authority to construct the project and the
24 New Jersey Educational Facilities Authority to finance the project. If
25 the district determines to handle the project on its own, then the
26 district will receive debt service aid on the preliminary eligible costs of
27 the project as determined by the commissioner. The debt service aid
28 will be calculated using the product of the district's State support ratio
29 (the percentage of its T&E budget which is supported by core
30 curriculum standards aid) and 1.15 as of the date of the commissioner's
31 determination of the preliminary eligible costs; however, even districts
32 which do not qualify for core curriculum standards aid will be aided at
33 a minimum of 10% of approved costs. The calculation of State
34 support at a fixed point in time differs from the current debt service
35 aid formula in which the State support ratio is recalculated annually
36 based on the level of core curriculum standards aid support in each
37 budget year.

38 In the case of a district which is building a school facilities project
39 on its own, the district may appeal to the commissioner for an increase
40 in the preliminary eligible costs if the detailed plans and specifications
41 completed by a design professional for the project indicate that the
42 cost of constructing that portion of the project which is consistent
43 with the facilities efficiency standards and does not exceed the area
44 allowances per FTE student exceeds the preliminary eligible costs as
45 determined by the commissioner by 10% or more. The district must
46 file its appeal within 30 days of the preparation of the plans and

1 specifications. The appeal must outline the reasons why the
2 preliminary eligible costs calculated for the project are inadequate and
3 estimate the amount of the adjustment which needs to be made to the
4 preliminary eligible costs. The commissioner is to forward the appeal
5 information to the building authority for its review and
6 recommendation. If the additional costs are the result of factors that
7 are within the control of the district or are the result of design factors
8 not required to meet the facilities efficiency standards, the building
9 authority will recommend to the commissioner that the preliminary
10 eligible costs be accepted as the final eligible costs. If the building
11 authority determines that the additional costs are not within the
12 control of the district or are the result of design factors required to
13 meet the facilities efficiency standards, the building authority is to
14 recommend to the commissioner a final eligible cost based on its
15 experience with districts of similar characteristics. The commissioner
16 must make his determination on the appeal within 30 days of its
17 receipt. If the commissioner does not approve an adjustment to the
18 project's preliminary eligible costs, the commissioner must issue his
19 findings in writing on the reasons for the denial and on why the
20 preliminary eligible costs as originally calculated are sufficient.

21 The debt service aid for districts which construct projects on their
22 own will be subject to reduction if the district fails to meet the
23 maintenance requirements outlined in the bill (maintenance
24 requirements for a district which uses the building authority to
25 construct the project will be established in a contract between the
26 district and the building authority). To receive aid for an improvement
27 or addition to an existing facility, a district will be required, beginning
28 ten years following the bill's enactment, to demonstrate a net
29 investment in maintenance over the ten years preceding the issuance
30 of the financing for the improvement or addition of 2% of what the
31 facility's replacement cost was ten years prior. Also, in order to
32 continue to be eligible for full debt service aid for bonds issued for
33 projects approved following the bill's effective date, a district will be
34 required to demonstrate, beginning in the fourth year after occupancy
35 of the facility, an annual investment in maintenance of at least two-
36 tenths of 1% of the facility's replacement cost. The bill establishes a
37 sliding scale reduction in aid for lesser investments.

38 The bill also includes a provision which authorizes a district with a
39 State aid percentage of less than 50% to enter into an agreement with
40 a county, municipality, other political entity, or public agency
41 authorized to construct a school facilities project to undertake the
42 design, planning, and construction of a school facilities project,
43 provided that the entity is subject to the "Local Public Contracts Law,"
44 the "Local Redevelopment and Housing Law," or the "Public School
45 Contracts Law."

46 In order to ensure that the debt service aid provided under the bill

1 is fully funded each year, the bill specifies that if the annual
2 appropriations act does not appropriate the amount determined to be
3 sufficient, the sales tax rate will be reduced from 6% to 5%. This
4 provision is a strong disincentive to underfund debt service aid
5 because the reduction in State sales tax revenue would be greater than
6 the cost of the debt service aid.

7
8 **School Facilities Project Revolving Loan Fund**

9
10 A district with a State share percentage of less than 50% also has
11 the option of financing a school facilities project through the School
12 Facilities Project Revolving Loan Fund established under the bill. The
13 New Jersey Educational Facilities Authority will issue \$1 billion in
14 bonds to finance the fund and the bond proceeds will be used to
15 provide loans only to such districts. The amount of loans that may be
16 made in the first fiscal year may not exceed \$400,000,000, in the
17 second fiscal year, \$300,000,000, and in the third fiscal year,
18 \$200,000,000. A 2% loan rate will be available on loans up to the
19 amount of the final eligible costs of the project as approved by the
20 commissioner. The loan will be secured by local unit obligations. In
21 the event that the dollar value of loan applications in any fiscal year
22 exceeds the amount of loan funds available, the facilities authority may
23 apportion the loan funds among eligible school facilities projects to
24 finance such percentage of each project's final eligible costs as
25 determined by the State Treasurer, and the district will be eligible to
26 receive State debt service aid on that portion of the school facilities
27 project's final eligible costs for which loan funds are not available.
28 Districts will be eligible to receive more than one loan. The bill
29 establishes a priority ranking for receipt of loan funds based on the
30 critical need for the project.

31
32 **Refinancing of Existing Debt**

33
34 In addition to the loans authorized to be made from the School
35 Facilities Project Revolving Loan Fund, the bill authorizes the
36 facilities authority to make loans to local units to finance all or a
37 portion of the cost of a school facilities project. Loans could also be
38 made to refund obligations of a local unit which were previously
39 issued to provide funds to pay for the cost of a school facilities
40 project. These loans will be made pursuant to terms and conditions
41 determined by the facilities authority and will be secured by local unit
42 obligations.

43
44 **State Aid for Projects Approved Prior to the Bill's Effective Date**

45
46 The debt service costs for each issuance of bonds or lease purchase

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1 arrangements for projects approved by the commissioner prior to the
2 bill's effective date will be supported by the State at the district's State
3 support ratio. That ratio will be recalculated for each budget year
4 during the life of the issuance as is currently the case.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 200

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 2000

The Senate Education Committee reports favorably and with committee amendments Senate Bill No. 200.

As amended by committee, this bill establishes a school facilities construction and financing program. The program will be operated through the coordinated efforts of the Department of Education, the New Jersey Building Authority, and the New Jersey Educational Facilities Authority.

The school construction program is intended, not only to address the facilities needs in the Abbott districts as directed by the New Jersey Supreme Court, but also to provide a mechanism for the funding and construction of school facilities throughout the State. Through this coordinated effort, the Commissioner of Education will be charged with reviewing the need for the facility and ensuring that State funding is provided in accordance with that need, while the New Jersey Educational Facilities Authority will provide the funding mechanism for the construction of the facility through the issuance of its bonds. The facilities authority has extensive experience in financing the projects of institutions of higher education and under this bill would expand its mission to include the funding of K-12 facilities. The New Jersey Building Authority will provide construction management and project oversight services for certain school districts which are required under the bill to utilize the building authority to construct their projects. The services of the building authority would also be available to other school districts which want to take advantage of the building authority's construction expertise and realize the economies which the bulk construction activities of the building authority may offer the district.

Under the bill's provisions, any district which wants to undertake a school construction project would be required to apply to the commissioner for approval of that project. The commissioner would review the proposed project to determine if: a. it is consistent with the district's long range facilities plan (required under a separate section of the bill); and, b. it is consistent with the facilities efficiency standards and area allowances per student derived from those

standards.

If the commissioner determines that the proposed project does comply with both of the above, the commissioner calculates the preliminary eligible costs of the project which are the costs on which the district will be aided. The preliminary eligible costs for all school construction projects, whether constructed by the building authority or the district, will include State support of "soft costs" including site acquisition, site development, issuance costs, legal fees, and fees for professional services. The commissioner is required to approve area allowances in excess of those derived from the facilities efficiency standards if the board of education demonstrates that required programs cannot be addressed within the standards and that all other proposed spaces are consistent with those standards. One exception to this procedure is in the case of county special services school districts and county vocational school districts. For those districts the preliminary eligible costs will equal the amount determined by the district's board of school estimate and approved by the board of chosen freeholders. This exception recognizes the fact that these districts often require unique classrooms to accommodate the populations they serve and the programs they offer. Also the bill requires the commissioner to approve area allowances in excess of those derived from the facilities efficiency standards if the additional allowances are necessary to accommodate centralized facilities to be shared among two or more school buildings in the district and the centralized facilities represent a more cost effective alternative.

If the commissioner determines that the project is not consistent with both the area allowances and facilities efficiency standards and does not approve any additions to those factors, then he will notify the district of that fact. The district then has the choice of either modifying its project so that it meets the facilities efficiency standards or paying for the excess cost of the project on its own.

Following the approval of the project and the determination of preliminary eligible costs, the bill outlines the finance and construction options for the project depending on the type of school district.

The bill also includes provisions to allow the State Treasurer to designate, during the three fiscal years following its effective date, up to six school facilities projects as demonstration projects. These demonstration projects would be built by a redevelopment entity as part of the larger economic, redevelopment, or community development efforts occurring within the municipality in which the school district is located. The procedures for the approval of demonstration projects would incorporate some of the elements described above for the approval of school facilities projects; however there would be some additions to those procedures as well.

Abbott Districts, Level II Districts, and Districts with a State Aid Percentage of 50% or Greater

Abbott districts will be required to use the building authority for the construction of school facilities projects and will have 100% of their approved costs paid by the State through facilities authority financing. Districts in level II monitoring and districts which have a State support ratio equal to or greater than 50% will also be required to use the building authority for the construction of school facilities projects. The State will fund an amount of the approved project costs equal to 115% of the district's State support ratio through the issuance of facilities authority bonds.

For these groups of districts, once the commissioner determines the project's preliminary eligible costs as previously described, the commissioner submits to the building authority a preliminary project report which describes the project, its preliminary eligible costs, and its priority ranking. Upon review of the report, and in consultation with the district, the building authority will prepare plans and specifications which contain its estimate of the cost to complete the project. The building authority then transmits to the commissioner its recommendation on whether the project can be completed within the preliminary eligible costs.

If the authority determines that the project can be completed within the preliminary eligible costs, then the preliminary eligible costs will be deemed to be the project's final eligible costs and the preliminary project report the final project report. If the building authority determines that the project cannot be completed within the preliminary eligible costs, then prior to making its recommendation to the commissioner, and in consultation with the district, the building authority determines if changes can be made to the project which will result in a reduction in cost while still meeting the school facilities efficiency standards. If that reduction is possible, then the building authority notifies the commissioner of that fact and the commissioner calculates the final eligible costs of the project to include the recommended changes and issues a final project report to the building authority. If the building authority determines that it is not possible to make such changes to the project either because the additional costs are outside of the control of the district or the additional costs are required to meet the facilities efficiency standards, then the building authority will recommend to the commissioner that the cost of the project be increased. The commissioner will calculate the final eligible project costs to include the additional costs recommended by the building authority and will issue a final project report to the building authority.

If the building authority determines that the additional costs are the result of factors which are within the control of the district or are the result of design factors which are not required to meet the facilities efficiency standards, the building authority will recommend to the

commissioner that the preliminary eligible costs be accepted. The commissioner will then calculate the project's final eligible costs and the project report which he issues will detail any excess costs which are to be borne by the district. The bill does stipulate, however, that despite the building authority's recommendation, the commissioner may approve final eligible costs which are in excess of preliminary eligible costs if the commissioner believes that approval is necessary to meet the educational needs of the district.

For any project constructed by the building authority, the building authority will be responsible for any costs of construction which exceed the amount originally projected and approved for financing if the excess is the result of an underestimate of labor and materials. The district will be responsible only for the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

Districts with a State Aid Percentage of Less Than 50%

A district which has a State support ratio of less than 50% has the option of constructing the project on its own or using the services of the New Jersey Building Authority to construct the project and the New Jersey Educational Facilities Authority to finance the project. If the district determines to handle the project on its own, then the district has the option of either receiving a one-time grant for the State share of the project or annual debt service aid on the final eligible costs of the project. The one-time State share grant will be in an amount equal to the product of the project's final eligible costs and 115% of the district aid percentage or 40%, whichever is greater. Debt service aid will also be calculated using the product of the district's district aid percentage and 1.15 as of the date of the commissioner's determination of final eligible costs; again however, even districts which do not qualify for core curriculum standards aid will be aided at a minimum of 40% of approved costs. The calculation of State support at a fixed point in time differs from the current debt service aid formula in which the State support ratio is recalculated annually based on the level of core curriculum standards aid support in each budget year.

In the case of a district which is building a school facilities project on its own, the district may appeal to the commissioner for an increase in the preliminary eligible costs if the detailed plans and specifications completed by a design professional for the project indicate that the cost of constructing that portion of the project which is consistent with the facilities efficiency standards and does not exceed the area allowances per FTE student exceeds the preliminary eligible costs as determined by the commissioner by 10% or more. The district must file its appeal within 30 days of the preparation of the plans and specifications. The appeal must outline the reasons why the preliminary eligible costs calculated for the project are inadequate and

estimate the amount of the adjustment which needs to be made to the preliminary eligible costs. The commissioner is to forward the appeal information to the building authority for its review and recommendation. If the additional costs are the result of factors that are within the control of the district or are the result of design factors not required to meet the facilities efficiency standards, the building authority will recommend to the commissioner that the preliminary eligible costs be accepted as the final eligible costs. If the building authority determines that the additional costs are not within the control of the district or are the result of design factors required to meet the facilities efficiency standards, the building authority is to recommend to the commissioner a final eligible cost based on its experience with districts of similar characteristics. The commissioner must make his determination on the appeal within 30 days of its receipt. If the commissioner does not approve an adjustment to the project's preliminary eligible costs, the commissioner must issue his findings in writing on the reasons for the denial and on why the preliminary eligible costs as originally calculated are sufficient.

Upon completion by the authority of a school facilities project, the district is to enter into a contract with the authority to provide for the maintenance of the project by the district. If the project is constructed by the district, the district must submit a plan to the commissioner to similarly provide for the project's maintenance. In the case of a district which has chosen to receive debt service aid, the debt service aid for districts which construct projects on their own will be subject to reduction if the district fails to meet the maintenance requirements outlined in the bill. To receive debt service aid for an improvement or addition to an existing facility, a district will be required, beginning ten years following the bill's enactment, to demonstrate a net investment in maintenance over the ten years preceding the issuance of the financing for the improvement or addition of 2% of what the facility's replacement cost was ten years prior. Also, in order to continue to be eligible for full debt service aid for bonds issued for projects approved following the bill's effective date, a district will be required to demonstrate, beginning in the fourth year after occupancy of the facility, an annual investment in maintenance of at least two-tenths of 1% of the facility's replacement cost. The bill establishes a sliding scale reduction in aid for lesser investments.

In order to ensure that the debt service aid provided under the bill is fully funded each year, the bill specifies that if the annual appropriations act does not appropriate the amount determined to be sufficient, the sales tax rate will be reduced from 6% to 5%. This provision is a strong disincentive to underfund debt service aid because the reduction in State sales tax revenue would be greater than the cost of the debt service aid.

Demonstration Projects

The bill allows the State Treasurer to designate, during the three fiscal years following its effective date, up to six school facilities projects as demonstration projects. These demonstration projects would be built by a redevelopment entity as part of the larger economic, redevelopment, or community development efforts occurring within the municipality in which the school district is located. Under the bill each district would be required to submit its long-range facilities plan to the planning board in the municipality in which the district is located for the board's review of the extent to which the long-range facilities plan is informed by, and consistent with, at least the land use plan element and housing element contained in the municipality's master plan. The planning board must then adopt a resolution setting forth the board's findings.

A district and a municipality may then apply to the building authority for the designation of a school facilities project contained in the long-range facilities plan as a demonstration project. The application would set forth the plan for carrying out the redevelopment project as a whole, including the school facilities project; the name of the redevelopment entity to undertake the project; a description of how the project fits into the redevelopment plan adopted by the municipal governing body; and a description of the community design features to be included in the school facilities project. The building authority will evaluate the request to determine whether the school facilities project is suitable for designation as a demonstration project and forward its recommendation to the State Treasurer and the Urban Coordinating Council. The council will review the recommendations of the building authority and will advise the building authority, the redevelopment entity, and the district of any potential available sources of funding for the demonstration project. As indicated above, the State Treasurer will make the determination on the selection of the demonstration projects. The State share of the final eligible costs of the school facilities project will be provided by the facilities authority pursuant to an agreement among the facilities authority, the redevelopment entity, and the district.

Refinancing of Existing Debt

The bill authorizes the facilities authority to make loans to local units to finance all or a portion of the cost of a school facilities project. Loans could also be made to refund obligations of a local unit which were previously issued to provide funds to pay for the cost of a school facilities project. These loans will be made pursuant to terms and conditions determined by the facilities authority and will be secured by local unit obligations.

Committee Amendments

1) provide a minimum level of 40% State support for school facilities projects approved by the commissioner after the bill's effective date;

2) eliminate the School Facilities Project Revolving Loan Fund and provide instead that a district whose district aid percentage is less than 50% which builds a project on its own may choose to receive a one-time grant for the State share of the project rather than annual debt service aid. The State share for the project will equal the product of the project's final eligible costs and 115% of the district's district aid percentage or 40%, whichever is greater;

3) revise the bill's provisions on community development school projects. Under the amended bill, the State Treasurer may, in the first three years following the bill's effective date, select six school facilities projects as demonstration projects to be constructed by redevelopment entities in conjunction with community development and redevelopment efforts;

4) revise the formula on the calculation of preliminary eligible costs for reconstruction and renovation projects to equal the estimated actual costs of the project;

5) require the commissioner by July 1, 2001 to provide the Legislature with recommendations to address the circumstances of districts which are contiguous with two or more Abbott districts to address the school finance issues related to the unique demographic situation of those districts; and

6) provide that school districts may enter into lease purchase agreements for equipment without the prior approval of the commissioner.

[First Reprint]

SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 17, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

As reported by the Senate Education Committee on May 4, 2000, with amendments.



S200 [1R] GORMLEY, LYNCH

2

1 AN ACT concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30 of this act shall be known
9 and may be cited as the “Educational Facilities Construction and
10 Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning and located as far
18 as possible in economically and socially viable communities.

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the
40 requirements of a thorough and efficient education, the State must also
41 protect the interests of taxpayers who will bear the burden of this
42 obligation. Design of school facilities should incorporate maximum

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:

¹ Senate SED committee amendments adopted May 4, 2000.

1 operating efficiencies and new technologies to advance the energy
2 efficiency of school facilities and the efficiency of other school
3 building systems, construction should be achieved in as efficient a
4 manner as possible, and a mechanism to assure proper maintenance of
5 new facilities should be established and implemented, in order to
6 reduce the overall cost of the program and to preserve this
7 infrastructure investment.

8 e. At the same time, the location of school facilities in the context
9 of the communities which they serve is important to both the
10 educational success of the schools and the development of those
11 communities. It is highly desirable, particularly in urban communities
12 where the State has indicated a particular concern respecting local
13 development efforts, that the planning and construction of schools be
14 integrated where possible into the economic and community
15 development efforts of local governments and community
16 redevelopment entities in order to promote more effective and efficient
17 use of land, resources and expertise and to better assure the future
18 viability of local neighborhoods and communities.

19

20 3. (New section) As used in sections 1 through 30 of this act,
21 unless the context clearly requires a different meaning:

22 "Abbott district" means an Abbott district as defined in section 3 of
23 P.L.1996, c.138 (C.18A:7F-3);

24 "Area cost allowance" means \$131 per square foot for the school
25 year 1999-2000 and shall be inflated by an appropriate cost index for
26 the 2000-2001 school year. For subsequent school years, the area
27 cost allowance shall be as established in the biennial Report on the
28 Cost of Providing a Thorough and Efficient Education and inflated by
29 an appropriate cost index for the second year to which the report
30 applies. The area cost allowance used in determining preliminary
31 eligible costs of school facilities projects shall be that of the year of
32 application for approval of the project;

33 "Building authority" means the New Jersey Building Authority
34 established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.);

35 "Commissioner" means the Commissioner of Education;

36 ¹["Community development project" means a redevelopment
37 project undertaken as part of a redevelopment plan adopted or
38 proposed to be adopted by the municipal governing body pursuant to
39 the "Local Redevelopment and Housing Law," P.L.1992, c.79
40 (C.40A:12A-1 et seq.), which contains a school facilities project;

41 "Community redevelopment entity" means a redevelopment entity
42 authorized by a municipal governing body to implement redevelopment
43 plans and to carry out redevelopment projects in the municipality
44 pursuant to the "Local Redevelopment and Housing Law," P.L.1992,
45 c.79 (C.40A:12A-1 et seq.), a county improvement authority
46 designated by the municipality to implement redevelopment plans or

1 carry out redevelopment projects pursuant to section 34 of P.L.1979,
2 c.275 (C.40:37A-55.1), or the New Jersey Redevelopment Authority,
3 where the municipality has designated that authority as its
4 redevelopment agency pursuant to subsection y. of section 5 of
5 P.L.1996, c.62 (C.55:19-24);¹

6 "Core curriculum content standards" means the standards
7 established pursuant to the provisions of subsection a. of section 4 of
8 P.L.1996, c.138 (C.18A:7F-4);

9 "Cost index" means the average annual increase, expressed as a
10 decimal, in actual construction cost factors for the New York City and
11 Philadelphia areas during the second fiscal year preceding the budget
12 year as determined pursuant to regulations promulgated by the
13 building authority pursuant to section 26 of this act;

14 "Debt service" means and includes payments of principal and
15 interest upon school bonds issued to finance the acquisition of school
16 sites and the purchase or construction of school facilities, additions to
17 school facilities, or the reconstruction, remodeling, alteration,
18 modernization, renovation or repair of school facilities, including
19 furnishings, equipment, architect fees and the costs of issuance of such
20 obligations and shall include payments of principal and interest upon
21 school bonds heretofore issued to fund or refund such obligations, and
22 upon municipal bonds and other obligations which the commissioner
23 approves as having been issued for such purposes. Debt service
24 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
25 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
26 (C.18A:58-33.2 et seq.) is excluded;

27 "Demonstration project" means a school facilities project selected
28 by the State Treasurer for construction by a redevelopment entity
29 pursuant to section 6 of this act;¹

30 "District" means a local or regional school district established
31 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
32 Statutes, a county special services school district established pursuant
33 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
34 county vocational school district established pursuant to article 3 of
35 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
36 operated school district established pursuant to P.L.1987, c.399
37 (C.18A:7A-34 et seq.);

38 "District aid percentage" means the number expressed as a
39 percentage derived from dividing the district's core curriculum
40 standards aid calculated pursuant to section 15 of P.L.1996, c.138
41 (C.18A:7F-15) ¹as of the date of the commissioner's determination of
42 preliminary eligible costs¹ by the district's T & E budget calculated
43 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
44 13) ¹as of the date of the commissioner's determination of preliminary
45 eligible costs¹ ;

46 "Excess costs" means the additional costs, if any, which shall be

1 borne by the district, of a school facilities project which result from
2 design factors that are ¹[either]¹ not required to meet the facilities
3 efficiency standards and not approved pursuant to paragraph (1) of
4 subsection g. of section 5 of this act or are not authorized as
5 community design features included in final eligible costs pursuant to
6 subsection c. of section 6 of this act;

7 "Facilities authority" means the New Jersey Educational Facilities
8 Authority created pursuant to N.J.S.18A:72A-1 et seq.;

9 "Facilities efficiency standards" means the standards promulgated
10 by the commissioner pursuant to subsection c. of section 4 of this act;

11 "Final eligible costs" means for school facilities projects to be
12 constructed by the building authority, the final eligible costs of the
13 school facilities project as determined by the commissioner, in
14 consultation with the building authority, pursuant to section 5 of this
15 act; for ¹[community development school] demonstration¹ projects
16 ¹[to be constructed by a community redevelopment entity]¹, the
17 final eligible costs of the ¹[community development school]¹ project
18 as determined by the commissioner and reviewed by the building
19 authority ¹[plus community design feature costs as approved by the
20 Urban Coordinating Council pursuant to section 6 of this act and
21 reviewed by the building authority] which may include the cost of
22 community design features determined by the commissioner to be an
23 integral part of the school facility and which were reviewed by the
24 authority and approved by the State Treasurer¹ pursuant to section 6
25 of this act; and for districts whose district aid percentage is less than
26 50% and which elect not to have the building authority construct a
27 school facilities project, final eligible costs ¹[shall equal preliminary
28 eligible costs] as determined pursuant to paragraph (1) of subsection
29 h. of section 5 of this act¹ ;

30 "FTE" means a full-time equivalent student which shall be
31 calculated as follows: in districts that qualify for early childhood
32 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
33 each student in grades kindergarten through 12 shall be counted at
34 100% of the actual count of students, and each preschool student
35 approved by the commissioner to be served in the district shall be
36 counted at 50% or 100% of the actual count of preschool students for
37 an approved half-day or full-day program, respectively; in districts that
38 do not qualify for early childhood program aid pursuant to section 16
39 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
40 12 shall be counted at 100% of the actual count of students, in the
41 case of districts which operate a half-day kindergarten program each
42 kindergarten student shall be counted at 50% of the actual count of
43 kindergarten students, in the case of districts which operate a full-day
44 kindergarten program or which currently operate a half-day
45 kindergarten program but propose to build facilities to house a full-
46 day kindergarten program each kindergarten student shall be counted

1 at 100% of the actual count of kindergarten students, and preschool
2 students shall not be counted. In addition, each preschool
3 handicapped child who is entitled to receive a full-time program
4 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
5 count of these students in the district;

6 "Functional capacity" means the number of students that can be
7 housed in a building in order to have sufficient space for it to be
8 educationally adequate for the delivery of programs and services
9 necessary for student achievement of the core curriculum content
10 standards. Functional capacity is determined by dividing the existing
11 gross square footage of a school building by the minimum area
12 allowance per FTE student pursuant to subsection b. of section 8 of
13 this act for the grade level students contained therein. The difference
14 between the projected enrollment determined pursuant to subsection
15 a. of section 8 of this act and the functional capacity is the unhoused
16 students that are the basis upon which the additional costs of space to
17 provide educationally adequate facilities for the entire projected
18 enrollment are determined. The existing gross square footage for the
19 purposes of defining functional capacity is exclusive of existing spaces
20 that are not contained in the facilities efficiency standards but which
21 are used to deliver programs and services aligned to the core
22 curriculum content standards, used to provide support services directly
23 to students, or other existing spaces that the district can demonstrate
24 would be structurally or fiscally impractical to convert to other uses
25 contained in the facilities efficiency standards;

26 "Lease purchase payment" means and includes payment of principal
27 and interest for lease purchase agreements in excess of five years
28 approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to the
29 effective date of P.L. , c. (C.) (now pending before the
30 Legislature as this bill) to finance the purchase or construction of
31 school facilities, additions to school facilities, or the reconstruction,
32 remodeling, alteration, modernization, renovation or repair of school
33 facilities, including furnishings, equipment, architect fees and issuance
34 costs. Approved lease purchase agreements in excess of five years
35 shall be accorded the same accounting treatment as school bonds;

36 "Level II district" means a district which is directed by the
37 commissioner to enter level II monitoring pursuant to the provisions
38 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

39 "Local share" means, in the case of a school facilities project to be
40 constructed by the building authority ¹[or a community
41 redevelopment entity]¹, the total costs less the State share as
42 determined pursuant to ¹[sections] section¹ 5 ¹[and 6]¹ of this act;
43 ¹[and in the case of a school facilities project not to be constructed by
44 the building authority or a community redevelopment entity, the total
45 costs less State debt service aid] in the case of a demonstration
46 project, the total costs less the State share as determined pursuant to

1 section 6 of this act; and in the case of a school facilities project to be
2 financed pursuant to section 15 of this act, the total costs less the
3 State share as determined pursuant to that section¹ ;

4 "Local unit" means a county, municipality, board of education or
5 any other political subdivision or instrumentality authorized to
6 construct, operate and maintain a school facilities project and to
7 borrow money for those purposes pursuant to law;

8 "Local unit obligations" means bonds, notes, refunding bonds,
9 refunding notes, lease obligations and all other obligations of a local
10 unit which are issued or entered into for the purpose of paying for all
11 or a portion of the costs of a school facilities project, including
12 moneys payable to the authority;

13 "Long-range facilities plan" means the plan required to be submitted
14 to the commissioner ¹[and where appropriate to the Urban
15 Coordinating Council]¹ by a district pursuant to section 4 of this act;

16 "Maintenance" means expenditures which are approved for repairs
17 and replacements for the purpose of keeping a school facility open and
18 safe for use or in its original condition, including repairs and
19 replacements to a school facility's heating, lighting, ventilation,
20 security and other fixtures to keep the facility or fixtures in effective
21 working condition. Maintenance shall not include contracted custodial
22 or janitorial services, expenditures for the cleaning of a school facility
23 or its fixtures, the care and upkeep of grounds or parking lots, and the
24 cleaning of, or repairs and replacements to, movable furnishings or
25 equipment, or other expenditures which are not required to maintain
26 the original condition over the school facility's useful life. Approved
27 maintenance expenditures shall be as determined by the commissioner
28 pursuant to regulations to be adopted by the commissioner pursuant
29 to section ¹[~~25~~] 26¹ of this act;

30 "Preliminary eligible costs" means the initial eligible costs of a
31 school facilities project as calculated pursuant to the formulas set forth
32 in section 7 of this act;

33 "Report on the Cost of Providing a Thorough and Efficient
34 Education" or "Report" means the report issued by the commissioner
35 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

36 ¹"Redevelopment entity" means a redevelopment entity authorized
37 by a municipal governing body to implement plans and carry out
38 redevelopment projects in the municipality pursuant to the "Local
39 Redevelopment and Housing Law;¹

40 "School bonds" means, in the case of a school facilities project
41 which is to be constructed by the building authority ¹[or a
42 community] , a¹ redevelopment entity, ¹or a district under section 15
43 of this act,¹ bonds, notes or other obligations issued by a district to
44 finance the local share; and, in the case of a school facilities project
45 which is not to be constructed by the building authority ¹[or a
46 community] , a¹ redevelopment entity, ¹or a district under section 15

1 of this act,¹ bonds, notes or other obligations issued by a district to
2 finance the total costs;

3 "School enrollment" means the number of FTE students other than
4 evening school students, including post-graduate students and post-
5 secondary vocational students, who, on the last school day prior to
6 October 16 of the current school year, are recorded in the registers of
7 the school;

8 "School facility" means and includes any structure, building or
9 facility used wholly or in part for academic purposes by a district, but
10 shall exclude athletic stadiums, grandstands, and any structure,
11 building or facility used solely for school administration;

12 "School facilities project" means the acquisition, demolition,
13 construction, improvement, repair, alteration, modernization,
14 renovation, reconstruction or maintenance of all or any part of a
15 school facility or of any other personal property necessary for, or
16 ancillary to, any school facility, and shall include fixtures, furnishings
17 and equipment, and shall also include, but is not limited to, site
18 acquisition, site development, services of design professionals, such as
19 engineers and architects, construction management, legal services,
20 financing costs and administrative costs and expenses incurred in
21 connection with the project;

22 "Special education services pupil" means a pupil receiving specific
23 services pursuant to chapter 46 of Title 18A of the New Jersey
24 Statutes;

25 "State aid" means State municipal aid and State school aid;

26 "State debt service aid" means for school bonds issued for school
27 facilities projects approved by the commissioner after the effective
28 date of P.L. , c. (C.) (now pending before the Legislature as this
29 bill) of districts which elect not to have the building authority or a
30 ¹[community]¹ redevelopment entity construct the project ¹or which
31 elect not to finance the project under section 15 of this act¹ , the
32 amount of State aid determined pursuant to section 9 of this act; and
33 for school bonds or certificates of participation issued for school
34 facilities projects approved by the commissioner prior to the effective
35 date of P.L. , c. (C.) (now pending before the Legislature as
36 this bill) the amount of State aid determined pursuant to section 10 of
37 this act;

38 "State municipal aid" means business personal property tax
39 replacement revenues, State urban aid and State revenue sharing, as
40 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
41 other similar forms of State aid payable to the local unit and to the
42 extent permitted by federal law, federal moneys appropriated or
43 apportioned to the municipality or county by the State;

44 "State school aid" means the funds made available to school
45 districts pursuant to sections 15 and 17 of P.L.1996, c.138
46 (C.18A:7F-15 and 17);

1 "State share" means the State's proportionate share of the final
 2 eligible costs of a school facilities project to be constructed by the
 3 building authority as determined pursuant to section 5 of this act ¹ [,
 4 and in the case of a community development school project the State's
 5 proportionate share of the final eligible costs of the community
 6 development school project as determined pursuant to sections 5 and
 7 6 of this act] in the case of a demonstration project, the State's
 8 proportionate share of the final eligible costs of the project as
 9 determined pursuant to sections 5 and 6 of this act; and in the case of
 10 a school facilities project to be financed pursuant to section 15 of this
 11 act, the State share as determined pursuant to that section¹ ;

12 "Total costs" means, in the case of a school facilities project which
 13 is to be constructed by the building authority or a ¹[community]¹
 14 redevelopment entity ¹or financed pursuant to section 15 of this act¹,
 15 the final eligible costs plus excess costs if any; and in the case of a
 16 school facilities project which is not to be constructed by the building
 17 authority or a ¹[community]¹ redevelopment entity ¹or financed
 18 pursuant to section 15 of this act¹, the total cost of the project as
 19 determined by the district ¹ [;

20 "Urban Coordinating Council" means the Urban Coordinating
 21 Council established pursuant to section 45 of P.L.1996, c.62 (C.55:19-
 22 60);

23 "Urban development municipality" means a municipality qualifying
 24 for assistance from the Urban Coordinating Council]¹.

25

26 4. (New section) a. ¹[(1)]¹ Beginning in the 1999-2000 school
 27 year and in every school year thereafter ending with a "0" or a "5",
 28 each district shall prepare and submit to the commissioner a long-
 29 range facilities plan that details the district's school facilities needs and
 30 the district's plan to address those needs for the ensuing five years.
 31 The long-range facilities plan shall incorporate the facilities efficiency
 32 standards and shall be filed with the commissioner no later than
 33 October 1, 2000 and no later than October 1 of the other filing years
 34 for approval in accordance with those standards. ¹[For all Abbott
 35 districts that have submitted long-range facilities plans to the
 36 commissioner prior to the effective date of P.L. , c. (C.)(now
 37 pending before the Legislature as this bill), the commissioner shall
 38 within 10 days of the effective date of P.L. , c. (C.)(now pending
 39 before the Legislature as this bill) submit the plan to the appropriate
 40 local planning board for review pursuant to subsection b. of this
 41 section and the 90-day review period established by that subsection
 42 shall begin on the date of the planning board's receipt of the plan.]¹
 43 For those Abbott districts that have submitted long-range facilities
 44 plans to the commissioner prior to the effective date of P.L. , c.
 45 (C.) (now pending before the Legislature as this bill)¹, this

1 ¹[paragraph] subsection¹ shall not be read to require an additional
2 filing by October 1, 2000.

3 ¹[(2)] b.¹ Notwithstanding any other law or regulation to the
4 contrary, an application for a school facilities project pursuant to
5 section 5 of this act shall not be approved unless the district has filed
6 a long-range facilities plan that is consistent with the application and
7 the plan has been approved by the commissioner; except that prior to
8 October 1, 2000, the commissioner may approve an application if the
9 project is necessary to protect the health or safety of occupants of the
10 school facility, or is related to required early childhood education
11 programs, or is related to a school facility in which the functional
12 capacity is less than 90% of the facilities efficiency standards based on
13 current school enrollment, or the district received bids on the school
14 facilities project prior to the effective date of P.L. , c. (C.) (now
15 pending before the Legislature as this bill) and the district
16 demonstrates that further delay will negatively affect the cost of the
17 project.

18 ¹[(3)] c.¹ An amendment to a long-range facilities plan may be
19 submitted at any time to the commissioner for review and approval.
20 ¹[An amendment to include a community development school project
21 in the plan shall be appropriate at any time unless construction or
22 acquisition of the school facilities project affected by the amendment
23 has been initiated by the building authority pursuant to section 5 of
24 this act.]¹

25 ¹[(4)] d.¹ Each long-range facilities plan shall include a cohort
26 survival methodology or other methodology approved by the
27 commissioner, accompanied by a certification by a qualified
28 demographer retained by the district that serves as the basis for
29 identifying the capacity and program needs detailed in the long-range
30 facilities plan.

31 ¹[(5)] e.¹ The long-range facilities plan shall include an educational
32 adequacy inventory of all existing school facilities in the district, the
33 identification of all deficiencies in the district's current inventory of
34 school facilities, which includes the identification of those deficiencies
35 that involve emergent health and safety concerns, and the district's
36 proposed plan for future construction and renovation. The long-range
37 facilities plan submissions shall conform to the guidelines, criteria and
38 format prescribed by the commissioner.

39 ¹[(6)] f.¹ Each district shall determine the number of "unhoused
40 students" for the ensuing five-year period calculated pursuant to the
41 provisions of section 8 of this act.

42 ¹g. Each district shall submit the long-range facilities plan to the
43 planning board of the municipality or municipalities in which the
44 district is situate for the planning board's review and findings pursuant
45 to section 22 of P.L.1975, c.291 (C.40:55D-31).¹

46 ¹[b. (1) Notwithstanding subsection a. of this section, prior to

1 the submission of a long-range facilities plan to the commissioner
2 pursuant to subsection a. of this section, a district located in an urban
3 development municipality and any district which is a Level II district
4 on the effective date of P.L. , c. (C.) (now pending before the
5 Legislature as this bill) shall submit the long-range facilities plan to
6 the planning board of the municipality pursuant to section 22 of
7 P.L.1975, c.291 (C.40:55D-31) for the planning board's review, which
8 shall include an assessment of the extent to which the plan takes
9 account of the land use and development proposals contained within
10 the municipal master plan adopted pursuant to section 19 of P.L.1975,
11 c.291 (C.40:55D-28) and recommendations as to the community
12 development impact of individual school facilities projects contained
13 in the long-range facilities plan. The commissioner shall not approve
14 any long-range facilities plan submitted by a district located in an
15 urban development municipality or by a Level II district, whether
16 submitted before or after the effective date of P.L. , c. (C.)
17 (now pending before the Legislature as this bill), unless the plan
18 submitted for approval includes a resolution of the municipal planning
19 board reviewed by the Urban Coordinating Council, setting forth the
20 board's findings respecting the coordination of land use and
21 development proposals for the municipality and school facilities
22 planning and the anticipated impact of the school facilities projects
23 contained in the plan on community development and redevelopment
24 efforts and plans in the municipality or the period established by
25 paragraph (2) of this subsection has expired. The commissioner shall
26 not consider any resolution that is not submitted to him in accordance
27 with the requirements established by paragraph (2) of this subsection.
28 The requirements of this subsection shall not bar the commissioner
29 from approving individual school projects in urban development
30 municipalities or in any district which is a Level II district on the
31 effective date of P.L. , c. (C.) (now pending before the
32 Legislature as this bill) if those projects could otherwise be approved
33 without the commissioner's approval of a long-range facilities plan as
34 provided in paragraph (2) of subsection a. of this section.

35 (2) Within 90 days following submission of a long-range facilities
36 plan to the municipality's planning board, the planning board shall
37 adopt a resolution setting forth:

38 (a) a description of the actions taken by the municipal planning
39 board respecting the long-range facilities plan pursuant to section 22
40 of P.L.1975, c.291 (C.40:55D-31);

41 (b) the board's findings as to the extent to which the long-range
42 facilities plan is informed by, and consistent with, the land use and
43 development proposals contained within the municipal master plan
44 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28);

45 (c) the board's findings respecting the anticipated impact of the
46 school facilities projects contained in the long-range facilities plan on

1 community development and redevelopment efforts and plans in the
2 municipality;

3 (d) the board's recommendations with respect to any school
4 facilities project contained in the plan which the board finds to be
5 appropriate for undertaking as a community development school
6 project consistent with existing or proposed community development
7 and redevelopment plans and projects in the municipality. The
8 municipal planning board shall transmit the adopted resolution to the
9 district as an attachment to the long-range facilities plan.

10 (3) On the first business day following adoption of the resolution,
11 the planning board shall transmit copies of the plan and the resolution
12 to the council and to the commissioner.

13 (4) Any district which is not located in an urban development
14 municipality or which is not a Level II district on the effective date of
15 P.L. , c. (C.) (now pending before the Legislature as this bill)
16 may elect to have its long-range facilities plan reviewed by the
17 municipal planning board pursuant to this subsection, and the
18 municipal planning board shall undertake that review and adopt a
19 resolution as set forth in paragraphs (1) and (2) of this subsection.

20 (5) The Urban Coordinating Council shall provide technical
21 assistance to municipal planning boards in urban development
22 municipalities and in Level II district municipalities to assist in their
23 review of long-range facilities plans and in formulating
24 recommendations pursuant to this subsection. The council shall
25 facilitate cooperative efforts of districts and planning boards by
26 identifying or suggesting opportunities for community development
27 school projects in the municipality.

28 (6) Within 45 days of the council's receipt of a long-range facilities
29 plan with an accompanying resolution of the municipal planning board
30 pursuant to this subsection, the council shall review the resolution to
31 determine if the findings of the municipal planning board demonstrate
32 a good faith effort to consult with the district with regard to the
33 coordination of land use and educational facilities planning and with
34 pertinent redevelopment entities with respect to the anticipated impact
35 of school facilities projects on community development and
36 redevelopment efforts and plans in the municipality.

37 c.] h.¹ The commissioner shall develop, for the March 2002¹ [and
38 subsequent Reports] Report¹ on the Cost of Providing a Thorough
39 and Efficient Education ¹and for subsequent reports¹ , facilities
40 efficiency standards for elementary, middle, and high schools
41 consistent with the core curriculum school delivery assumptions in the
42 report and sufficient for the achievement of the core curriculum
43 content standards, and for the provision of required programs in
44 Abbott districts and early childhood education programs in the
45 districts in which these programs are required by the State. The area
46 allowances per FTE student in each class of the district shall be
47 derived from these facilities efficiency standards.

1 The facilities efficiency standards developed by the commissioner
2 shall not be construction design standards but rather shall represent the
3 instructional spaces, specialized instructional areas, and administrative
4 spaces that are determined by the commissioner to be educationally
5 adequate to support the achievement of the core curriculum content
6 standards and for the provision of required programs in Abbott
7 districts and early childhood education programs in the districts in
8 which these programs are required. A district may design, at its
9 discretion, the educational and other spaces to be included within the
10 school facilities project. The design of the project may eliminate
11 spaces in the facilities efficiency standards, include spaces not in the
12 facilities efficiency standards, or size spaces differently than in the
13 facilities efficiency standards upon a demonstration of the adequacy of
14 the school facilities project to deliver the core curriculum content
15 standards pursuant to paragraph (2) of subsection g. of section 5 of
16 this act.

17 Within a reasonable period of time after the effective date of P.L. ,
18 c. (C.) (now pending before the Legislature as this bill), the
19 commissioner shall publish the facilities efficiency standards developed
20 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
21 New Jersey Register. Within a reasonable period of time after 30 days
22 after publication in the New Jersey Register, the commissioner shall
23 file the facilities efficiency standards with the Office of Administrative
24 Law and those standards shall become effective immediately upon
25 filing with the Office of Administrative Law. During the 30-day
26 period the commissioner shall provide an opportunity for public
27 comment on the proposed facilities efficiency standards.

28 ¹[d.] i.¹ Within 90 days of the commissioner's receipt of a long-
29 range facilities plan for review, the commissioner shall determine
30 whether the plan is fully and accurately completed and whether all
31 information necessary for a decision on the plan has been filed by the
32 district. ¹[Where pertinent, this 90-day period shall commence at the
33 same time as the 45-day period for council review provided in
34 paragraph (6) of subsection b. of this section.]¹ If the commissioner
35 determines that the plan is complete, the commissioner shall promptly
36 notify the district in writing and shall have 60 days from the date of
37 that notification to determine whether to approve the plan or not. If
38 the commissioner determines that the plan is not complete, the
39 commissioner shall notify the district in writing. The district shall
40 provide to the commissioner whatever information the commissioner
41 determines is necessary to make the plan accurate and complete. The
42 district shall submit that information to the commissioner, and the
43 commissioner shall have 60 days from the date of receipt of accurate
44 and complete information to determine whether to approve the plan or
45 not.

46 [e.] j.¹ Notwithstanding any provision in subsection ¹[d.] i.¹ of
47 this section, if at any time the number of long-range facilities plans

1 filed by school districts with the commissioner and pending review
2 exceeds 20 % of the number of school districts in New Jersey, the
3 commissioner may extend by 60 days the deadline for reviewing each
4 plan pending at that time.

5 ¹k. By July 1, 2001, the commissioner shall provide the
6 Legislature with recommendations to address the circumstances of
7 districts which are contiguous with two or more Abbott districts. The
8 recommendations shall address the issues of the financing of school
9 facilities projects and the funding of the educational and other
10 programs required within these districts as a result of their unique
11 demographic situation.¹

12

13 5. (New section) a. The building authority shall construct and the
14 facilities authority shall finance the school facilities projects of Abbott
15 districts, level II districts, and districts with a district aid percentage
16 equal to or greater than 50%.

17 b. ¹[(1)]¹ Any district whose district aid percentage is less than
18 50% may elect to have the facilities authority undertake the financing
19 and the building authority undertake the construction of a school
20 facilities project in the district and the State share shall be determined
21 pursuant to this section. In the event that the district elects not to
22 have the building authority undertake the construction of the project,
23 State ¹[debt service aid] support¹ for the project shall be determined
24 pursuant to section 9 ¹or section 15¹ of this act ¹, as applicable¹ .

25 ¹[(2) A district whose district aid percentage is less than 50% may
26 enter into an agreement with a county, municipality, other political
27 entity, or public agency authorized to construct a school facilities
28 project to undertake the design, planning, and construction of a school
29 facilities project provided that the entity is subject to the "Local Public
30 Contracts Law," P.L.1971, c.79 (C.40A:11-1 et seq.), the "Local
31 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
32 seq.), or the "Public School Contracts Law, N.J.S.18A:18A-1 et
33 seq.)."]¹

34 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
35 contrary, the procedures for obtaining approval of a school facilities
36 project shall be as set forth in this act; provided that any district
37 whose district aid percentage is less than 50%, which elects not to
38 have the building authority or a ¹[community]¹ redevelopment entity
39 undertake the construction of the project, shall also be required to
40 comply with the provisions of N.J.S.18A:18A-16.

41 d. Any district seeking to initiate a school facilities project shall
42 apply to the commissioner for approval of the project. The application
43 shall, at a minimum, contain the following information: a description
44 of the school facilities project; a schematic drawing of the project or,
45 at the option of the district, preliminary plans and specifications; a
46 delineation and description of each of the functional components of the
47 project; the number of unhoused students to be housed in the project;

1 the area allowances per FTE student as calculated pursuant to section
2 8 of this act; and the estimated cost to complete the project as
3 determined by the district.

4 e. The commissioner shall review each proposed school facilities
5 project to determine whether it is consistent with the district's long-
6 range facilities plan and whether it complies with the facilities
7 efficiency standards and the area allowances per FTE student derived
8 from those standards. The commissioner shall make a decision on a
9 district's application within 90 days from the date he determines that
10 the application is fully and accurately completed and that all
11 information necessary for a decision has been filed by the district, or
12 from the date of the last revision made by the district. If the
13 commissioner is not able to make a decision within 90 days, he shall
14 notify the district in writing explaining the reason for the delay and
15 indicating the date on which a decision on the project will be made ¹,
16 provided that the date shall not be later than 60 days from the
17 expiration of the original 90 days set forth in this subsection¹. If the
18 decision is not made by the subsequent date indicated by the
19 commissioner, then the project shall be deemed approved and the
20 preliminary eligible costs shall equal the proposed cost of the project.

21 f. If the commissioner determines that the school facilities project
22 complies with the facilities efficiency standards and the district's long-
23 range facilities plan and does not exceed the area allowance per FTE
24 student derived from those standards, the commissioner shall calculate
25 the preliminary eligible costs of the project pursuant to the formulas
26 set forth in section 7 of this act; except that in the case of a county
27 special services school district or a county vocational school district,
28 the commissioner shall calculate the preliminary eligible costs to equal
29 the amount determined by the board of school estimate and approved
30 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
31 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate. The
32 preliminary eligible costs for all school facilities projects shall also
33 include, in addition to the capital costs of construction, other
34 allowable costs associated with the project.

35 g. If the commissioner determines that the school facilities project
36 is inconsistent with the facilities efficiency standards or exceeds the
37 area allowances per FTE student derived from those standards, the
38 commissioner shall notify the district.

39 (1) The commissioner ¹[may] shall¹ approve area allowances in
40 excess of the area allowances per FTE student derived from the
41 facilities efficiency standards if the board of education or State district
42 superintendent, as appropriate, demonstrates that school facilities
43 needs related to required programs cannot be addressed within the
44 facilities efficiency standards and that all other proposed spaces are
45 consistent with those standards. The commissioner shall approve area
46 allowances in excess of the area allowances per FTE student derived
47 from the facilities efficiency standards if the additional area allowances

1 are necessary to accommodate centralized facilities to be shared
2 among two or more school buildings within the district and the
3 centralized facilities represent a more cost effective alternative.

4 (2) The commissioner may waive a facilities efficiency standard if
5 the board of education or State district superintendent, as appropriate,
6 demonstrates to the commissioner's satisfaction that the waiver will
7 not adversely affect the educational adequacy of the school facility,
8 including the ability to deliver the programs and services necessary to
9 enable all students to achieve the core curriculum content standards.

10 (3) To house the district's central administration, a district may
11 request an adjustment to the approved areas for unhoused students of
12 2.17 square feet for each FTE student in the projected total district
13 school enrollment if the proposed administrative offices will be housed
14 in a school facility and the district demonstrates either that the existing
15 central administrative offices are obsolete or that it is more practical
16 to convert those offices to instructional space. To the extent that
17 existing administrative space will continue to be used for
18 administrative purposes, the space shall be included in the formulas set
19 forth in section 7 of this act.

20 If the commissioner approves excess facilities efficiency standards
21 or additional area allowances pursuant to paragraphs (1), (2), or (3)
22 of this subsection, the commissioner shall calculate the preliminary
23 eligible costs based upon the additional area allowances or excess
24 facilities efficiency standards pursuant to the formulas set forth in
25 section 7 of this act. In the event that the commissioner does not
26 approve the excess facilities efficiency standards or additional area
27 allowances, the district may either: modify its submission so that the
28 school facilities project meets the facilities efficiency standards; or pay
29 for the excess costs.

30 (4) The commissioner shall approve spaces in excess of, or
31 inconsistent with, the facilities efficiency standards, hereinafter
32 referred to as nonconforming spaces, upon a determination by the
33 district that the spaces are necessary to comply with State or federal
34 law concerning individuals with disabilities. A district may apply for
35 additional State aid for nonconforming spaces that will permit pupils
36 with ¹[learning]¹ disabilities to be educated to the greatest extent
37 possible in the same buildings or classes with their nondisabled peers.
38 The nonconforming spaces may: (a) allow for the return of pupils with
39 ¹[learning]¹ disabilities from private facilities; (b) permit the retention
40 of pupils with ¹[learning]¹ disabilities who would otherwise be placed
41 in private facilities; (c) provide space for regional programs in a host
42 school building that houses both disabled and nondisabled pupils; and
43 (d) provide space for the coordination of regional programs by a
44 county special services school district, educational services
45 commission, jointure commission, or other agency authorized by law
46 to provide regional educational services in a school building that
47 houses both disabled and nondisabled pupils. A district's State support

1 ratio shall be adjusted to equal the lesser of the sum of
2 ¹[CCSAID/TEBUD as defined in section 9] district aid percentage as
3 defined in section 3¹ of this act plus 0.25, or 100% for any
4 nonconforming spaces approved by the commissioner pursuant to this
5 paragraph.

6 h. Upon approval of a school facilities project and determination
7 of the preliminary eligible costs:

8 (1) In the case of a district whose district aid percentage is less
9 than 50% and which has elected not to have the building authority
10 undertake the construction of the school facilities project, the
11 commissioner shall notify the district whether the school facilities
12 project is approved and, if so approved, the preliminary eligible costs
13 and the excess costs, if any. Following the determination of
14 preliminary eligible costs and the notification of project approval, the
15 district may appeal to the commissioner for an increase in those costs
16 if the detailed plans and specifications completed by a design
17 professional for the school facilities project indicate that the cost of
18 constructing that portion of the project which is consistent with the
19 facilities efficiency standards and does not exceed the area allowances
20 per FTE student exceeds the preliminary eligible costs as determined
21 by the commissioner for the project by 10% or more. The district shall
22 file its appeal within 30 days of the preparation of the plans and
23 specifications. ¹If the district chooses not to file an appeal, then the
24 final eligible costs shall equal the preliminary eligible costs.¹

25 The appeal shall outline the reasons why the preliminary eligible
26 costs calculated for the project are inadequate and estimate the amount
27 of the adjustment which needs to be made to the preliminary eligible
28 costs. The commissioner shall forward the appeal information to the
29 building authority for its review and recommendation. If the additional
30 costs are the result of factors that are within the control of the district
31 or are the result of design factors that are not required to meet the
32 facilities efficiency standards, the building authority shall recommend
33 to the commissioner that the preliminary eligible costs be accepted as
34 the final eligible costs. If the building authority determines the
35 additional costs are not within the control of the district or are the
36 result of design factors required to meet the facilities efficiency
37 standards, the building authority shall recommend to the commissioner
38 a final eligible cost based on its experience for districts with similar
39 characteristics. The commissioner shall make a determination on the
40 appeal within 30 days of its receipt. If the commissioner does not
41 approve an adjustment to the school facilities project's preliminary
42 eligible costs, the commissioner shall issue his findings in writing on
43 the reasons for the denial and on why the preliminary eligible costs as
44 originally calculated are sufficient.

45 (2) In all other cases, the commissioner shall promptly prepare and
46 submit to the building authority a preliminary project report which
47 shall consist, at a minimum, of the following information: a complete

1 description of the school facilities project; the actual location of the
2 project; the total square footage of the project together with a
3 breakdown of total square footage by functional component; the
4 preliminary eligible costs of the project; the project's priority ranking
5 determined pursuant to subsection m. of this section; any other
6 factors to be considered by the building authority in undertaking the
7 project; and the name and address of the person from the district to
8 contact in regard to the project.

9 i. Upon receipt by the building authority of the preliminary project
10 report, the building authority, upon consultation with the district, shall
11 prepare detailed plans, schedules and specifications which contain the
12 building authority's estimated cost and schedule to complete the school
13 facilities project. The building authority shall transmit to the
14 commissioner the building authority's recommendations in regard to
15 the project which shall, at a minimum, contain the detailed plans and
16 specifications; whether the school facilities project can be completed
17 within the preliminary eligible costs; and any other factors which the
18 building authority determines should be considered by the
19 commissioner.

20 (1) In the event that the building authority ¹[advises the
21 commissioner] determines¹ that the school facilities project can be
22 completed within the preliminary eligible costs ¹[, the commissioner
23 shall: calculate the final eligible costs to equal the preliminary eligible
24 costs; give final approval to the project; and issue a final project
25 report] : the final eligible costs shall be deemed to equal the
26 preliminary eligible costs; the commissioner shall be deemed to have
27 given final approval to the project; and the preliminary project report
28 shall be deemed to be the final project report delivered¹ to the building
29 authority pursuant to subsection j. of this section.

30 (2) In the event that the building authority determines that the
31 school facilities project cannot be completed within the preliminary
32 eligible costs, prior to the submission of the building authority's
33 recommendations to the commissioner, the building authority shall, in
34 consultation with the district and the commissioner, determine
35 whether changes can be made in the project which will result in a
36 reduction in costs while at the same time meeting the facilities
37 efficiency standards approved by the commissioner.

38 (a) If the building authority determines that changes in the school
39 facilities project are possible so that the project can be accomplished
40 within the scope of the preliminary eligible costs while still meeting the
41 facilities efficiency standards, the building authority shall so advise the
42 commissioner, whereupon the commissioner shall: calculate the final
43 eligible costs to equal the preliminary eligible costs; give final
44 approval to the project with the changes noted; and issue a final
45 project report to the building authority pursuant to subsection j. of this
46 section.

47 (b) If the building authority determines that it is not possible to

1 make changes in the school facilities project so that it can be
2 completed within the preliminary eligible costs either because the
3 additional costs are the result of factors outside the control of the
4 district or the additional costs are required to meet the facilities
5 efficiency standards, the building authority shall recommend to the
6 commissioner that the preliminary eligible costs be increased
7 accordingly, whereupon the commissioner shall: calculate the final
8 eligible costs to equal the sum of the preliminary eligible costs plus the
9 increase recommended by the building authority; give final approval
10 to the project; and issue a final project report to the building authority
11 pursuant to subsection j. of this section.

12 (c) If the additional costs are the result of factors that are within
13 the control of the district or are the result of design factors that are
14 not required to meet the facilities efficiency standards ¹or approved
15 pursuant to paragraph (1) of subsection g. of this section¹, the
16 building authority shall recommend to the commissioner that the
17 preliminary eligible costs be accepted, whereupon the commissioner
18 shall: calculate the final eligible costs to equal the preliminary eligible
19 costs and specify the excess costs which are to be borne by the district;
20 give final approval to the school facilities project; and issue a final
21 project report to the building authority pursuant to subsection j. of
22 this section; provided that the commissioner may approve final eligible
23 costs which are in excess of the preliminary eligible costs if, in his
24 judgment, the action is necessary to meet the educational needs of the
25 district.

26 (d) For a school facilities project constructed by the building
27 authority, the building authority shall be responsible for any costs of
28 construction, but only from the proceeds of bonds issued by the
29 facilities authority pursuant to this act, which exceed the amount
30 originally projected by the building authority and approved for
31 financing by the facilities authority, provided that the excess is the
32 result of an underestimate of labor or materials costs by the building
33 authority. After receipt by the building authority of the final project
34 report, the district shall be responsible only for the costs associated
35 with changes, if any, made at the request of the district to the scope
36 of the school facilities project.

37 j. The building authority shall not commence the acquisition or
38 construction of a school facilities project unless the commissioner
39 transmits to the building authority a final project report and the district
40 complies with the approval requirements for the local share, if any,
41 pursuant to section 11 of this act. The final project report shall
42 contain all of the information contained in the preliminary project
43 report and, in addition, shall contain: the final eligible costs; the excess
44 costs, if any; the total costs which equals the final eligible costs plus
45 excess costs, if any; the State share; and the local share.

46 k. For the Abbott districts, the State share shall be 100% of the
47 final eligible costs. For all other districts, the State share shall be an

1 amount equal to 115% of the district aid percentage; except that the
2 State share shall not be less than ¹[10%] 40%¹ of the final eligible
3 costs.

4 l. The local share for school facilities projects constructed by the
5 building authority or a ¹[community]¹ redevelopment entity shall
6 equal the final eligible costs plus any excess costs less the State share.

7 m. The commissioner shall establish, in consultation with the
8 Abbott districts, a priority ranking of all school facilities projects in the
9 Abbott districts based upon his determination of critical need, and shall
10 establish priority categories for all school facilities projects in non-
11 Abbott districts. The commissioner shall rank projects from Tier I to
12 Tier IV in terms of critical need according to the follow prioritization:

13 Tier I: health and safety, including electrical system upgrades;
14 required early childhood education programs; unhoused students/class
15 size reduction as required to meet the standards of the
16 "Comprehensive Educational Improvement and Financing Act of
17 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

18 Tier II: educational adequacy - specialized instructional spaces,
19 media centers, cafeteriums, and other non-general classroom spaces
20 contained in the facilities efficiency standards; special education spaces
21 to achieve the least restrictive environment.

22 Tier III: technology projects; regionalization/consolidation projects.

23 Tier IV: other local objectives.

24 n. ¹[Except as otherwise provided in paragraph (2) of subsection
25 b. of this section, the] The¹ provisions of the "Public School Contracts
26 Law," N.J.S.18A:18A-1 et seq., shall be applicable to any school
27 facilities project constructed by a district but shall not be applicable to
28 projects constructed by the building authority or a ¹[community]¹
29 redevelopment entity pursuant to the provisions of this act.

30 o. In the event that a district whose district aid percentage is less
31 than 50% elects not to have the building authority undertake
32 construction of a school facilities project, any proceeds of school
33 bonds issued by the district for the purpose of funding the project
34 which remain unspent upon completion of the project shall be used
35 by the district to reduce the outstanding principal amount of the school
36 bonds.

37 p. Upon completion by the building authority of a school facilities
38 project, if the cost of construction and completion of the project is less
39 than the total costs, the district shall be entitled to receive a portion of
40 the local share based on a pro rata share of the difference based on the
41 ratio of the State share to the local share.

42 q. The building authority shall determine the cause of any costs of
43 construction which exceed the amount originally projected by the
44 building authority and approved for financing by the facilities
45 authority.

46 r. In the event that a district has engaged architectural services
47 that have been prequalified by the building authority to prepare the

1 documents required for initial proposal of a school facilities project,
2 the district shall, if permitted by the terms of the district's contract for
3 architectural services, assign the contract for architectural services to
4 the building authority, provided that the fees for the architectural
5 services shall not exceed the fees normally paid by the building
6 authority for such services.

7
8 6. (New section) The provisions of section 5 of P.L. , c.
9 (C.) (now pending before the Legislature as this bill) shall pertain
10 to ¹[community development school projects except as otherwise
11 provided in this section.

12 a. A district and municipality may request that the Urban
13 Coordinating Council designate as a community development school
14 project a school facilities project contained in a long-range facilities
15 plan for which a planning board resolution was reviewed by the
16 council pursuant to subsection b. of section 4 of P.L. , c. (C.)
17 (now pending before the Legislature as this bill) and determined by the
18 council to demonstrate a good faith effort as provided in that
19 subsection or which was added to the long-range facilities plan by
20 amendment approved by the commissioner subsequent to adoption of
21 the plan. The request shall set forth: (1) a project plan for carrying
22 out the redevelopment project as a whole, including the construction
23 of the school facility; (2) the name of the community redevelopment
24 entity to undertake the project; and (3) a description of how the
25 project fits into a redevelopment plan adopted or to be adopted by the
26 municipal governing body pursuant to section 7 of P.L.1992, c.79
27 (C.40A:12A-7). The council shall designate the project as a
28 community development school project if it determines that:

29 (a) the project furthers definite local objectives as to appropriate
30 land uses, density of population, and improved traffic and public
31 transportation, public utilities, recreational and community facilities
32 and other public improvements;

33 (b) the project provides significant social and economic benefits to
34 the municipality, its neighborhoods and residents;

35 (c) based upon the past experience of the community
36 redevelopment entity in undertaking similar projects and the financial
37 capability of that redevelopment entity, there is a high degree of
38 assurance that the project will be undertaken and completed
39 successfully by the community redevelopment entity.

40 With the agreement of the district and the municipality, the council
41 may designate the building authority as the redevelopment entity which
42 shall undertake the community development school project. The
43 designation shall be made if the council determines that neither the
44 community redevelopment entity proposed by the district and
45 municipality or any other redevelopment entity authorized to
46 undertake redevelopment projects in the municipality is financially
47 capable to do so, or possesses appropriate experience in undertaking

1 similar projects.

2 In the event that the council designates the building authority as the
3 redevelopment entity which shall undertake the community
4 development school project, the building authority shall operate under
5 the "Local Redevelopment and Housing Law," P.L.1992, c.79
6 (C.40A:12A-1 et seq.) in undertaking the project.

7 The council's review of the proposed community development
8 school project for designation under this section shall proceed at the
9 same time as the commissioner's review of the school facilities project
10 for approval under section 5 of P.L. , c. (C.) (now pending
11 before the Legislature as this bill). The council's designation or
12 decision not to make a designation shall precede approval by the
13 commissioner.

14 b. Designation of a community development school project shall
15 entitle an urban development municipality and a municipality in which
16 a Level II district is located on the effective date of P.L. , c.
17 (C.) (now pending before the Legislature as this bill) to higher
18 priority for receipt of State assistance for the project as determined by
19 the Urban Coordinating Council in consultation with the community
20 redevelopment entity to undertake the project. The council shall
21 coordinate the provision of State assistance for the community
22 development school project which may include any or all of the
23 following, so long as the purposes for which the moneys are to be
24 expended are not inconsistent with the provisions of any other law:

25 (1) demolition grants or loans made available by the Department of
26 Community Affairs;

27 (2) priority for loans and loan guarantees allocated to "qualified
28 municipalities" by the New Jersey Economic Development Authority
29 pursuant to section 59 of P.L.1996, c.62 (C.55:19-73) or otherwise
30 made available for urban development purposes;

31 (3) priority for loans, loan guarantees and any other housing
32 assistance made available by the New Jersey Housing and Mortgage
33 Finance Agency pursuant to the "New Jersey Housing and Mortgage
34 Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-1 et seq.),
35 for which community development school projects may be eligible;

36 (4) priority for funding out of the "Neighborhood Preservation
37 Nonlapsing Revolving Fund" established pursuant to section 20 of
38 P.L.1985, c.222 (C.52:27D-320);

39 (5) priority for loans, loan guarantees, financing through tax exempt
40 bond financing or any other financial assistance available for these
41 projects by the New Jersey Redevelopment Authority established
42 pursuant to section 4 of P.L.1996, c.62 (C.55:19-23);

43 (6) priority for low-income housing tax credits administered by the
44 New Jersey Housing and Mortgage Finance Agency and made
45 available pursuant to Section 42(h)(4) of the Internal Revenue Code
46 for those projects which support the community development school
47 project within the district;

1 (7) priority for any transportation infrastructure funds administered
2 by the State for which the community development school project may
3 otherwise be eligible, including any moneys available through
4 reauthorization of the "New Jersey Transportation Trust Fund"
5 pursuant to the "New Jersey Transportation Trust Fund Authority Act
6 of 1984," P.L.1984, c.73 (C.27:1B-1 et al.);

7 (8) priority for funds to assist in site remediation which may be
8 made available pursuant to the "Hazardous Discharge Fund" created
9 pursuant to the "Hazardous Discharge Bond Act," P.L.1981, c.275,
10 the "Hazardous Discharge Site Cleanup Fund" established pursuant to
11 section 1 of P.L.1985, c.247 (C.58:10-23.34) or any other moneys
12 made available for purposes consistent with the implementation of a
13 community development school project;

14 (9) priority for any funds which may be made available for the
15 acquisition or development of lands by the State for recreation and
16 conservation purposes pursuant to: P.L.1961, c.46; P.L.1971, c.165;
17 P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265;
18 and P.L.1989, c.183, or any similar act for such purposes that may be
19 enacted; or any such funds administered pursuant to P.L.1961, c.45
20 (C.13:8A-1 et seq.), P.L.1971, c.419 (C.13:8A-19 et seq.), and
21 P.L.1975, c.155 (C.13:8A-35 et seq.), or any similar act for such
22 purposes that may be enacted to the extent that those moneys further
23 the implementation of a community development school project;

24 (10) priority for any State aid for a municipal library which
25 supports a community development school project which is otherwise
26 available pursuant to section 1 of P.L.1985, c.297 (C.18A:74-3.2) or
27 any other law; and

28 (11) priority for any State moneys which may be made available to
29 construct, maintain or operate recreational facilities or playgrounds in
30 order to further the implementation of a community development
31 school project.

32 c. In addition to the requirements set forth in section 5 of this act,
33 a community development school project may request inclusion in the
34 final eligible costs of the school facilities project, of all or any portion
35 of the cost of any community design features including any area,
36 rooms, equipment, recreational area or playground included in the
37 school facilities project which are to be used in common by students
38 of the district and by residents of the community, but there shall not
39 be included in the final eligible costs any portion of the cost of any
40 features which are not an integral part of the school building and
41 grounds. The Urban Coordinating Council shall approve the request
42 if it finds that the inclusion of the funding in the final eligible costs
43 would be conducive to the usefulness and success of the project for
44 both the students of the district and the residents of the community.
45 The council may condition its approval upon the adoption by the
46 school district of policies suitable for assuring continuing community
47 access to the community design features.

1 The cost of the community design features approved by the Urban
2 Coordinating Council shall be reviewed by the building authority. The
3 district shall submit the documentation required by the building
4 authority for the building authority to make its determination. The
5 building authority shall, in its recommendation to the commissioner
6 pursuant to section 5 of this act, include its recommendation with
7 respect to the cost of the community design features.

8 d. The facilities authority shall provide funding for the State's share
9 of the final eligible costs of a school facilities project to be constructed
10 as part of a designated community development school project as
11 approved by the Urban Coordinating Council. The facilities authority
12 shall provide the funding to the community redevelopment entity to
13 undertake construction of the project, or to the building authority
14 contracting for construction of the school facilities project, as
15 determined in the designation of the project by the council. Prior to
16 the provision of funding, the building authority shall review the
17 preliminary eligible costs of the school facilities project and certify to
18 the commissioner and the Urban Coordinating Council any increase or
19 other adjustment necessary to permit the school facilities project to be
20 constructed in a manner conducive to the success of the community
21 development school project. If a community development school
22 project is to be constructed by a community redevelopment entity, the
23 facilities authority shall provide funding for the State share pursuant
24 to an agreement among the facilities authority, the community
25 redevelopment entity, and the State Treasurer which shall, in addition
26 to any other terms and conditions, set forth the terms for disbursement
27 of the State share and provide for the monitoring of construction by
28 the State.

29 e. Upon completion of a community development school project by
30 a community redevelopment entity, the district shall submit to the
31 commissioner a plan to provide for the maintenance of the project and
32 shall enter into a contract which provides for that maintenance] school
33 facilities projects designated to be demonstration projects except as
34 otherwise provided in this section.

35 a. For the initial three full fiscal years following the effective date
36 of this act, the State Treasurer may designate up to six school facilities
37 projects which the State Treasurer determines to be in the best
38 interests of the State and of the districts to be demonstration projects
39 pursuant to the provisions of this section.

40 b. A district and municipality may apply to the building authority
41 for the designation of a school facilities project contained in a long-
42 range facilities plan submitted to the commissioner pursuant to section
43 4 of P.L. , c. (C.) (now pending before the Legislature as this
44 bill) to be a demonstration project to provide for the coordination of
45 local economic development, redevelopment or community
46 development with a school facilities project. The application shall be
47 accompanied by substantively, parallel resolutions requesting the

1 designation adopted by the board of education of the district and the
2 governing body of the municipality. The application shall set forth:
3 (1) a plan for carrying out the redevelopment project as a whole,
4 including the construction of the school facilities project; (2) the name
5 of the redevelopment entity to undertake the project under the "Local
6 Redevelopment and Housing Law" P.L. 1992, c. 79 (C.40A:12A-1 et
7 seq.); (3) a description of how the project fits into a redevelopment
8 plan adopted or to be adopted by the municipal governing body
9 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a
10 description of the community design features to be included in the
11 school facilities project.

12 c. The building authority shall evaluate the request to determine
13 whether the school facilities project is suitable for designation as a
14 demonstration project and whether the proposed redevelopment entity
15 is suitable for designation as the entity to construct the demonstration
16 project based upon consideration of the following factors:

17 (1) whether the demonstration project furthers definite local
18 objectives as to appropriate land uses, density of population, and
19 improved traffic and public transportation, public utilities, recreational
20 and community facilities and other public improvements;

21 (2) whether the demonstration project provides significant social
22 and economic benefits to the municipality, its neighborhoods and
23 residents;

24 (3) whether the development of the school facilities project is
25 consistent with the local development plan;

26 (4) the extent to which the school facilities project contains
27 community design features which can be used by the community;

28 (5) whether the redevelopment entity has the current capacity to
29 construct the demonstration project;

30 (6) whether the redevelopment entity has the appropriate prior
31 experience in developing similar types of projects; and

32 (7) whether there exist donations from private entities for the
33 purpose of the demonstration project.

34 d. The building authority's review of the proposed school facilities
35 project for designation as a demonstration project under this section
36 shall commence upon approval by the commissioner of the school
37 facilities project pursuant to section 5 of P.L. , c. (C.) (now
38 pending before the Legislature as this bill). Upon approval by the
39 commissioner of the school facilities project, and recommendation by
40 the building authority that the school facilities project be a
41 demonstration project, the recommendation of the building authority
42 shall be forwarded to the State Treasurer who shall determine whether
43 the school facilities project should be designated as a demonstration
44 project. At the same time as the building authority forwards its
45 recommendation to the State Treasurer, the building authority shall
46 forward its recommendation to the Urban Coordinating Council for
47 review pursuant to subsection i. of this section.

1 e. In addition to the requirements set forth in section 5 of this act,
2 a demonstration project may request inclusion in the final eligible costs
3 of the school facilities project, of all or any portion of the cost of any
4 community design features including any area, rooms, equipment,
5 recreational area or playground included in the school facilities project
6 which are to be used in common by students of the district and by
7 residents of the community, but there shall not be included in the final
8 eligible costs any portion of the cost of any features which are not an
9 integral part of the school building and grounds. The commissioner
10 shall approve the inclusion of the community design features as part
11 of the school facilities project if he finds that the inclusion of the
12 community design features as part of the school facilities project
13 would be conducive to the usefulness and success of the project for
14 both the students of the district and the residents of the community.
15 The commissioner may condition his approval upon the adoption by
16 the district of policies suitable for assuring continuing community or
17 educational access to the community design features.

18 f. The cost of the community design features approved by the
19 commissioner shall be reviewed by the building authority. The district
20 shall submit the documentation required by the building authority for
21 the building authority to make its determination. The building
22 authority shall, in its recommendation to the commissioner pursuant
23 to section 5 of this act, include its recommendation with respect to the
24 cost of the community design features. The commissioner shall make
25 the final determination with respect to the inclusion of the cost of
26 community design features in the final eligible costs.

27 g. The facilities authority shall provide funding for the State's share
28 of the final eligible costs of a school facilities project to be constructed
29 as part of a demonstration project pursuant to an agreement among the
30 facilities authority, the redevelopment entity and the district which
31 shall, in addition to any other terms and conditions, set forth the terms
32 for disbursement of the State share and provide for the monitoring of
33 construction by the building authority.

34 h. Upon completion of a demonstration project by a redevelopment
35 entity, the district shall submit to the commissioner a plan to provide
36 for the maintenance of the project and shall enter into a contract which
37 provides for that maintenance.

38 i. The Urban Coordinating Council shall review the
39 recommendations of the building authority with respect to the
40 demonstration projects and shall advise the building authority,
41 redevelopment entity and the district regarding the potential
42 availability of funding for the demonstration project, including, but not
43 limited to, sources of funds for acquisition, clearance, site remediation,
44 and assemblage of land and the development, redevelopment,
45 construction or rehabilitation of any structure or improvement
46 included in the project¹.

1 7. (New section) a. Preliminary eligible costs for construction of
 2 new school facilities and additions to school facilities, characterized by
 3 an increase in the square footage of the school facility, shall be
 4 approved only if necessary for reasons of unhoused students.
 5 Unhoused students are the number of students to be housed in a
 6 school building, but which cannot be housed in an existing building
 7 without additional space or a new building in order to maintain
 8 educational adequacy ¹; or which are temporarily being housed in
 9 space that was originally designed or intended for instruction in
 10 specialized areas including, but not limited to, science, art, music,
 11 other hands-on learning experiences and comprehensive health and
 12 physical education¹. Unhoused students are calculated by subtracting
 13 the projected enrollment for a school building from its functional
 14 capacity.

15 ¹Preliminary eligible costs for construction of new school facilities
 16 and additions to school facilities pursuant to this subsection shall be
 17 calculated as follows:¹

18 Preliminary eligible costs = AU x C plus other allowable costs

19 where

20 AU is the approved area for unhoused students; and

21 C is the area cost allowance ¹[;] ¹.

22 b. Preliminary eligible costs shall be ¹[calculated as follows for]
 23 approved for a rehabilitation project which means the¹ reconstruction,
 24 remodeling, alteration, modernization, renovation or repair of school
 25 facilities ¹[that were originally constructed by the district or that the
 26 district purchased more than five years prior to the date of application
 27 for approval to the commissioner and that have not been previously
 28 approved by the commissioner pursuant to this act within the prior 15
 29 years; provided that the 15-year requirement may be waived by the
 30 commissioner if the district satisfactorily demonstrates that
 31 extraordinary circumstances apply] but only for the purpose of
 32 keeping the school building functional for its original purpose or for
 33 new purposes that can be accomplished without increasing the gross
 34 square footage of the original facility¹.

35 ¹Preliminary eligible costs for rehabilitation projects pursuant to
 36 this subsection shall be calculated as follows:¹

37 Preliminary eligible costs = ¹[R x A

38 where

39 R = the replacement costs of the facility = GA x C

40 and where

41 GA is the gross area (square footage) of the existing school facility
 42 or portion thereof being reconstructed, remodeled, altered,
 43 modernized, renovated or repaired;

44 C is the area cost allowance; and

45 A is a factor determined by the age of the school facility, the
 46 measure of which commences with occupancy of the school facility,
 47 according to the following table:

1	Age of the School Facility	A
2	15 years or less	zero
3	16 years or more and less than 26 years	50%
4	26 years or more and less than 41 years	60%
5	41 years or more	85%

6

7 For the purposes of this section the age of the school facility shall be
8 a composite measure of the age of individual sections of the building
9 determined in accordance with a method approved by the
10 commissioner. The commissioner may adjust “A” for a district that
11 demonstrates that additional renovation expenditures are necessary to
12 address health and safety conditions or obsolescence] estimated actual
13 costs¹.

14 ¹[Notwithstanding the provisions of this subsection, all] All¹
15 school facilities shall be deemed suitable for rehabilitation unless a pre-
16 construction evaluation undertaken by the district demonstrates to the
17 satisfaction of the commissioner that the structure might pose a risk to
18 the safety of the occupants even after rehabilitation, or that
19 rehabilitation is not cost-effective. ¹Whenever a district determines to
20 undertake new construction rather than a rehabilitation project, the
21 district shall undertake a preconstruction evaluation to determine,
22 whether, because of health and safety or efficiency, it would be more
23 feasible to replace rather than renovate the school facility. When the
24 district demonstrates to the satisfaction of the commissioner that
25 replacement is more feasible, the district shall be authorized to have
26 the school facility replaced rather than renovated, and the preliminary
27 eligible costs shall be determined pursuant to subsection a. of this
28 section. The estimated costs of a rehabilitation project shall contain
29 only those costs necessary for compliance with the Uniform
30 Construction Code, health and safety, and educational adequacy as
31 determined pursuant to the facilities efficiency standards and
32 paragraph (1) of subsection g. of section 5 of this act.¹

33 c. ¹[Preliminary eligible costs for new construction done in lieu of
34 renovations shall be determined in accordance with the methodology
35 for new construction, with preliminary eligible costs determined
36 pursuant to subsection a. of this section, only when the decision to
37 replace a school facility is supported by a feasibility study conducted
38 by the district, and either the age of the building being replaced is 41
39 years or greater or the commissioner determines that extraordinary
40 circumstances apply.]¹ When ¹[new]¹ construction done in lieu of
41 ¹[renovations] rehabilitation projects¹ qualifies as new construction,
42 the approved area for unhoused students shall be determined by the
43 commissioner, with consideration of the existing school facilities in the
44 district.

45 d. Preliminary eligible costs for ¹[new]¹ construction done in lieu
46 of ¹[renovations] rehabilitation projects¹ which does not meet the

1 requirements of subsection ¹[c.] b.¹ of this section shall be determined
2 in accordance with the methodology for aiding ¹[renovations]
3 rehabilitation projects¹, with the preliminary eligible costs determined
4 pursuant to subsection b. of this section.

5 e. Preliminary eligible costs for purchase of an existing facility to
6 be used as a school facility shall be determined in accordance with the
7 methodology for new construction, with preliminary eligible costs
8 determined pursuant to subsection a. of this section.

9 f. Preliminary eligible costs for any addition or reconstruction,
10 remodeling, alteration, modernization, renovation or repair made to a
11 purchased facility within five years of purchase shall be determined as
12 follows:

13 Preliminary eligible costs = (ACP-PC) x (C/CP) plus other
14 allowable costs

15 where

16 ACP is the preliminary eligible costs for the facilities purchase
17 pursuant to subsection e. of this section;

18 PC is the purchase cost for the facility;

19 C is the area cost allowance at the time of application for the
20 renovation; and

21 CP is the area cost allowance at the time of purchase of the
22 facility.

23 Preliminary eligible costs so calculated shall not be less than
24 zero.

25 g. Other allowable costs shall include the costs of site
26 development, acquisition of land or other real property interests
27 necessary to effectuate the school facilities project, fees for the
28 services of design professionals, including architects, engineers,
29 construction managers and other design professionals, legal fees, and
30 the costs associated with financing the school facilities project. Other
31 allowable costs for school facilities projects to be undertaken by the
32 building authority shall be determined by the building authority. Other
33 allowable costs for school facilities projects to be undertaken by a
34 district or a community redevelopment entity shall be equal to the
35 actual costs unless the commissioner, in consultation with the building
36 authority, determines these costs to be unreasonable in light of the
37 experience of similarly situated districts.

38
39 8. (New section) a. The number of unhoused students shall be
40 calculated as the number of FTE students who are projected to be
41 enrolled in preschool handicapped, preschool, kindergarten, grades 1
42 through 12, and special education services pupil educational programs
43 provided in a district within five years, which are in excess of the
44 functional capacity of the district's current school facilities or the
45 functional capacity of the school facilities which will be available
46 within five years other than the school facilities for which the
47 preliminary eligible costs are determined, based upon the district's

1 long-range facilities plan. The determination of unhoused capacity
 2 shall separately consider projected enrollments and functional
 3 capacities at the early childhood and elementary (preschool through
 4 grade 5), middle (grades ¹[six] 6¹ through ¹[eight] 8¹), and high
 5 school (grades ¹[nine] 9¹ through 12) levels. For the purpose of
 6 calculating the district's unhoused students, special education services
 7 students shall be considered part of the grade level to which the
 8 students' chronological age corresponds. In the event that the
 9 commissioner approves a school facilities project which involves the
 10 construction of a new school facility to replace an existing school
 11 facility, which shall accommodate both the unhoused students and the
 12 students in the existing school facility, the calculation of the number
 13 of unhoused students shall include the number of students currently
 14 attending the existing facility which is to be replaced.

15 b. Approved area for unhoused students (AU) shall be determined
 16 according to the following formula:

$$17 \quad AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$$

18 where

19 UEC, UE, UM, UH are the numbers of unhoused students in the
 20 early childhood, elementary, middle, and high school enrollment
 21 categories, respectively; and

22 SEC, SE, SM, SH are the area allowances per FTE student in
 23 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
 24 and grades 9 through 12, respectively. Area allowances shall be
 25 determined based on the grade level of a student regardless of the
 26 grade configurations used in the school buildings of the district.

27 The minimum area allowance per FTE student shall be as follows:

28

29	Preschool through grade 5	125 sq. ft.
30	Grades 6 through 8	136 sq. ft.
31	Grades 9 through 12	151 sq. ft.

32

33 The commissioner, in consultation with the State Treasurer and the
 34 Commissioner of the Department of Community Affairs, shall adopt
 35 regulations that establish a process for the consideration of special
 36 circumstances, in addition to those provided in section 5 of this act, in
 37 which the area allowances per FTE student established pursuant to this
 38 subsection may be ¹[exceeded] adjusted¹. Any decision made by the
 39 commissioner pursuant to those regulations shall be made in
 40 consultation with the State Treasurer and the Commissioner of the
 41 Department of Community Affairs.

42

43 9. (New section) a. State debt service aid for capital investment
 44 in school facilities for a district whose district aid percentage is less
 45 than 50% and which elects not to have the building authority construct
 46 a school facilities project ¹or to finance the project under section 15
 47 of this act¹, shall be distributed upon a determination of preliminary

1 eligible costs by the commissioner, according to the following formula:

2 Aid is the sum of A for each issuance of school bonds issued for a
3 school facilities project approved by the commissioner after the
4 effective date of P.L. , c. (C.) (now pending before the
5 Legislature as this bill)

6 where

7 $A = B \times AC/P \times ({}^1[CCSAID/TEBUD] \underline{DAP}^1 \times 1.15) \times M$, with
8 $AC/P = 1$

9 whenever AC/P would otherwise yield a number greater than one,
10 and where:

11 B is the district's debt service for the individual issuance for the
12 fiscal year;

13 AC is the preliminary eligible costs determined pursuant to section
14 7 of this act;

15 P is the principal of the individual issuance plus any other funding
16 sources approved for the school facilities project;

17 ¹[CCSAID is the district's core curriculum standards aid amount
18 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15)
19 as of the date of the commissioner's determination of the preliminary
20 eligible costs;

21 TEBUD is the district's T&E budget determined pursuant to section
22 13 of P.L.1996, c.138 (C.18A:7F-13) as of the date of the
23 commissioner's determination of the preliminary eligible costs]

24 DAP is the district's district aid percentage as defined pursuant to
25 section 3 of this act¹ ; and

26 M is a factor representing the degree to which a district has fulfilled
27 maintenance requirements for a school facilities project determined
28 pursuant to subsection b. of this section.

29 For county special services school districts, ¹[CCSAID/TEBUD]
30 DAP¹ shall be that of the county vocational school district in the same
31 county. Notwithstanding any provision of this subsection to the
32 contrary, State debt service aid shall not be less than ¹[10%]40%¹ of
33 the preliminary eligible costs.

34 b. The maintenance factor (M) shall be 1.0 except when one of the
35 following conditions applies, in which case the maintenance factor
36 shall be as specified:

37 (1) Effective ten years from the date of the enactment of P.L. ,
38 c. (C.) (now pending before the Legislature as this bill), the
39 maintenance factor for aid for reconstruction, remodeling, alteration,
40 modernization, renovation or repair, or for an addition to a school
41 facility, shall be zero for all school facilities projects for which the
42 district fails to demonstrate over the ten years preceding issuance a net
43 investment in maintenance of the related school facility of at least 2%
44 of the replacement cost of the school facility, determined pursuant to
45 subsection b. of section 7 of this act using the area cost allowance of
46 the year ten years preceding the year in which the school bonds are
47 issued.

1 (2) For new construction, additions, and school facilities aided
 2 under subsection b. of section 7 of this act supported by financing
 3 issued for projects approved by the commissioner after the effective
 4 date of P.L. , c. (C.) (now pending before the Legislature as
 5 this bill), beginning in the fourth year after occupancy of the school
 6 facility, the maintenance factor shall be reduced according to the
 7 following schedule for all school facilities projects for which the
 8 district fails to demonstrate in the prior fiscal year an investment in
 9 maintenance of the related school facility of at least two-tenths of 1 %
 10 of the replacement cost of the school facility, determined pursuant to
 11 subsection b. of section 7 of this act.

12

Maintenance Percentage	Maintenance Factor (M)
.199% - .151%	75%
.150% - .100%	50%
Less than .100%	Zero

17

18 (3) Within one year of the enactment of P.L. , c. (C.) (now
 19 pending before the Legislature as this bill), the commissioner shall
 20 promulgate rules requiring districts to develop a long-range
 21 maintenance plan and specifying the expenditures that qualify as an
 22 appropriate investment in maintenance for the purposes of this
 23 subsection.

24 Any district which obtained approval from the commissioner for
 25 a school facilities project since September 1, 1998 and prior to the
 26 effective date of P.L. , c. (C.) (now pending before the
 27 Legislature as this bill) may elect to have the commissioner re-
 28 calculate its State aid as if the project were subject to the provisions
 29 of this act; provided that a district which received approval from the
 30 commissioner for a school facilities project prior to the effective date
 31 of P.L. , c. (C.) (now pending before the Legislature as this
 32 bill), but has not issued debt, other than short term notes, or entered
 33 into construction contracts, shall not be precluded from deciding not
 34 to proceed with the project and instead submitting an application
 35 pursuant to section 5 of this act.

36

37 10. (New section) For each issuance of school bonds or
 38 certificates of participation issued for a school facilities project
 39 approved by the commissioner prior to the effective date of P.L. ,
 40 c. (C.) (now pending before the Legislature as this bill):

41 Aid is the sum of A

42 where

43 $A = B \times \text{CCSAID/TEBUD}$

44 and where

45 B is the district's total debt service or lease purchase payment for
 46 the individual issuance for the fiscal year, provided that for the
 47 purpose of determining debt service or lease purchase payment under

1 this section the cost of site acquisition may be included;
2 CCSAID is the district's core curriculum standards aid amount
3 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
4 and

5 TEBUD is the district's T&E budget determined pursuant to section
6 13 of P.L.1996, c.138(C.18A:7F-13).

7 For county special services school districts, CCSAID/TEBUD shall
8 be that of the county vocational school district in the same county.
9

10 11. (New section) A school facilities project shall not be
11 constructed unless the local share of the project, if any, is approved
12 in accordance with the provisions for the approval of capital projects
13 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
14 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.
15

16 12. (New section) A district, other than a State-operated school
17 district, that sought approval pursuant to section 11 of this act of a
18 school facilities project without excess costs but failed to receive that
19 approval, and within the three years prior to that, sought and failed to
20 receive approval of that school facilities project with or without excess
21 costs, may submit the project to the commissioner and request that the
22 commissioner approve the project and authorize the issuance of school
23 bonds for the local share of the project. Upon receipt of the request,
24 the commissioner shall review the school facilities project and
25 determine whether the project is necessary for the provision of a
26 thorough and efficient system of education in the district. If the
27 commissioner concludes that the project is necessary, the
28 commissioner may approve the project without excess costs and
29 authorize the issuance of school bonds to fund the local share. In
30 addition to the amount of taxes determined by the legal voters of the
31 district at the annual school election, the secretary of the board of
32 education shall certify the amount required for the repayment of the
33 interest and principal of the bonds required to fund the local share
34 amount approved by the commissioner in the same manner required
35 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
36 and the amount so certified shall be included in the taxes assessed,
37 levied and collected in the municipality or municipalities comprising
38 the school district for those purposes.

39 Any school facilities project authorized pursuant to this section
40 shall be constructed by the building authority. Nothing in this section
41 shall preclude a State-operated school district from using the process
42 established pursuant to section 2 of P.L.1991, c.139 (C.18A:7A-46.2)
43 to obtain the approval of the commissioner to undertake a school
44 facilities project.
45

46 13. (New section) a. The facilities authority shall be responsible
47 for the financing of school facilities projects and the building authority

1 shall be responsible for the planning, design, construction
2 management, acquisition, construction, and completion of school
3 facilities projects. Upon submission to the building authority of a final
4 project report and financing by the facilities authority, the building
5 authority shall undertake the acquisition, construction, and all other
6 appropriate actions necessary to complete the project. When the final
7 eligible costs of a school facilities project are less than or equal to
8 \$250,000, the building authority may, in its discretion, authorize a
9 district to undertake the acquisition, construction and all other
10 appropriate actions necessary to complete the project and enter into
11 a grant agreement with the district for the payment of the State share.

12 b. The facilities authority shall undertake the financing of school
13 facilities projects pursuant to the provisions of this act. The facilities
14 authority may, in its discretion and upon consultation with the district,
15 finance only the State share of the school facilities project or the State
16 share and the local share of the project. In the event that the facilities
17 authority finances only the State share of a project, the building
18 authority shall not commence acquisition or construction of the project
19 until the building authority receives the local share from the district.

20 c. In order to implement the construction and finance arrangements
21 established for school facilities projects which are to be constructed by
22 the building authority and financed by the facilities authority pursuant
23 to this section, a district shall enter into an agreement with the building
24 authority, the facilities authority, and the commissioner containing the
25 terms and conditions determined by the parties to be necessary to
26 effectuate the project.

27 d. Upon completion by the building authority of a school facilities
28 project, the district shall enter into an agreement with the building
29 authority to provide for the maintenance of the project by the district.
30 In the event that the school facilities project is constructed by a
31 district, upon the completion of the project, the district shall submit to
32 the commissioner a plan to provide for the maintenance of the project
33 by the district. Any agreement or plan shall contain, in addition to any
34 other terms and provisions, a requirement for the establishment of a
35 maintenance reserve fund, the funding levels of which shall be as set
36 forth in regulations adopted by the commissioner pursuant to section
37 ¹[25] 26¹ of this act.

38 e. There is hereby established a separate fund entitled the "School
39 Facilities Construction Fund." This fund shall be maintained by the
40 building authority separate and apart from any other funds of the
41 building authority and may be held in depositaries as may be selected
42 by the building authority and invested and reinvested as other funds in
43 the custody of the building authority, subject to the approval of the
44 State Treasurer. All interest or other income or earnings derived from
45 the investment or reinvestment of moneys in the fund shall be credited
46 to the fund. Any grants, contributions, donations and reimbursements
47 from federal aid programs and from other public or private sources as

1 may be used lawfully for the purposes of this act shall also be held in
2 the fund, but shall be expended in accordance with any conditions or
3 requirements attached thereto. The moneys in the fund are specifically
4 dedicated and shall be applied to the cost of school facilities projects
5 undertaken by the building authority pursuant to this act. The fund
6 shall be credited with the proceeds of bonds issued pursuant to section
7 14 of this act; any moneys appropriated or otherwise made available
8 to it by the Legislature; net earnings received from the investment or
9 deposit of monies in the fund, and any other moneys which the
10 building authority determines to deposit therein.

11 f. Upon the issuance by the facilities authority of bonds pursuant
12 to section 14 of this act, the proceeds of the bonds less costs of
13 issuance shall be transferred to the building authority for deposit into
14 the School Facilities Construction Fund.

15 g. In order to implement the arrangements provided for in this act,
16 the State Treasurer, the facilities authority and the building authority
17 are hereby authorized to enter into one or more contracts. The
18 contracts shall provide, in addition to other terms and conditions, for
19 the payment by the facilities authority to the building authority
20 pursuant to subsection f. of this section in order for the building
21 authority to carry out its responsibilities as set forth in this act. The
22 contract or contracts shall be on terms and conditions as determined
23 by the parties, provided that the incurrence of any obligations of the
24 State under the contract or contracts, if any, shall be subject to and
25 dependent upon appropriations being made from time to time by the
26 Legislature for the purposes of this act.

27

28 14. (New section) Notwithstanding any other provisions of law
29 to the contrary:

30 a. The facilities authority shall have the power, pursuant to the
31 provisions of this act and N.J.S.18A:72A-1 et seq., to issue bonds and
32 refunding bonds, incur indebtedness and borrow money secured, in
33 whole or in part, by monies received pursuant to sections 17, 18 and
34 19 of this act for the purposes of: financing all or a portion of the
35 costs of school facilities projects and any costs related to the issuance
36 thereof, including, but not limited to, the administrative, insurance,
37 operating and other expenses of the facilities authority to undertake
38 the financing of school facilities projects and the administrative,
39 insurance and operating expenses of the building authority to
40 undertake the design, construction and maintenance of school facilities
41 projects; lending moneys to local units to pay the costs of all or a
42 portion of school facilities projects and any costs related to the
43 issuance thereof; ¹[funding the school facilities project revolving loan
44 fund pursuant to the provisions of section 15 of this act;]¹ and
45 financing the acquisition of school facilities projects to permit the
46 refinancing of debt by the district pursuant to section 16 of this act.

47 The facilities authority may establish reserve funds to further secure

1 bonds and refunding bonds issued pursuant to this section and may
2 issue bonds to pay for the administrative, insurance and operating
3 costs of the facilities authority and the building authority in carrying
4 out the provisions of this act. In addition to its bonds and refunding
5 bonds, the facilities authority shall have the power to issue
6 subordinated indebtedness, which shall be subordinate in lien to the
7 lien of any or all of its bonds or refunding bonds as the facilities
8 authority may determine.

9 b. The facilities authority shall issue the bonds or refunding bonds
10 in such manner as it shall determine in accordance with the provisions
11 of this act and N.J.S.18A:72A-1 et seq.; provided that notwithstanding
12 any other law to the contrary, no resolution adopted by the facilities
13 authority authorizing the issuance of bonds or refunding bonds
14 pursuant to this section shall be adopted or otherwise made effective
15 without the approval in writing of the State Treasurer; and refunding
16 bonds issued to refund bonds issued pursuant to this section shall be
17 issued on such terms and conditions as may be determined by the
18 facilities authority and the State Treasurer. The facilities authority
19 may, in any resolution authorizing the issuance of bonds or refunding
20 bonds issued pursuant to this section, pledge the contract with the
21 State Treasurer provided for pursuant to section 18 of this act, or any
22 part thereof, or may pledge all or any part of the repayments of loans
23 made to local units pursuant to section 19 of this act for the payment
24 or redemption of the bonds or refunding bonds, and covenant as to the
25 use and disposition of money available to the facilities authority for
26 payment of the bonds and refunding bonds. All costs associated with
27 the issuance of bonds and refunding bonds by the facilities authority
28 for the purposes set forth in this act may be paid by the facilities
29 authority from amounts it receives from the proceeds of the bonds or
30 refunding bonds, and from amounts it receives pursuant to sections
31 17, 18, and 19 of this act. The costs may include, but shall not be
32 limited to, any costs relating to the issuance of the bonds or refunding
33 bonds, administrative costs of the facilities authority attributable to the
34 making and administering of loans to fund school facilities projects,
35 and costs attributable to the agreements entered into pursuant to
36 subsection d. of this section.

37 c. Each issue of bonds or refunding bonds of the facilities authority
38 shall be special obligations of the facilities authority payable out of
39 particular revenues, receipts or funds, subject only to any agreements
40 with the holders of bonds or refunding bonds, and may be secured by
41 other sources of revenue, including, but not limited to, one or more of
42 the following:

43 (1) Pledge of the revenues and other receipts to be derived from
44 the payment of local unit obligations and any other payment made to
45 the facilities authority pursuant to agreements with any local unit, or
46 a pledge or assignment of any local unit obligations, and the rights and
47 interest of the authority therein;

- 1 (2) Pledge of rentals, receipts and other revenues to be derived
2 from leases or other contractual arrangements with any person or
3 entity, public or private, including one or more local units, or a pledge
4 or assignment of those leases or other contractual arrangements and
5 the rights and interests of the facilities authority therein;
- 6 (3) Pledge of all moneys, funds, accounts, securities and other
7 funds, including the proceeds of the bonds;
- 8 (4) Pledge of the receipts to be derived from payments of State aid
9 to the facilities authority pursuant to section 21 of this act;
- 10 (5) Pledge of the contract or contracts with the State Treasurer
11 pursuant to section 18 of this act;
- 12 (6) Pledge of any sums remitted to the local unit by donation from
13 any person or entity, public or private, subject to the approval of the
14 State Treasurer;
- 15 (7) A mortgage on all or any part of the property, real or personal,
16 comprising a school facilities project then owned or thereafter to be
17 acquired, or a pledge or assignment of mortgages made to the facilities
18 authority by any person or entity, public or private, including one or
19 more local units and rights and interests of the facilities authority
20 therein; and
- 21 (8) The receipt of any grants, reimbursements or other payments
22 from the federal government.
- 23 d. The resolution authorizing the issuance of bonds or refunding
24 bonds pursuant to this section may also provide for the facilities
25 authority to enter into any revolving credit agreement, agreement
26 establishing a line of credit or letter of credit, reimbursement
27 agreement, interest rate exchange agreement, currency exchange
28 agreement, interest rate floor or cap, options, puts or calls to hedge
29 payment, currency, rate, spread or similar exposure or similar
30 agreements, float agreements, forward agreements, insurance
31 contracts, surety bonds, commitments to purchase or sell bonds,
32 purchase or sale agreements, or commitments or other contracts or
33 agreements and other security agreements approved by the facilities
34 authority in connection with the issuance of the bonds or refunding
35 bonds pursuant to this section. In addition, the facilities authority
36 may, in anticipation of the issuance of the bonds or the receipt of
37 appropriations, grants, reimbursements or other funds, including,
38 without limitation, grants from the federal government for school
39 facilities projects, issue notes, the principal of or interest on which, or
40 both, shall be payable out of the proceeds of notes, bonds or other
41 obligations of the facilities authority or appropriations, grants,
42 reimbursements or other funds or revenues of the facilities authority.
- 43 e. The facilities authority is authorized to engage, subject to the
44 approval of the State Treasurer and in such manner as the State
45 Treasurer shall determine, the services of financial advisors and
46 experts, placement agents, underwriters, appraisers, and other
47 advisors, consultants and agents as may be necessary to effectuate the

1 financing of school facilities projects.

2 f. Bonds and refunding bonds issued by the facilities authority
3 pursuant to this section shall be special and limited obligations of the
4 facilities authority payable from, and secured by, funds and moneys
5 determined by the facilities authority in accordance with this section.
6 Notwithstanding any other provision of law or agreement to the
7 contrary, any bonds and refunding bonds issued by the facilities
8 authority pursuant to this section shall not be secured by the same
9 property as bonds and refunding bonds issued by the facilities
10 authority to finance projects other than school facilities projects.
11 Neither the members of the facilities authority nor any other person
12 executing the bonds or refunding bonds shall be personally liable with
13 respect to payment of interest and principal on these bonds or
14 refunding bonds. Bonds or refunding bonds issued pursuant to this
15 section shall not be a debt or liability of the State or any agency or
16 instrumentality thereof, except as otherwise provided by this
17 subsection, either legal, moral or otherwise, and nothing contained in
18 this act shall be construed to authorize the facilities authority to incur
19 any indebtedness on behalf of or in any way to obligate the State or
20 any political subdivision thereof, and all bonds and refunding bonds
21 issued by the facilities authority shall contain a statement to that effect
22 on their face.

23 g. The State hereby pledges and covenants with the holders of any
24 bonds or refunding bonds issued pursuant to this act that it will not
25 limit or alter the rights or powers vested in the facilities authority by
26 this act, nor limit or alter the rights or powers of the State Treasurer
27 in any manner which would jeopardize the interest of the holders or
28 any trustee of the holders, or inhibit or prevent performance or
29 fulfillment by the facilities authority or the State Treasurer with
30 respect to the terms of any agreement made with the holders of the
31 bonds or refunding bonds or agreements made pursuant to subsection
32 d. of this section; except that the failure of the Legislature to
33 appropriate moneys for any purpose of this act shall not be deemed a
34 violation of this section.

35 h. The facilities authority and the building authority may charge to
36 and collect from local units, districts, the State and any other person,
37 any fees and charges in connection with the facilities authority's or
38 building authority's actions undertaken with respect to school facilities
39 projects, including, but not limited to, fees and charges for the
40 facilities authority's administrative, organization, insurance, operating
41 and other expenses incident to the financing of school facilities
42 projects and the building authority's administrative, organization,
43 insurance, operating and other expenses incident to the planning,
44 design, construction management, acquisition, construction,
45 completion and placing into service and maintenance of school
46 facilities projects. Notwithstanding any provision of this act to the
47 contrary, no Level II district or a district whose district aid percentage

1 is greater than or equal to 50% but less than 100% shall be responsible
2 for the payment of any fees and charges related to the building
3 authority's operating expenses.

4
5 15. (New section) ¹[a. The facilities authority shall establish and
6 maintain a special nonlapsing revolving loan fund to be known as the
7 "School Facilities Project Revolving Loan Fund," hereinafter referred
8 to as the "loan fund," which shall be credited with: (1) the proceeds of
9 the sale of bonds pursuant to subsection b. of this section; (2) any
10 moneys that shall be received by the facilities authority from the
11 repayment of loans made from the fund; (3) any moneys appropriated
12 or otherwise made available to it by the Legislature; (4) net earnings
13 received from the investment or deposit of monies in the fund; and (5)
14 any other moneys which the facilities authority determines to deposit
15 therein.

16 b. In addition to any bonds which the facilities authority is
17 authorized to issue pursuant to this act, the facilities authority is
18 authorized to issue bonds in an aggregate principal amount not
19 exceeding \$1,000,000,000 the proceeds from which shall be deposited
20 into the loan fund. The bonds shall be secured in whole or in part by
21 monies received pursuant to sections 17, 18 and 19 of this act.

22 c. The facilities authority shall use the monies in the loan fund
23 exclusively for making loans to local units for the purposes of
24 financing the final eligible costs of school facilities projects in
25 accordance with the provisions of this section. The amount of loans
26 that may be made in the first fiscal year shall not exceed
27 \$400,000,000, in the second fiscal year, \$300,000,000, and in the third
28 fiscal year, \$200,000,000. In any fiscal year in which the dollar value
29 of the loans made is less than the amount permitted herein, the excess
30 amount shall be carried forward and shall be available for loans in the
31 following fiscal year. Each loan to a local unit from the loan fund shall
32 be evidenced by local unit obligations and shall be authorized and
33 issued as provided by law. Notwithstanding the provisions of any law
34 to the contrary, the local unit obligations may be sold at private sale
35 to the facilities authority at any price, whether or not less than par
36 value, and shall be subject to redemption prior to maturity at any times
37 and at any prices as the facilities authority and the local unit may
38 agree.

39 d. Loans from the fund may be made to districts whose district aid
40 percentage is less than 50% and which have elected not to have the
41 building authority construct a school facilities project. Loans from the
42 fund shall be for time periods that are customary for the financing of
43 the construction of school facilities. The facilities authority shall
44 establish other terms of the loan which shall include, but not be limited
45 to, a schedule for drawing down the loan, and a repayment schedule;
46 provided that the interest rate shall be 2% per annum for a minimum
47 period of two years following the effective date of this act, or such

1 other rate as the State Treasurer may, from time to time, approve
2 following the minimum two-year period. Any loan interest rate
3 approved by the State Treasurer pursuant to this subsection shall be
4 no greater than 4% below The Bond Buyer Municipal Bond Index
5 Rate on the date of the establishment of the new loan interest rate.
6 Each loan by the facilities authority, and the terms and conditions of
7 the loan, shall be subject to approval by the State Treasurer.

8 In the event that the dollar value of the loan applications in any
9 fiscal year exceeds the amount of loan funds available, the facilities
10 authority may apportion the loan funds among eligible school facilities
11 projects to finance such percentage as determined by the State
12 Treasurer of each project's final eligible costs, and the district shall
13 be eligible to receive State debt service aid pursuant to section 9 of
14 this act on that portion of the school facilities project's final eligible
15 costs for which loan funds are not available.

16 e. Loans made from the fund to finance school facilities projects
17 shall be allocated to districts in accordance with the critical need for
18 the project. The commissioner shall rank school facilities projects
19 from Tier I to Tier IV in terms of critical need according to the
20 following prioritization:

21 Tier I: health and safety, including electrical system upgrades;
22 required early childhood education programs; unhoused students/class
23 size reduction as required to meet the standards of the
24 "Comprehensive Educational Improvement and Financing Act of
25 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.).

26 Tier II: educational adequacy - specialized instructional spaces,
27 media centers, cafeteriums, and other non-general classroom spaces
28 contained in the facilities efficiency standards; special education spaces
29 to achieve the least restrictive environment.

30 Tier III: technology projects; regionalization/consolidation projects.

31 Tier IV: other local objectives.

32 f. Except as otherwise provided in subsection d. of this section, if
33 a district obtains a loan from the facilities authority for a school
34 facilities project pursuant to this section, the district shall not receive
35 State debt service aid for the project pursuant to section 9 of this act.

36 g. All repayments of the loans and interest thereon shall be
37 deposited by the facilities authority into the loan fund for use as
38 provided for in this section.

39 h. Any district shall be eligible to receive additional loans pursuant
40 to this section even if the district has received a previous loan;
41 provided that the additional loans are in conformance with the
42 selection criteria established pursuant to this section.

43 i. The facilities authority shall promulgate as part of the regulations
44 adopted pursuant to subsection b. of section 26 of this act, the
45 procedures to be followed by districts in submitting loan applications,
46 which shall include the dates within each fiscal year by which a district
47 is required to submit its application in order to be eligible to receive

1 loan funds] In the case of a district whose district aid percentage is
2 less than 50% and which elects not to have the building authority
3 undertake the construction of the school facilities project, for any
4 project approved by the commissioner after the effective date of this
5 act, the district may elect to receive a one-time grant for the State
6 share of the project rather than annual debt service aid under section
7 9 of this act. The State share payable to the district shall equal the
8 product of the project's final eligible costs and 115% of the district aid
9 percentage or 40%, whichever is greater¹ .

10
11 16. (New section) In addition to the other powers and duties
12 which have been granted to the facilities authority, whenever any local
13 unit finances the construction or acquisition of a school facilities
14 project which would otherwise qualify under this act except that the
15 debt was issued prior to the effective date of this act, the facilities
16 authority may refinance the debt issued by the local unit through the
17 issuance of bonds secured by repayments of loans made to the local
18 units and may purchase the work or improvement and lease the same
19 to the district, subject to the approval of the State Treasurer; except
20 that the amount of the purchase price for a school facilities project
21 shall not exceed the original cost. Each loan to a local unit pursuant
22 to this section shall be evidenced by local unit obligations and shall be
23 authorized and issued as provided by law. Notwithstanding the
24 provisions of any law to the contrary, the local unit obligations may be
25 sold at private sale to the facilities authority at any price, whether or
26 not less than par value, and shall be subject to redemption prior to
27 maturity at any times and at any prices as the facilities authority and
28 the local unit may agree. All powers, rights, obligations and duties
29 granted to or imposed upon the facilities authority, districts, State
30 departments and agencies or others by this act in respect to school
31 facilities projects shall apply to the same extent with respect to any
32 refinance of debt pursuant to this section; except that any action
33 otherwise required to be taken at a particular time in the
34 implementation of a school facilities project may, when the
35 circumstances require in connection with a refinance of debt pursuant
36 to this section, be taken with the same effect as if taken at that
37 particular time. Upon repayment of the bonds or provision for
38 repayment of bonds issued by the facilities authority to refinance the
39 debt of the local unit, the school facilities project shall be transferred
40 to the district.

41
42 17. (New section) In each fiscal year the State Treasurer shall pay
43 from the General Fund to the facilities authority and the building
44 authority, in accordance with a contract among the State Treasurer,
45 the facilities authority and the building authority as authorized
46 pursuant to section 18 of this act, an amount equal to the debt service
47 amount due to be paid in the State fiscal year on the bonds or

1 refunding bonds of the facilities authority issued or incurred pursuant
2 to section 14 of this act and any additional costs authorized pursuant
3 to that section; provided that all such payments from the General Fund
4 shall be subject to and dependent upon appropriations being made
5 from time to time by the Legislature for those purposes, and provided
6 further that all payments shall be used only to pay for the costs of
7 school facilities projects and the costs of financing those projects.

8
9 18. (New section) The State Treasurer, the facilities authority and
10 the building authority are authorized to enter into one or more
11 contracts to implement the payment arrangement provided for in
12 section 17 of this act. The contract shall provide for payment by the
13 State Treasurer of the amounts required pursuant to section 17 of this
14 act and shall set forth the procedure for the transfer of monies for the
15 purpose of that payment. The contract shall contain terms and
16 conditions as determined by the parties and shall, where appropriate,
17 contain terms and conditions necessary and desirable to secure any
18 bonds or refunding bonds of the facilities authority issued or incurred
19 pursuant to this act; provided that notwithstanding any other provision
20 of law or regulation of the facilities authority to the contrary, the
21 facilities authority and the building authority shall be paid only such
22 funds as shall be determined by the contract, and the incurrence of any
23 obligation of the State under the contract, including any payments to
24 be made thereunder from the General Fund, shall be subject to and
25 dependent upon appropriations being made from time to time by the
26 Legislature for the purposes of this act.

27
28 19. (New section) a. ¹[In addition to loans authorized pursuant to
29 section 15 of this act, the] The¹ facilities authority may make and
30 contract to make loans to local units in accordance with and subject to
31 the provisions of this act to finance all or any portion of the cost of a
32 school facilities project which the local unit may lawfully undertake or
33 acquire and for which the local unit is authorized by law to borrow
34 money; or to refund obligations of the local unit which were issued to
35 provide funds to pay for the cost of a school facilities project. The
36 loans may be made subject to the terms and conditions the facilities
37 authority determines to be consistent with the purposes of this act.
38 Each loan by the facilities authority and the terms and conditions
39 thereof shall be subject to approval by the State Treasurer.

40 b. Each loan to a local unit shall be evidenced by local unit
41 obligations and shall be authorized and issued as provided by law.
42 Notwithstanding the provisions of any other law to the contrary, the
43 local unit obligations may be sold at private sale to the facilities
44 authority at any price, whether or not less than par value, and shall be
45 subject to redemption prior to maturity at any times and at any prices
46 as the facilities authority and the local unit may agree. Each loan to
47 a local unit and the local unit obligations issued to evidence the loan

1 shall bear interest at a rate or rates per annum, including zero interest,
2 and shall be repaid in whole or in part, as the facilities authority and
3 the local unit may agree, with the approval of the State Treasurer.

4
5 20. (New section) A local unit may purchase, lease, rent, sublease
6 or otherwise acquire any school facilities project or any space within
7 a project and pay the amounts as may be agreed upon between the
8 local unit and the facilities authority as the purchase price, rent or
9 other charge therefor; provided that the terms and conditions of the
10 agreement between the facilities authority and the local unit relating
11 to the purchase, lease, rental or sublease shall be subject to the
12 approval of the State Treasurer.

13
14 21. (New section) a. In the event that a local unit has failed or is
15 unable to pay to the facilities authority in full when due any local unit
16 obligations issued by the local unit to the facilities authority, including,
17 but not limited to, any lease or sublease obligations, or any other
18 monies owed by the district to the facilities authority, to assure the
19 continued operation and solvency of the facilities authority, the State
20 Treasurer shall pay directly to the facilities authority an amount
21 sufficient to satisfy the deficiency from State aid payable to the local
22 unit; provided that if the local unit is a school district, the State aid
23 shall not include any State aid which may otherwise be restricted
24 pursuant to the provisions of P.L.1996, c.138 (C.18A:7F-1 et seq.).
25 As used in this section, local unit obligations include the principal or
26 interest on local unit obligations or payment pursuant to a lease or
27 sublease of a school facilities project to a local unit, including the
28 subrogation of the facilities authority to the right of the holders of
29 those obligations, any fees or charges payable to the facilities
30 authority, and any amounts payable by a local unit under a service
31 contract or other contractual arrangement the payments under which
32 are pledged to secure any local unit obligations issued to the facilities
33 authority by another local unit.

34 b. If the facilities authority requires, and if there has been a failure
35 or inability of a local unit to pay its local unit obligations to the
36 facilities authority for a period of 30 days, the chairman or the
37 executive director of the facilities authority shall certify to the State
38 Treasurer, with written notice to the fiscal officer of the local unit, the
39 amount remaining unpaid, and the State Treasurer shall pay that
40 amount to the facilities authority; or if the right to receive those
41 payments has been pledged or assigned to a trustee for the benefit of
42 the holders of bonds or refunding bonds of the facilities authority, to
43 that trustee, out of the State aid payable to the local unit, until the
44 amount so certified has been paid. Notwithstanding any provision of
45 this act to the contrary, the State Treasurer's obligation to pay the
46 facilities authority pursuant to this section shall not extend beyond the
47 amount of State aid payable to the local unit.

1 c. The amount paid to the facilities authority pursuant to this
2 section shall be deducted from the appropriation or apportionment of
3 State aid payable to the local unit and shall not obligate the State to
4 make, nor entitle the local unit to receive, any additional appropriation
5 or apportionment. The obligation of the State Treasurer to make
6 payments to the facilities authority or trustee and the right of the
7 facilities authority or trustee to receive those payments shall be subject
8 and subordinate to the rights of holders of qualified bonds issued prior
9 to the effective date of this act pursuant to P.L.1976, c.38 (C.40A:3-1
10 et seq.) and P.L.1976, c.39 (C.18A:24-85 et seq.).

11

12 22. (New section) a. The facilities authority and the building
13 authority shall have the power to accept and use any funds
14 appropriated and paid by the State to the facilities authority and the
15 building authority, for the purposes for which the appropriations are
16 made. The facilities authority and the building authority shall have the
17 power to apply for and receive and accept appropriations or grants of
18 property, money, services or reimbursements for money previously
19 spent and other assistance offered or made available to it by or from
20 any person, government agency, public authority or any public or
21 private entity whatever for any lawful corporate purpose of the
22 facilities authority, including, without limitation, grants, appropriations
23 or reimbursements from the federal government, and to apply and
24 negotiate for the same upon such terms and conditions as may be
25 required by any person, government agency, authority or entity as the
26 facilities authority and the building authority may determine to be
27 necessary, convenient or desirable.

28 b. The facilities authority shall establish a financial incentive program
29 for the purpose of promoting donations to school facilities projects.
30 Any entity which makes a donation approved by the State Treasurer
31 to the preliminary eligible costs of a school facilities project shall
32 receive an incentive payment pursuant to the provisions of this
33 subsection. The amount of the incentive payment shall equal 50% of
34 the fair market value of the donation but shall not in any one year
35 exceed one-half of the amount of taxes paid or otherwise due from the
36 donor pursuant to the provisions of the "New Jersey Gross Income
37 Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation
38 Business Tax Act," P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable,
39 for the tax year in which the donation is made. The fair market value
40 of a non-cash donation shall be determined by the State Treasurer. The
41 carry-forward for incentive payments shall not be inconsistent with
42 that allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a
43 donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in
44 the case of a donation by a corporation.

45 All incentive payments made pursuant to this section shall be funded
46 by and shall be subject to annual appropriations to the facilities
47 authority for this purpose, and shall in no way rely upon funds raised

1 by the issuance of bonds for school facilities projects.

2

3 23. (New section) Not less than the prevailing wage rate
4 determined by the Commissioner of Labor ¹[and Industry]¹ pursuant
5 to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be
6 paid to workers employed in the performance of construction
7 contracts in connection with any school facilities project that is
8 undertaken by the building authority, a ¹[community]¹ redevelopment
9 entity ¹[,] or¹ a district ¹[, or a county, municipality, other political
10 entity or public agency designated by a school district]¹.

11

12 24. (New section) The commissioner, in consultation with the State
13 Treasurer, shall annually submit to the Governor and the Legislature
14 a report on the school facilities construction program established
15 pursuant to the provisions of this act. The report shall be submitted
16 no later than August 1 of each year and shall include, but not be
17 limited to, the following information for the prior fiscal year: the
18 number of school facilities projects approved by the commissioner
19 pursuant to section 5 of this act; the number of projects constructed
20 by the building authority and the amount of time that it has taken the
21 building authority to complete those projects; the number of projects
22 constructed by districts; ¹[the number of projects constructed by
23 entities designated by districts;]¹ the number of ¹[community
24 development school] demonstration¹ projects approved; [¹the
25 number of loans made to districts from the School Facilities Project
26 Revolving Loan Fund; the percentage of the final eligible costs of each
27 project which was supported through loan funding; the number, if any,
28 of eligible school facilities projects for which loan funds were
29 requested but not available;]¹ the number of approved projects which
30 exceeded the facilities efficiency standards, the components of those
31 projects which exceeded the standards, and the amount of construction
32 by individual districts and Statewide estimated to have exceeded the
33 standards; and recommendations for changes in the school facilities
34 construction program established pursuant to this act.

35

36 25. (New section) Notwithstanding the provisions of P.L.1999,
37 c.138 to the contrary concerning the conditions on the appropriation
38 and reappropriation of the balance in the School Construction and
39 Renovation Fund, the unexpended balance in the School Construction
40 and Renovation Fund on the effective date of this act is appropriated
41 to the building authority for deposit in the School Facilities
42 Construction Fund established pursuant to subsection e. of section 13
43 of this act.

44

45 26. (New section) a. The commissioner shall adopt, pursuant to the
46 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et

1 seq.), rules and regulations necessary to implement the provisions of
2 sections 1 through 12 of this act; except that notwithstanding any
3 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
4 commissioner may adopt, immediately upon filing with the Office of
5 Administrative Law, such rules and regulations as the commissioner
6 deems necessary to implement the provisions of sections 1 through 12
7 of this act which shall be effective for a period not to exceed 12
8 months. Determinations made by the commissioner pursuant to this
9 act and the rules and regulations adopted by the commissioner to
10 implement this act shall be considered to be final agency action and
11 appeal of that action shall be directly to the Appellate Division of the
12 Superior Court. The regulations shall thereafter be amended, adopted
13 or re-adopted by the State Board of Education in accordance with the
14 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

15 b. The facilities authority shall adopt, pursuant to the
16 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et
17 seq.), and in consultation with the State Treasurer, rules and
18 regulations necessary to implement the provisions of sections 13
19 through 22 of this act; except that notwithstanding any provision of
20 P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the facilities
21 authority may adopt, immediately upon filing with the Office of
22 Administrative Law, such rules and regulations as the facilities
23 authority deems necessary to implement the provisions of sections 13
24 through 22 of this act which shall be effective for a period not to
25 exceed six months and shall thereafter be amended, adopted or re-
26 adopted by the facilities authority, in accordance with the provisions
27 of P.L.1968, c.410 (C.52:14B-1 et seq.).

28 c. The building authority shall adopt, pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), and in consultation with the State Treasurer, rules and
31 regulations necessary to implement the provisions of this act as they
32 apply to the building authority; except that notwithstanding any
33 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
34 building authority may adopt, immediately upon filing with the Office
35 of Administrative Law, such rules and regulations as the building
36 authority deems necessary to implement the provisions of this act as
37 they apply to the building authority which shall be effective for a
38 period not to exceed six months and shall thereafter be amended,
39 adopted or readopted by the building authority in accordance with the
40 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

41 d. Any regulations adopted to implement this act shall include
42 provisions to ensure that all programs necessary to comply with
43 Abbott V are approved.

44

45 27. (New section) All property of the facilities authority and the
46 building authority shall be exempt from levy and sale by virtue of an
47 execution and no execution of other judicial process shall issue against

1 the same nor shall any judgment against the facilities authority and the
2 building authority be a charge or lien upon their property; provided
3 that nothing herein contained shall apply to or limit the rights of the
4 holder of any bonds, notes or other obligations to pursue any remedy
5 for the enforcement of any pledge or lien given by the facilities
6 authority and building authority on or with respect to any project,
7 school facilities project, or any revenues or other moneys.

8
9 28. (New section) If any clause, sentence, paragraph, section or
10 part of this act shall be adjudged by any court of competent
11 jurisdiction to be invalid, the judgment shall not affect, impair or
12 invalidate the remainder thereof, but shall be confined in its operation
13 to the clause, sentence, paragraph, section or part thereof directly
14 involved in the controversy in which the judgment shall have been
15 rendered.

16
17 29. (New section) This act shall be construed liberally to effectuate
18 the legislative intent and the purposes of this act as complete and
19 independent authority for the performance of each act and thing herein
20 authorized and all powers herein granted shall be broadly interpreted
21 to effectuate the intent and purposes and not as a limitation of
22 powers.

23
24 30. (New section) There shall be appropriated annually for the
25 purposes of this act up to \$100,000,000 from monies made available
26 to the State from tobacco companies under the nationwide settlement
27 of the respective actions by the various states against those companies,
28 entered into by this State in the Master Settlement Agreement in State
29 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
30 Court, Chancery Division, Middlesex County, No.C.254-96.

31
32 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
33 read as follows:

34 11. Each school district and county vocational school district shall
35 make an annual report of its progress in conforming to the standards
36 for the evaluation of school performance adopted pursuant to section
37 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
38 shall include but not be limited to:

- 39 a. Demographic data related to each school;
40 b. Results of designated assessment programs, including Statewide
41 assessment programs established pursuant to law and regulation;
42 c. Information on each school's fiscal operation, including the
43 budget of each school;
44 d. (Deleted by amendment, P.L.1996, c.138).
45 e. Plans and programs for professional improvement;
46 f. Plans to carry out innovative educational programs designed to
47 improve the quality of education;

1 g. Recommendations for school improvements during the ensuing
2 year; and

3 h. Such additional information as may be prescribed by the
4 commissioner.

5 [Additionally, the State Board of Education may require each
6 district to submit a facilities survey, including current use practices and
7 projected capital project needs.]

8 The district reports shall be submitted to the commissioner annually
9 on a date to be prescribed by the commissioner, who shall make them
10 the basis for an annual report to the Governor and the Legislature,
11 describing the condition of education in New Jersey, the efforts of
12 New Jersey schools in meeting the standards of a thorough and
13 efficient education, the steps underway to correct deficiencies in
14 school performance, and the progress of New Jersey schools in
15 comparison to other state education systems in the United States.

16 (cf: P.L.1996, c.138, s.36)

17

18 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
19 read as follows:

20 1. a. In any State-operated school district created pursuant to the
21 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
22 established a Capital Project Control Board, hereinafter the board,
23 which shall be responsible for the review of any capital project
24 proposed by the State district superintendent provided that the State
25 district superintendent proposes that the capital project be financed in
26 whole or in part by school bonds or notes, or through a lease purchase
27 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
28 shall also be responsible for the certification to the State district
29 superintendent of schools and the Commissioner of Education of the
30 necessity for the capital project and the certification of the
31 appropriation to be made by the governing body of the municipality.

32 b. The board shall consist of five voting members. One member
33 shall be appointed by the Commissioner of Education and two
34 members shall be appointed by the chief executive officer with the
35 consent of a majority of the full membership of the local governing
36 body of the municipality or municipalities in which the school district
37 is located. If the school district is comprised of two municipalities,
38 each municipality shall be entitled to one member, appointed by the
39 executive officer with the consent of the governing body. If the school
40 district is comprised of more than two municipalities, each of the two
41 municipalities with the largest population according to the most recent
42 federal decennial census shall be entitled to one member, appointed by
43 the executive officer with the consent of the governing body.
44 However, if a local governing body fails to agree upon the selection of
45 either board member appointed by an executive officer, then the
46 Commissioner of Education shall make the appointment. One member

1 shall be appointed by the Director of the Division of Local
2 Government Services in the Department of Community Affairs who
3 shall have experience in the area of local finance and capital projects.
4 The fifth member shall be the State district superintendent of schools
5 who shall serve ex-officio and shall act as chairperson of the board.
6 The board members, except for the State district superintendent, shall
7 each serve for a term of one year commencing on July 1 of each year
8 and expiring on June 30 of the following year. Any vacancy in the
9 membership of the board shall be filled for the unexpired term in the
10 manner provided by the original appointment. Members of the board
11 may be employees of the State or any subdivision thereof. All
12 members of the board shall serve without compensation.

13 c. The board shall meet from time to time upon the request of the
14 State district superintendent. All meetings of the board shall be
15 conducted pursuant to the provisions of the "Open Public Meetings
16 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
17 superintendent, or his designee, shall be charged with the responsibility
18 of preparing a transcript of the proceedings and all votes shall be
19 recorded in writing.

20 (cf: P.L.1991, c.139, s.1)

21

22 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
23 read as follows:

24 2. The board shall hear the recommendation of the State district
25 superintendent concerning any proposed capital project, which is to be
26 financed in whole or in part by school bonds or notes, or through a
27 lease purchase agreement pursuant to subsection f. of
28 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
29 the proposed capital project to determine whether the project will
30 assist the State-operated school district in providing a thorough and
31 efficient system of education in that district. In making this
32 determination it may take into consideration factors such as the
33 conditions in the school district, any applicable educational goals, the
34 objectives and standards established by the State, the need for the
35 capital project, the reasonableness of the amount to be expended for
36 the capital project, the estimated time for the undertaking and
37 completion of the capital project, and any other factors which the
38 board may deem necessary including the relationship of the capital
39 project to the long-term capital budget or plan of the school district
40 and the fiscal implications thereof.

41 Following its review and within 60 days of the date on which the
42 State district superintendent submits the recommendation to the board,
43 the board shall adopt a resolution as to whether the State-operated
44 school district should undertake the capital project and providing its
45 reasons therefor. The board shall adopt a resolution indicating the
46 necessity for the capital project and shall also fix and determine by

1 resolution the amount necessary to be raised locally for the capital
2 project. If the board fails to act within 60 days of the submission date,
3 the State district superintendent shall submit the recommendation to
4 the commissioner who shall approve or disapprove the capital project.
5 If the board makes a decision which is contrary to the recommendation
6 of the superintendent, the superintendent may, within 30 days from the
7 date of the board's action, submit the matter to the commissioner for
8 final decision. If the commissioner determines that a capital project
9 should be undertaken, the commissioner shall so notify the board and
10 shall indicate the amount necessary to be raised locally for the capital
11 project. Upon notification, the board shall adopt a resolution
12 indicating the necessity for the capital project and shall also fix and
13 determine by resolution the amount necessary for the capital project
14 as indicated by the commissioner. Certified copies of any resolution
15 requesting the authorization and issuance of bonds and notes or the
16 authorization of a lease purchase agreement shall be delivered to the
17 State district superintendent, the Commissioner of Education, the
18 Director of the Division of Local Government Services in the
19 Department of Community Affairs and the governing body of the
20 municipality or municipalities in which the school district is located.
21 The board shall not approve or recommend any capital project which
22 is inconsistent with the provisions of N.J.S.18A:21-1.

23 (cf: P.L.1991, c.139, s.2)

24

25 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
26 read as follows:

27 3. Notwithstanding the provisions of any law to the contrary, the
28 cost of any capital project authorized pursuant to this act which is to
29 be funded by bonds or notes and certified by the board to the State
30 district superintendent, the Commissioner of Education, the Director
31 of the Division of Local Government Services in the Department of
32 Community Affairs and the governing body of the municipality or
33 municipalities in which the school district is located shall be financed
34 by the issuance of school bonds or notes pursuant to the provisions of
35 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
36 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
37 other obligations shall be authorized, issued, sold and delivered in the
38 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).

39 (cf: P.L.1991, c.139, s.3)

40

41 35. N.J.S.18A:20-4.2 is amended to read as follows:

42 18A:20-4.2 The board of education of any school district may, for
43 school purposes:

44 (a) Purchase, take and condemn lands within the district and lands
45 not exceeding 50 acres in extent without the district but situate in a
46 municipality or municipalities adjoining the district, but no more than

1 25 acres may be so acquired in any one such municipality, without the
2 district, except with the consent, by ordinance, of such municipality;

3 (b) Grade, drain and landscape lands owned or to be acquired by it
4 and improve the same in like manner;

5 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
6 repair or furnish buildings;

7 (d) Borrow money therefor, with or without mortgage; in the case
8 of a type II district without a board of school estimate, when
9 authorized so to do at any annual or special school election; and in the
10 case of a type II district having a board of school estimate, when the
11 amount necessary to be provided therefor shall have been fixed,
12 determined and certified by the board of school estimate; and in the
13 case of a type I district, when an ordinance authorizing expenditures
14 for such purpose is finally adopted by the governing body of a
15 municipality comprised within the district; provided, however, that no
16 such election shall be held nor shall any such resolution of a school
17 estimate board or ordinance of a municipal governing body be
18 introduced to authorize any lease of any building for a term exceeding
19 one year, until the proposed terms of such lease have been reviewed
20 and approved by the Commissioner of Education and the Local
21 Finance Board in the Department of Community Affairs;

22 (e) Construct, purchase, lease or otherwise acquire a building with
23 the federal government, the State, a political subdivision thereof or any
24 other individual or entity properly authorized to do business in the
25 State; provided that: (1) the noneducational uses of the building are
26 compatible with the establishment and operation of a school, as
27 determined by the Commissioner of Education; (2) the portion of the
28 building to be used as a school meets regulations of the Department of
29 Education; (3) the board of education has complied with the
30 provisions of law and regulations relating to the selection and approval
31 of sites; and (4) in the case of a lease, that any lease in excess of five
32 years shall be approved by the Commissioner of Education and the
33 Local Finance Board in the Department of Community Affairs;

34 (f) Acquire [by lease purchase agreement a site and school
35 building; provided that the site and building meet guidelines and
36 regulations of the Department of Education and that any lease
37 purchase agreement in excess of five years shall be approved by the
38 Commissioner of Education as in the best interest of the school district
39 after determining that the relationship of the proposed lease purchase
40 project to the district's goals and objectives established pursuant to
41 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
42 provided that for any lease purchase agreement in excess of five years
43 the Local Finance Board in the Department of Community Affairs shall
44 determine within 30 days that the cost and the financial terms and
45 conditions of the agreement are reasonable], with the approval of
46 either the commissioner, or voters or board of school estimate, as

1 applicable. ¹[equipment or] ¹ improvements or additions to school
2 buildings through lease purchase agreements not in excess of five
3 years. The agreement shall be recorded as an expenditure of the
4 General Fund of the district. The commissioner shall approve the
5 agreement only upon a demonstration by the district that the lease
6 purchase payments and any operating expenses related to the
7 agreement can be included within the district's net budget spending
8 growth limitation and will not result in the need for approval by the
9 voters or board of school estimate, as appropriate, of additional
10 spending proposals to maintain existing instructional programs and
11 extracurricular activities. If the commissioner cannot approve the
12 agreement, the board of education may frame a separate question to
13 authorize the lease purchase agreement and obtain voter or board of
14 school estimate approval to enter into the agreement. ¹[A lease
15 purchase agreement for equipment shall not require approval by the
16 commissioner unless the aggregate value of the agreement exceeds in
17 any school year 1% of the district's net budget or \$250,000, whichever
18 is less.] A district may, without separate prior approval of the
19 commissioner, also acquire equipment through a lease purchase
20 agreement not in excess of five years, provided that the amount of the
21 first installment and each subsequent installment for the lease purchase
22 payments is included in the budget that is advertised and submitted for
23 approval to the voters of the district or the board of school estimate,
24 as appropriate.¹ As used herein, a "lease purchase agreement" refers
25 to any agreement which gives the board of education as lessee the
26 option of purchasing the leased **[premises]** equipment or
27 improvements or additions to existing school buildings during or
28 upon termination of the lease, with credit toward the purchase price
29 of all or part of rental payments which have been made by the board
30 of education in accordance with the lease. As part of such a
31 transaction **[approved by the Commissioner of Education]**, the board
32 of education may transfer or lease land or rights in land, including any
33 building thereon, after publicly advertising for proposals for the
34 transfer for nominal or fair market value, to the party selected by the
35 board of education, by negotiation or otherwise, after determining that
36 the proposal is in the best interest of the taxpayers of the district, to
37 construct or to improve and to lease or to own or to have ownership
38 interests in the site and the school building to be leased pursuant to
39 such lease purchase agreement, notwithstanding the provisions of any
40 other law to the contrary. The land and any building thereon which is
41 described in a lease purchase agreement entered into pursuant to this
42 amendatory act, shall be deemed to be and treated as property of the
43 school district, used for school purposes pursuant to R.S.54:4-3.3, and
44 shall not be considered or treated as property leased to another whose
45 property is not exempt, and shall not be assessed as real estate
46 pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any lease

1 purchase agreement authorized by this section shall contain a provision
2 making payments thereunder subject to the annual appropriation of
3 funds sufficient to meet the required payments or shall contain an
4 annual cancellation clause and shall require all construction contracts
5 let by public school districts or let by developers or owners of
6 property used for school purposes to be competitively bid, pursuant to
7 P.L.1977, c.114 (N.J.S.18A:18A-1 et seq.);

8 (g) Establish with an individual or entity authorized to do business
9 in the State a tenancy in common, condominium, horizontal property
10 regime or other joint ownership arrangement on a site contributed by
11 the school district; provided the following conditions are met:

12 (1) The individual or entity agrees to construct on the site, or
13 provide for the construction thereon, a building or buildings for use of
14 the board of education separately or jointly with the individual or
15 entity, which shall be subject to the joint ownership arrangement;

16 (2) The provision of the building shall be at no cost or at a reduced
17 cost to the board of education;

18 (3) The school district shall not make any payment for use of the
19 building other than its pro rata share of costs of maintenance and
20 improvements;

21 (4) The noneducational uses of the building are compatible with the
22 establishment and operation of a school, as determined by the
23 Commissioner of Education;

24 (5) The portion of the building to be used as a school, and the site,
25 meet regulations of the Department of Education; and

26 (6) Any such agreement shall be approved by the Commissioner
27 of Education and the Local Finance Board in the Department of
28 Community Affairs;

29 (h) Acquire through sale and lease-back textbooks and
30 non-consumable instructional materials provided that the sale price and
31 principal amount of the lease-back do not exceed the fair market value
32 of the textbooks and instructional materials and that the interest rate
33 applied in the lease-back is consistent with prevailing market rates or
34 is less.

35 (cf: P.L.1998, c.55, s.1)

36

37 36. N.J.S.18A:22-18 is amended to read as follows:

38 18A:22-18. When a board of education of a type I district shall
39 determine by resolution that it is necessary to sell school bonds to
40 raise money for any capital project authorized by law, it shall prepare
41 and deliver to each member of the board of school estimate a
42 statement of the amount of money estimated to be necessary for such
43 purpose. The statement shall include the amount needed to be raised
44 by school bonds, the final eligible costs of the project as approved by
45 the commissioner pursuant to section 5 of P.L. .c. (C.) (now
46 pending before the Legislature as this bill) and in the case of a
47 ¹[community development school project by the Urban Coordinating

1 Council] demonstration project¹ pursuant to section 6 of P.L. , c.
2 (C.) (now pending before the Legislature as this bill), and, if
3 applicable, the amount of any costs of the project which are in addition
4 to the final eligible costs.
5 (cf: P.L.1993, c.83, s.6)

6
7 37. N.J.S.18A:22-19 is amended to read as follows:
8 18A:22-19. The board of school estimate shall fix and determine the
9 local share amount necessary for said purpose and shall certify such
10 amount separately to the board of education and to the governing body
11 of the municipality.
12 (cf: N.J.S.18A:22-19)

13
14 38. N.J.S.18A:22-27 is amended to read as follows:
15 18A:22-27. Whenever the board of education in a type II school
16 district having a board of school estimate shall, by resolution adopted
17 by recorded roll call affirmative vote of two thirds of its full
18 membership, determine that it is necessary to sell school bonds to raise
19 money for any capital project, it shall, by such resolution, estimate the
20 amount necessary to be raised for such project or projects, itemizing
21 such estimate so as to make it readily understandable, and the
22 secretary of the board of education shall certify a copy of such
23 resolution to each member of the board of school estimate of the
24 district. The resolution shall include the amount needed to be raised
25 by school bonds, the final eligible costs of the project as approved by
26 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
27 pending before the Legislature as this bill) and in the case of a
28 ¹[community development school project by the Urban Coordinating
29 Council] demonstration project¹ pursuant to section 6 of P.L. , c.
30 (C.) (now pending before the Legislature as this bill), and, if
31 applicable, the amount of any costs of the project which are in
32 addition to the final eligible costs.
33 (cf: P.L.1993, c.83, s.8)

34
35 39. N.J.S.18A:22-28 is amended to read as follows:
36 18A:22-28. The board of education of such district shall also, upon
37 delivery of such certificate to the members of the board of school
38 estimate, fix a date, place and time for the holding of a public hearing
39 by the board of school estimate with respect to the amount of money
40 to be raised locally for such project or projects, which date shall be not
41 less than 15 nor more than 30 days after the date of such delivery, and
42 shall cause notice of such public hearing and such resolution, including
43 a statement that said resolution will be on file and open to
44 examination to the public between reasonable hours to be fixed and at
45 a place to be named therein from the date of such notice until the date
46 of said public hearing, to be published at least once and not less than

1 seven days before such public hearing in at least one newspaper,
2 published in each municipality comprised within the school district,
3 and if no newspaper is published in any such municipality, then, as to
4 such municipality, in at least one newspaper circulating in the
5 municipality, and said board of education shall cause said resolution
6 to be on file and open to the examination of the public accordingly and
7 to be produced at said public hearing for the information of those
8 attending the same.

9 (cf: N.J.S.18A:22-28)

10

11 40. N.J.S.18A:22-29 is amended to read as follows:

12 18A:22-29. On the date and at the time and place so fixed for such
13 public hearing, the board of school estimate shall grant the taxpayers
14 and other interested persons an opportunity to present objections and
15 to be heard with respect to said resolution and the amount of money
16 necessary to be raised locally for such project or projects and with
17 respect to the various items and projects for which the same is to be
18 raised.

19 (cf: N.J.S.18A:22-29)

20

21 41. N.J.S.18A:22-30 is amended to read as follows:

22 18A:22-30. At or after such hearing the board of school estimate
23 shall fix and determine the amount of money necessary to be raised
24 locally for said project or projects, and the secretary of said board
25 shall certify said amount to the board of education of the district and
26 to the board or body of each municipality comprised therein which has
27 power to make appropriations of money to be raised by taxes in such
28 municipality. The board of education of the district and the governing
29 body of each such municipality comprising the district shall apportion
30 the amount so to be appropriated, assessed, levied and raised in each
31 of such municipalities, as nearly as may be, on the same basis and by
32 the application of the same standards as are provided by law for
33 apportionment of appropriations by county tax boards.

34 (cf: N.J.S.18A:22-30)

35

36 42. N.J.S.18A:22-39 is amended to read as follows:

37 18A:22-39. Whenever the undertaking of any capital project or
38 projects to be paid for from the proceeds of an issue or issue of bonds
39 is submitted to the voters of a type II district at an annual or special
40 school election for their approval or disapproval, the board shall frame
41 and adopt by a recorded roll call majority vote of its full membership
42 the question or questions to be submitted so that each project is
43 submitted in a separate question, or all or any number of them are
44 submitted in one question, which shall state the project or projects so
45 submitted and the amounts to be raised for each of the projects so
46 separately submitted or for each or for all of the projects so jointly

1 submitted, as the case may be, but any proposal for the purchase of
2 land shall be sufficient to authorize the taking and condemning of such
3 land. If the project is to be constructed by the New Jersey Building
4 Authority or a ¹[community]¹ redevelopment entity ¹or by the
5 district with a grant pursuant to section 15 of P.L. , c. (C.) (now
6 pending before the Legislature as this bill)¹ , the referendum shall,
7 when framed as a single question, request approval for the local share
8 and shall disclose the final eligible costs of the project as approved by
9 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
10 pending before the Legislature as this bill) and in the case of a
11 ¹[community development school project by the Urban Coordinating
12 Council] demonstration project¹ pursuant to section 6 of P.L. , c.
13 (C.) (now pending before the Legislature as this bill), and, if
14 applicable, the amount of any costs of the project which are in addition
15 to the final eligible costs. If the school facilities project is not to be
16 constructed by the New Jersey Building Authority or a
17 ¹[community]¹ redevelopment entity ¹or by the district with a grant
18 pursuant to section 15 of P.L. , c. (C.) (now pending before the
19 Legislature as this bill)¹ , the referendum shall, when framed as a
20 single question, request approval for the total costs of the project,
21 shall disclose State debt service aid for the project and, if applicable,
22 the amount of any costs of the project which are in addition to the final
23 eligible costs of the project. When a project is framed in more than
24 one question, a summary shall be included in the explanatory statement
25 which accompanies the questions that includes the total costs of the
26 project, total State debt service aid, and, if applicable, the amount of
27 the costs of the project which are in addition to the final eligible costs
28 of the project, and any individual question containing costs in addition
29 to the final eligible costs shall include the amount of those additional
30 costs.

31 The statement of additional costs in any ballot question and in any
32 explanatory statement that accompanies a ballot question shall describe
33 the additional costs as follows: "This project includes \$(insert
34 amount) for school facility construction elements in addition to the
35 facilities efficiency standards developed by the Commissioner of
36 Education."

37 (cf: P.L.1993, c.83, s.12)

38

39 43. N.J.S.18A:72A-1 is amended to read as follows:

40 18A:72A-1. **[It is hereby declared]** The Legislature finds and
41 declares that a serious public emergency exists affecting and
42 threatening the welfare, comfort, health, safety and prosperity of the
43 people of the state and resulting from the fact that financial resources
44 are lacking with which to construct required dormitory and other
45 educational facilities at public and private institutions of higher
46 education and to construct public elementary and secondary school

1 facilities; that it is essential that this and future generations of youth
2 be given the fullest opportunity to learn and to develop their
3 intellectual and mental capacities; that it is essential that institutions
4 for higher education and school districts within the state be provided
5 with appropriate additional means to assist such youth in achieving
6 the required levels of learning and development of their intellectual
7 and mental capacities; that it is essential that all resources of the state
8 be employed in order to meet the tremendous demand for higher
9 educational opportunities and public school facilities; that all
10 institutions of higher education in the state, both public and private,
11 and all public elementary and secondary educational institutions, are
12 an integral part of the total educational effort in the state for
13 providing higher educational opportunities, and that it is the purpose
14 of this chapter and P.L. , c. (C.) (now pending before the
15 Legislature as this bill) to provide a measure of assistance and an
16 alternative method of financing to enable institutions of higher
17 education and public school districts in the state to provide the
18 facilities which are sorely needed to accomplish the purposes of this
19 chapter and P.L. , c. (C.) (now pending before the Legislature as
20 this bill), all to the public benefit and good, to the extent and manner
21 provided herein and in P.L. , c. (C.) (now pending before the
22 Legislature as this bill).

23 The Legislature further finds that the inventory of public
24 elementary and secondary school buildings and the equipment and
25 capital resources currently available are aging, both chronologically
26 and technologically; that the current funding at the federal, State, and
27 local levels and the current mechanisms for construction of these
28 capital projects is inadequate to meet the demonstrated need for public
29 school facilities and these inadequacies necessitate additional sources
30 of funding and the coordination of construction activities at the State
31 level to meet those needs; that while the credit status of New Jersey's
32 school districts is sound, it can be economically more reasonable to
33 finance the costs of developing the educational infrastructure of the
34 State's public elementary and secondary schools, by providing for the
35 funding of capital projects through the issuance of bonds, notes or
36 other obligations by the New Jersey Educational Facilities Authority,
37 to be retired through annual payments made by the State subject to
38 appropriation by the State Legislature, and to provide for the use of
39 the proceeds of those bonds, notes or other obligations to pay for
40 educational infrastructure projects; that such a structure would
41 substantially reduce the costs of financing and provide for a more
42 efficient use of the funds available for the development of the
43 educational infrastructure; that the New Jersey Building Authority has
44 substantial and significant experience in undertaking major capital
45 construction projects, has a system of internal controls and procedures
46 to ensure the integrity of construction activities, and is therefore the

1 appropriate entity to undertake the planning, design, construction and
2 operation of elementary and secondary educational infrastructure
3 projects; and that by authorizing the New Jersey Educational Facilities
4 Authority and the New Jersey Building Authority to undertake these
5 activities, there will be achieved economies of scale, better
6 coordination of resources, effective financial management and
7 reporting, and increased monitoring and quality control of school
8 district instruction.

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

10

11 44. N.J.S.18A:72A-3 is amended to read as follows:

12 18A:72A-3. As used in this act, the following words and terms
13 shall have the following meanings, unless the context indicates or
14 requires another or different meaning or intent:

15 "Authority" means the New Jersey Educational Facilities Authority
16 created by this chapter or any board, body, commission, department
17 or officer succeeding to the principal functions thereof or to whom the
18 powers conferred upon the authority by this chapter and P.L. , c.
19 (C.) (now pending before the Legislature as this bill) shall be given
20 by law;

21 "Bond" means bonds [or] , notes or other obligations and refunding
22 bonds of the authority issued pursuant to this chapter and P.L. , c.
23 (C.) (now pending before the Legislature as this bill);

24 "Cost" means in connection with a school facilities project, all costs
25 and expenses necessary or incident to all or part of a school facilities
26 project, including the costs associated with financing and
27 administrative fees and expenses;

28 "County college capital project" means any capital project of a
29 county college certified pursuant to section 2 of P.L.1971, c.12
30 (C.18A:64A-22.2) and approved by the State Treasurer for funding
31 pursuant to the "County College Capital Projects Fund Act,"
32 P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

33 "District" means a local or regional school district established
34 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
35 Statutes, a county special services school district established pursuant
36 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
37 county vocational school district established pursuant to article 3 of
38 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
39 operated school district established pursuant to P.L.1987, c.399
40 (C.18A:7A-34);

41 "Dormitory" means a housing unit with necessary and usual
42 attendant and related facilities and equipment;

43 "Educational facility" means a structure suitable for use as a
44 dormitory, dining hall, student union, administration building,
45 academic building, library, laboratory, research facility, classroom,
46 athletic facility, health care facility, teaching hospital, and parking

1 maintenance storage or utility facility and other structures or facilities
2 related thereto or required or useful for the instruction of students or
3 the conducting of research or the operation of an institution for higher
4 education, and public libraries, and the necessary and usual attendant
5 and related facilities and equipment, but shall not include any facility
6 used or to be used for sectarian instruction or as a place for religious
7 worship;

8 "Emerging needs program" means a program at one or more public
9 or private institutions of higher education directed to meeting new and
10 advanced technology needs or to supporting new academic programs
11 in science and technology;

12 "Higher education equipment" means any property consisting of, or
13 relating to, scientific, engineering, technical, computer,
14 communications or instructional equipment;

15 "Local unit" means a county, municipality, board of education or
16 any other political entity authorized to construct, operate and maintain
17 a school facilities project and to borrow money for those purposes
18 pursuant to Title 18A of the New Jersey Statutes;

19 "Participating college" means a public institution of higher
20 education or private college which, pursuant to the provisions of this
21 chapter, participates with the authority in undertaking the financing
22 and construction or acquisition of a project;

23 "Project" means a dormitory or an educational facility or any
24 combination thereof, or a county college capital project, but shall not
25 include a school facilities project;

26 "Private college" means an institution for higher education other
27 than a public college, situated within the State and which, by virtue of
28 law or charter, is a nonprofit educational institution empowered to
29 provide a program of education beyond the high school level;

30 "Private institution of higher education" means independent colleges
31 or universities incorporated and located in New Jersey, which by virtue
32 of law or charter or license, are nonprofit educational institutions
33 authorized to grant academic degrees and which provide a level of
34 education which is equivalent to the education provided by the State's
35 public institutions of higher education as attested by the receipt of and
36 continuation of regional accreditation by the Middle States Association
37 of Colleges and Schools, and which are eligible to receive State aid;

38 "Public institution of higher education" means Rutgers, The State
39 University, the State colleges, the New Jersey Institute of Technology,
40 the University of Medicine and Dentistry of New Jersey, the county
41 colleges and any other public university or college now or hereafter
42 established or authorized by law;

43 "School facilities project" means the acquisition, demolition,
44 construction, improvement, repair, alteration, modernization,
45 renovation, reconstruction or maintenance of all or any part of any
46 school facility or of any other personal property necessary for or

1 ancillary to any school facility, and shall include fixtures, furnishings
2 and equipment, and shall include, but is not limited to, site
3 acquisition, site development, the services of design professionals such
4 as engineers and architects, construction management, legal services,
5 financing costs and administrative fees and expenses incurred in
6 connection with the school facilities project.

7 "School facility" means and includes any structure, building or
8 facility used wholly or in part for academic purposes by a district, but
9 shall exclude athletic stadiums, grandstands, and any structure,
10 building or facility used solely for school administration.

11 "Refunding bonds" means bonds, notes, or other obligations issued
12 to refinance bonds previously issued by the authority pursuant to this
13 chapter and P.L. , c. (C.) (now pending before the Legislature as
14 this bill).

15 "University" means Rutgers, The State University.
16 (cf: P.L.1999, c.184, s.6)

17

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

19 18A:72A-4. (a) There is hereby established in but not of the
20 Department of the Treasury a public body corporate and politic, with
21 corporate succession to be known as the "New Jersey educational
22 facilities authority." Notwithstanding this allocation, the authority shall
23 be independent of any supervision or control by the department or any
24 officer thereof. The authority shall constitute a political subdivision of
25 the State established as an instrumentality exercising public and
26 essential governmental functions, and the exercise by the authority of
27 the powers conferred by this chapter and P.L. , c. (C.) (now
28 pending before the Legislature as this bill) shall be deemed and held
29 to be an essential governmental function of the State.

30 (b) The authority shall consist of seven members, two of whom
31 shall be the chairman of the Commission on Higher Education, ex
32 officio, and the State Treasurer, ex officio, or when so designated by
33 them, their deputies; one person to be appointed by the Governor upon
34 the recommendation of the President of the Senate and one person
35 appointed by the Governor upon the recommendation of the Speaker
36 of the General Assembly who shall serve during the two year
37 legislative term in which they are appointed and until their successors
38 are appointed and qualified; and [five] three citizens of the State to be
39 appointed by the Governor [with the advice and consent of the
40 Senate] no more than two of whom shall be of the same political party
41 for terms of five years [; provided that the terms of the members first
42 appointed shall be arranged by the Governor so that one of such terms
43 shall expire on April 30 in each successive year ensuing after such
44 appointments]. Each member shall hold office for the term of his
45 appointment and shall continue to serve during the term of his
46 successor unless and until his successor shall have been appointed and

1 qualified. Any vacancy among the members appointed by the
2 Governor shall be filled by appointment for the unexpired term only.
3 A member of the authority shall be eligible for reappointment.

4 The terms of office of members of the authority appointed by the
5 Governor who are serving on the effective date of P.L. , c. (C.)
6 (now pending before the Legislature as this bill) shall expire upon the
7 appointment by the Governor of five members of the authority as
8 provided by this section. The five members initially appointed by the
9 Governor pursuant to this section shall be as follows: one member
10 upon the recommendation of the President of the Senate and one
11 member upon the recommendation of the Speaker of the General
12 Assembly, who shall serve during the two-year legislative term in
13 which they are appointed; and three members whose terms shall be
14 arranged so that a term of one of the members expires on April 30 in
15 each successive year ensuing after the appointments.

16 (c) Any member of the authority appointed by the Governor may
17 be removed from office by the Governor for cause after a public
18 hearing.

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

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

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

41 (g) Before the issuance of any bonds under the provisions of this
42 chapter or P.L. , c. (C.) (now pending before the Legislature as
43 this bill), the members and the officer of the authority charged with
44 the handling of the authority's moneys shall be covered by a surety
45 bond or bonds in a penal sum of not less than \$25,000.00 per person
46 conditioned upon the faithful performance of the duties of their

1 respective offices, and executed by a surety company authorized to
2 transact business in the State of New Jersey as surety. Each such bond
3 shall be submitted to the attorney general for his approval and upon his
4 approval shall be filed in the Office of the Secretary of State prior to
5 the issuance of any bonds by the authority. At all times after the
6 issuance of any bonds by the authority the officer of the authority and
7 each member charged with the handling of the authority's moneys shall
8 maintain such surety bonds in full force and effect. All costs of such
9 surety bonds shall be borne by the authority.

10 (h) Notwithstanding any other law to the contrary, it shall not be
11 or constitute a conflict of interest for a trustee, director, officer or
12 employee of a participating college or a member or employee of a
13 board of education to serve as a member of the authority; provided
14 such trustee, director, officer, member or employee shall abstain from
15 discussion, deliberation, action and vote by the authority under this
16 chapter or P.L. , c. (C.) (now pending before the Legislature as
17 this bill) in specific respect to such participating college or board of
18 education of which such member is a trustee, director, officer,
19 member or employee.

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

34 Notwithstanding the foregoing provisions of this subsection (i),
35 with regard to the authorization or sale of bonds of the authority, the
36 authority shall furnish to the Governor a certified copy of the minutes
37 of the meeting at which the bonds are authorized or sold and the
38 Governor shall indicate approval or disapproval of the action upon
39 receipt of the certified copy of the minutes.

40 The powers conferred in this subsection (i) upon the Governor shall
41 be exercised with due regard for the rights of the holders of bonds of
42 the authority at any time outstanding, and nothing in, or done pursuant
43 to, this subsection (i) shall in any way limit, restrict or alter the
44 obligation or powers of the authority or any representative or officer
45 of the authority to carry out and perform in every detail each and
46 every covenant, agreement or contract at any time made or entered

1 into by or on behalf of the authority with respect to its bonds or for
2 the benefit, protection or security of the holders thereof.

3 (cf: P.L.1999, c.217, s.11)

4

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

6 18A:72A-5. The authority shall have power:

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

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

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

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

15 (e) To borrow money and to issue bonds and notes and other
16 obligations of the authority and to provide for the rights of the holders
17 thereof as provided in this chapter and P.L. , c. (C.) (now
18 pending before the Legislature as this bill);

19 (f) To acquire, lease as lessee, hold and dispose of real and
20 personal property or any interest therein, in the exercise of its powers
21 and the performance of its duties under this chapter and P.L. , c.
22 (C.) (now pending before the Legislature as this bill);

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

32 (h) To receive and accept, from any federal or other public agency
33 or governmental entity, grants or loans for or in aid of the acquisition
34 or construction of any project or school facilities project, and to
35 receive and accept aid or contributions from any other source, of
36 either money, property, labor or other things of value, to be held, used
37 and applied only for the purposes for which such grants, loans and
38 contributions may be made consistent with this chapter and section 22
39 of P.L. , c. (C.) (now pending before the Legislature as this bill);

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

45 (j) By contract or contracts or by its own employees to construct,
46 acquire, reconstruct, rehabilitate and improve, and furnish and equip,

1 projects for participating colleges and, pursuant to the provisions of
2 P.L. ,c. (C.) (now pending before the Legislature as this bill), to
3 finance the planning, design, and construction of school facilities
4 projects; however, in any contract or contracts undertaken by the
5 authority for the construction, reconstruction, rehabilitation or
6 improvement of any public college project where the cost of such
7 work will exceed \$25,000, the contracting agent shall advertise for and
8 receive in the manner provided by law:

- 9 (1) separate bids for the following categories of work;
 - 10 (a) the plumbing and gas fitting work;
 - 11 (b) the heating and ventilating systems and equipment;
 - 12 (c) the electrical work, including any electrical power plants;
 - 13 (d) the structural steel and ornamental iron work;
 - 14 (e) all other work and materials required for the completion of the
15 project, or
- 16 (2) bids for all work and materials required to complete the entire
17 project if awarded as a single contract; or
- 18 (3) both (1) and (2) above.

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

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

26 (k) To determine the location and character of any project to be
27 undertaken pursuant to the provisions of this chapter and to
28 construct, reconstruct, maintain, repair, operate, lease, as lessee or
29 lessor, and regulate the same pursuant to this chapter in the case of
30 any project, and as authorized pursuant to the provisions of P.L. , c.
31 (C.) (now pending before the Legislature as this bill) in the case of
32 any school facilities project; to enter into contracts for any or all such
33 purposes; to enter into contracts for the management and operation of
34 a project and the financing of a school facilities project, and to
35 designate a participating college as its agent to determine the location
36 and character of a project undertaken by such participating college
37 under the provisions of this chapter and, as the agent of the authority,
38 to construct, reconstruct, maintain, repair, operate, lease, as lessee or
39 lessor, and regulate the same, and, as agent of the authority, to enter
40 into contracts for any and all such purposes including contracts for the
41 management and operation of such project;

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

46 (m) Generally to fix and revise from time to time and to charge and

1 collect rates, rents, fees and other charges for the use of and for the
2 services furnished or to be furnished by a project or, if applicable, a
3 school facilities project or any portion thereof and to contract with
4 holders of its bonds and with any other person, party, association,
5 corporation or other body, public or private, in respect thereof;

6 (n) To enter into any and all agreements or contracts, execute any
7 and all instruments, and do and perform any and all acts or things
8 necessary, convenient or desirable for the purposes of the authority or
9 to carry out any power expressly given in this chapter or in P.L. ,
10 c. (C.) (now pending before the Legislature as this bill);

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

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

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

23 (r) To enter into agreements or contracts, execute instruments, and
24 do and perform all acts or things necessary, convenient or desirable for
25 the purposes of the authority to carry out any power expressly
26 provided pursuant to this chapter and P.L. , c. (C.)(now
27 pending before the Legislature as this bill), including, but not limited
28 to, entering into contracts with the State Treasurer and the building
29 authority as authorized pursuant to section 18 of P.L. , c. (C.)
30 (now pending before the Legislature as this bill) and entering into
31 agreements with districts as may be authorized pursuant to P.L. , c.
32 (C.) (now pending before the Legislature as this bill);

33 (s) To enter into leases, rentals or other disposition of a real
34 property interest in and of any school facilities project to or from any
35 local unit, pursuant to P.L. , c. (C.)(now pending before the
36 Legislature as this bill);

37 (t) To make and contract to make loans or leases to local units to
38 finance the cost of school facilities projects and to acquire and
39 contract to acquire bonds, notes or other obligations issued or to be
40 issued by local units to evidence the loans or leases, all in accordance
41 with the provisions of this chapter and P.L. , c. (C.)(now
42 pending before the Legislature as this bill);

43 (u) Subject to any agreement with holders of its bonds issued to
44 finance a school facilities project, obtain as security or to provide
45 liquidity for payment of all or any part of the principal of and interest
46 and premium on the bonds of the authority or for the purchase upon

1 tender or otherwise of the bonds, lines of credit, letters of credit,
2 reimbursement agreements, interest rate exchange agreements,
3 currency exchange agreements, interest rate floors or caps, options,
4 puts or calls to hedge payment, currency, rate, spread or similar
5 exposure or similar agreements, float agreements, forward agreements,
6 insurance contract, surety bond, commitment to purchase or sell
7 bonds, purchase or sale agreement, or commitments or other contracts
8 or agreements and other security agreements or instruments in any
9 amounts and upon any terms as the authority may determine and pay
10 any fees and expenses required in connection therewith;

11 (v) To charge to and collect from local units, the State and any
12 other person, any fees and charges in connection with the authority's
13 actions undertaken with respect to projects and school facilities
14 projects, including, but not limited to, fees and charges for the
15 authority's administrative, organization, insurance, operating and other
16 expenses incident to the financing, construction and placing into
17 service and maintenance of projects and school facilities projects .
18 (cf: P.L.1997, c.360, s.6)

19

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

21 18A:72A-12. **[All]** With respect to projects, all moneys received
22 pursuant to the authority of this chapter, whether as proceeds from the
23 sale of bonds or as revenues, shall be deemed to be trust funds to be
24 held and applied solely as provided in this chapter. Any officer with
25 whom, or any bank or trust company with which, such moneys shall be
26 deposited shall act as trustee of such moneys and shall hold and apply
27 the same for the purposes hereof, subject to such regulations as this
28 chapter and the resolution authorizing the bonds of any issue or the
29 trust agreement securing such bonds may provide.

30 (cf: N.J.S.18A:72A-12)

31

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

33 18A:72A-15. Bonds and notes issued by the authority under the
34 provisions of this chapter and P.L. , c. (C.) (now pending before
35 the Legislature as this bill) are hereby made securities in which the
36 state and all political subdivisions of the state, their officers, boards,
37 commissions, departments or other agencies, all banks, bankers,
38 savings banks, trust companies, savings and loan associations,
39 investment companies and other persons carrying on a banking
40 business, all insurance companies, insurance associations, and other
41 persons carrying on an insurance business, and all administrators,
42 executors, guardians, trustees and other fiduciaries, and all other
43 persons whatsoever who now are or may hereafter be authorized to
44 invest in bonds or other obligations of the state, may properly and
45 legally invest any funds, including capital belonging to them or within
46 their control; and said bonds, notes or other securities or obligations

1 are hereby made securities which may properly and legally be
2 deposited with and received by any state or municipal officers or
3 agency of the state for any purpose for which the deposit of bonds or
4 other obligations of the state is now or may hereafter be authorized
5 by law.

6 (cf: N.J.S.18A:72A-15)

7

8 49. Section 2 of P.L.1981, c.120 (C.52:18A-78.2) is amended to
9 read as follows:

10 2. As used in this act, unless the context clearly indicates
11 otherwise:

12 a. "Authority" means the New Jersey Building Authority created
13 under this act.

14 b. "Bonds" means bonds , notes, other obligations and refunding
15 bonds issued by the authority pursuant to this act.

16 c. "Building" includes any portion thereof, such as an apartment
17 created under the "Horizontal Property Act," P.L.1963, c.168
18 (C.46:8A-1 et seq.) or a unit created under the "Condominium Act,"
19 P.L.1969, c.257 (C.46:8B-1 et seq.).

20 d. "Local governmental agency" means any municipality, county,
21 school district, or any agency, department or instrumentality of any of
22 the foregoing, or any other public body having local or regional
23 jurisdiction or powers and not constituting a State agency.

24 e. "Notes" means notes issued by the authority pursuant to this act.

25 f. "Project" means any building or buildings, including related
26 structures, parking facilities, improvements, real and personal property
27 or any interest therein, including lands under water, space rights and
28 air rights, and other appurtenances and facilities necessary or
29 convenient to the use or operation of the building or buildings,
30 acquired, owned, constructed, reconstructed, extended, rehabilitated,
31 renovated, preserved or improved by the authority for the purposes set
32 forth in section 8 of P.L.1992, c.174 (C.52:18A-78.5a), but shall not
33 include a school facilities project.

34 g. "State agency" means the Executive, Legislative or Judicial
35 branch of the State Government or any officer, department, board,
36 commission, bureau, division, public authority or corporation, agency
37 or instrumentality of the State.

38 h. "Historic public building" means a building that is owned by a
39 governmental agency and that is on or eligible for State or National
40 Registers of Historic Places.

41 i. "District" means a local or regional school district established
42 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
43 Statutes, a county special services school district established pursuant
44 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
45 county vocational school district established pursuant to article 3 of
46 chapter 54 of Title 18A of the New Jersey Statutes, and a State-

1 operated school district established pursuant to P.L.1987, c.399
2 (C.18A:7A-34).

3 j. "Local unit" means a county, municipality, board of education or
4 any other political entity authorized to construct, operate and maintain
5 a school facilities project and to borrow money for those purposes
6 pursuant to Title 18A of the New Jersey Statutes.

7 k. "School facilities project" means the acquisition, demolition,
8 construction, improvement, repair, alteration, modernization,
9 renovation, reconstruction or maintenance of all or any part of a
10 school facility or of any other personal property necessary for or
11 ancillary to a school facility, and shall include fixtures, furnishings and
12 equipment, and shall include, but is not limited to, site acquisition, site
13 development, the services of design professionals such as engineers
14 and architects, construction management, legal services and financing
15 and administrative costs incurred in connection with the school
16 facilities project.

17 l. "School facility" means and includes any structure, building or
18 facility used wholly or in part for academic purposes by a district, but
19 shall exclude athletic stadiums, grandstands, and any structure,
20 building or facility used solely for school administration.

21 m. "Refunding bonds" means bonds, notes, or other obligations
22 issued to refinance bonds previously issued by the authority pursuant
23 to P.L.1981, c.120 (C.52:18A-78.1 et seq.).
24 (cf: P.L.1992, c.174, s.1)

25
26 50. Section 3 of P.L.1981, c.120 (C.52:18A-78.3) is amended to
27 read as follows:

28 3. The Legislature finds and declares the following:

29 a. That for many years the functions of the State Government have
30 grown and that during this period of rapid expansion no definite
31 program has been adopted for the housing and carrying out of the
32 operations of the many State agencies.

33 b. That many State agencies have their offices in privately owned
34 or inadequate State owned buildings and that these buildings are
35 inadequate to meet the needs of these State agencies and the needs of
36 the people of the State.

37 c. That it is to the economic benefit and general welfare of the
38 citizens of the State to provide sufficient office space and related
39 facilities for these State agencies and thus provide for a more efficient
40 and economic operation of State Government.

41 d. That projects for the construction of correctional facilities are
42 required because of a critical public need and a legal constraint.

43 e. That in order to provide for office space and related facilities at
44 a cost that these State agencies can afford, it is necessary to create and
45 establish a building authority for the purposes of constructing,
46 operating, selling and leasing office buildings and related facilities to

1 meet the needs of State agencies.

2 f. It is necessary and in the public interest that this building
3 authority have the necessary funds to provide for predevelopment
4 cost, temporary financing, land development expenses, construction
5 and operation of office buildings and related facilities for the use of,
6 and sale or rental to, State agencies.

7 g. That the renovation and preservation of historic public buildings
8 contribute to the preservation of the State's heritage, the promotion of
9 the cultural life of our people, and the development and redevelopment
10 of our municipalities.

11 h. For these purposes, there should be created a corporate
12 governmental agency to be known as the "New Jersey Building
13 Authority" which, through issuance of bonds and notes to the private,
14 investing public may provide or obtain the capital resources necessary
15 to acquire, construct, reconstruct, rehabilitate, renovate, preserve or
16 improve these office buildings and related facilities necessary or
17 convenient to the operation of any State agency, or historic public
18 buildings, as the case may be.

19 i. That the acquisition, construction, reconstruction, rehabilitation,
20 renovation, preservation or improvement of these office buildings and
21 related facilities necessary or convenient to the operation of any State
22 agency, and historic public buildings are public uses and public
23 purposes for which public money may be loaned and private property
24 may be acquired and tax exemptions granted, and that the powers and
25 duties of the New Jersey Building Authority as set forth in this act are
26 necessary and proper for the purpose of achieving the ends here
27 recited.

28 j. That the construction, reconstruction, rehabilitation, renovation,
29 preservation and improvement activities of the authority will provide
30 a much needed stimulus for the construction industry, and related
31 industries and professions, particularly in urban areas.

32 k. That the highest priority for the New Jersey Building shall be the
33 renovation and preservation of the following facilities in the State
34 Capital: the State House, the Old Barracks, the War Memorial, the
35 Kelsey Building, and the townhouses adjacent to the Kelsey Building.

36 The Legislature further finds and declares that:

37 l. It is essential that this and future generations of young people be
38 given the fullest opportunity to learn and develop their intellectual
39 capacities; that institutions of public elementary and secondary
40 education within the State be provided with the appropriate additional
41 means required to assist these young citizens in achieving the required
42 levels of learning and the complete development of their intellectual
43 abilities; and that the resources of the State be employed to meet the
44 tremendous demand for public elementary and secondary educational
45 opportunities.

46 m. Public elementary and secondary educational facilities are an

1 integral part of the effort in this State to provide educational
2 opportunities; it is the purpose of P.L. , c. (C.) (now pending
3 before the Legislature as this bill) to provide a measure of assistance
4 and an alternative method of financing to enable school districts to
5 provide the facilities which are so critically needed; the inventory of
6 public elementary and secondary school buildings and the equipment
7 and capital resources currently available are aging, both
8 chronologically and technologically; and the current funding at the
9 federal, State, and local levels and the current mechanisms for
10 construction of these capital projects is inadequate to meet the
11 demonstrated need for school facilities and these inadequacies
12 necessitate additional sources of funding and the coordination of
13 construction activities at the State level to meet those needs.

14 n. While the credit status of New Jersey's school districts is sound,
15 it can be economically more reasonable to finance the costs of
16 developing the educational infrastructure of the State's public
17 elementary and secondary schools, by providing for the funding of
18 capital projects through the issuance of bonds, notes or other
19 obligations by the New Jersey Educational Facilities Authority, to be
20 retired through annual payments made by the State subject to
21 appropriation by the State Legislature, and to provide for the use of
22 the proceeds of those bonds, notes or other obligations to pay for
23 educational infrastructure projects; and such a structure would
24 substantially reduce the costs of financing and provide for a more
25 efficient use of the funds available for the development of the
26 educational infrastructure.

27 o. The New Jersey Building Authority has substantial and significant
28 experience in undertaking major capital construction projects, has a
29 system of internal controls and procedures to ensure the integrity of
30 construction activities, and is therefore the appropriate entity to
31 undertake the planning, design, construction, and operation of
32 educational infrastructure projects; and by authorizing the New Jersey
33 Building Authority and the New Jersey Educational Facilities
34 Authority to undertake these activities, there will be achieved
35 economies of scale, better coordination of resources, effective
36 financial management and control and increased monitoring and quality
37 control of school district construction.

38 (cf: P.L.1992, c.174, s.2)

39

40 51. Section 4 of P.L.1981, c.120 (C.52:18A-78.4) is amended to
41 read as follows:

42 4. a. There is established in the Department of the Treasury a
43 public body corporate and politic, with corporate succession, to be
44 known as the "New Jersey Building Authority." The authority is
45 constituted an instrumentality of the State exercising public and
46 essential governmental functions, and the exercise by the authority

1 thereof of the powers conferred by this act shall be deemed and held
2 to be an essential governmental function of the State.

3 b. The membership of the authority shall consist of ~~[12]~~ 13
4 directors as follows: the State Treasurer, ~~[the Comptroller of the~~
5 ~~Treasury,]~~ the Chairman of the Commission on Capital Budgeting
6 and Planning and the Commissioner of Education who shall be
7 members ex officio; two persons appointed by the Governor upon the
8 recommendation of the President of the Senate and two persons
9 appointed by the Governor upon the recommendation of the Speaker
10 of the General Assembly, of whom no more than one of each group
11 of two shall be of the same political party, and who shall serve during
12 the 2-year legislative term in which they are appointed and until their
13 successors shall have been appointed and qualified; and ~~[five]~~ six
14 directors appointed by the Governor ~~[with the advice and consent of~~
15 ~~the Senate]~~ for terms of 4 years no more than ~~[three]~~ four of whom
16 shall be of the same political party. ~~[The directors of the authority~~
17 ~~first appointed by the Governor shall serve for terms of 1 year, 2~~
18 ~~years, 3 years and two for 4 years, respectively, and thereafter~~
19 ~~directors shall be appointed by the Governor for terms of 4 years.]~~
20 Each such director shall hold office for the term of his appointment
21 and until his successor shall have been appointed and qualified. A
22 director shall be eligible for reappointment. Any vacancy on the board
23 of directors occurring other than by expiration of term shall be filled
24 in the same manner as the original appointment but for the unexpired
25 term only.

26 The terms of office of the directors of the authority appointed by
27 the Governor who are serving on the effective date of P.L. , c.
28 (C.) (now pending before the Legislature as this bill) shall expire
29 upon the appointment by the Governor of ten directors pursuant to
30 this section. The ten directors appointed by the Governor pursuant to
31 the provisions of this section shall be as follows: two persons upon the
32 recommendation of the President of the Senate and two persons upon
33 the recommendation of the Speaker of the General Assembly, who
34 shall serve during the two-year legislative term in which they are
35 appointed; and six persons, one of whom shall serve for a term of one
36 year, two for terms of two years, two for terms of three years, and
37 one for a term on four years.

38 c. Each director appointed by the Governor, except those
39 appointed upon recommendation of the President of the Senate and
40 Speaker of the General Assembly, may be removed from office by the
41 Governor for cause, after a public hearing, and may be suspended by
42 the Governor pending the completion of the hearing. Each director
43 before entering upon his duties shall take and subscribe an oath to
44 perform the duties of his office faithfully, impartially and justly to the
45 best of his ability. A record of the oaths shall be filed in the office of
46 the Secretary of State.

1 d. The authority shall not be deemed to be constituted and shall not
2 take action or adopt motions or resolutions until all original authorized
3 members shall have been appointed and qualified in the manner
4 provided in this section. A chairman shall be appointed by the
5 Governor with the advice and consent of the Senate from the
6 directors of the authority other than the ex officio directors, and the
7 directors of the authority shall annually elect one of their number as
8 vice chairman thereof. The directors shall elect a secretary and a
9 treasurer who need not be directors, and the same person may be
10 elected to serve both as secretary and treasurer. The powers of the
11 authority shall be vested in the directors thereof in office from time to
12 time and seven directors of the authority shall constitute a quorum at
13 any meeting thereof. Action may be taken and motions and
14 resolutions adopted by the authority at any meeting thereof by the
15 affirmative vote of at least seven directors of the authority. No
16 vacancy on the board of directors of the authority shall impair the right
17 of a quorum of the directors to exercise all the powers and perform all
18 the duties of the authority.

19 e. Each director and the treasurer of the authority shall execute a
20 bond to be conditioned upon the faithful performance of the duties of
21 the director or treasurer, as the case may be, in such form and amount
22 as may be prescribed by the Comptroller of the Treasury. Bonds shall
23 be filed in the office of the Secretary of State. At all times thereafter,
24 the directors and treasurer of the authority shall maintain these bonds
25 in full effect. All costs of the bonds shall be borne by the authority.

26 f. The directors of the authority shall serve without compensation,
27 but the authority shall reimburse its directors for actual expenses
28 necessarily incurred in the discharge of their duties. Notwithstanding
29 the provisions of any other law, no officer or employee of the State
30 shall be deemed to have forfeited or shall forfeit his office or
31 employment or any benefits or emoluments thereof by reason of his
32 acceptance of the office of ex officio director of the authority or his
33 services therein.

34 g. The State Treasurer [and the Comptroller of the Treasury of the
35 State], as an ex officio [directors] director of the authority, may
36 [each] designate an officer or employee of the Department of the
37 Treasury to represent him at meetings of the authority, and the
38 Chairman of the Commission on Capital Budgeting and Planning, as
39 ex officio director of the authority, may designate a member or the
40 executive director of the Commission on Capital Budgeting and
41 Planning to represent him at meetings of the authority and the
42 Commissioner of Education, as an ex officio director of the authority,
43 may designate an officer or employee of the Department of Education
44 to represent him at meetings of the authority. Each designee may
45 lawfully vote and otherwise act on behalf of the director for whom he
46 constitutes the designee. The designation shall be in writing delivered

1 to the authority and shall continue in effect until revoked or amended
2 in writing delivered to the authority.

3 h. The authority may be dissolved by act of the Legislature on
4 condition that the authority has no debts or obligations outstanding or
5 that provision has been made for the payment or retirement of these
6 debts or obligations. Upon any dissolution of the authority all
7 property, funds and assets thereof shall be vested in the State. In
8 addition, subject to any property rights of a person, firm, partnership
9 [or], corporation or local unit resulting from the sale or leasing of a
10 project or a school facilities project by the authority to the person,
11 firm, partnership [or], corporation or local unit, any project or school
12 facilities project shall be vested in the State upon the payment or
13 retirement of all debts or obligations for the project or school
14 facilities project or upon the assumption by the State of liability for
15 any outstanding debts or obligations for the project or school facilities
16 project.

17 i. A true copy of the minutes of every meeting of the authority shall
18 be forthwith delivered by and under the certification of the secretary
19 thereof to the Governor and the presiding officers of both houses of
20 the Legislature. No action taken at any meeting by the authority shall
21 have effect until 15 days after a copy of the minutes has been so
22 delivered unless during the 15-day period the Governor shall approve
23 the same in which case the action shall become effective upon the
24 approval. If, in the 15-day period, the Governor returns the copy of
25 the minutes with veto of any action taken by the authority or any
26 member thereof at that meeting, the action shall be of no effect. The
27 powers conferred in this subsection upon the Governor shall be
28 exercised with due regard for the rights of the holders of bonds and
29 notes of the authority at any time outstanding; and nothing in, or
30 done pursuant to, this subsection shall in any way limit, restrict or
31 alter the obligation or powers of the authority or any representative
32 or officer of the authority to carry out and perform in every detail
33 each and every covenant, agreement or contract at any time made or
34 entered into by or on behalf of the authority with respect to its bonds
35 or notes or for the benefit, protection or security of the holders
36 thereof.

37 (cf: P.L.1983, c.138, s.3)

38

39 52. Section 5 of P.L.1981, c.120 (C.52:18A-78.5) is amended to
40 read as follows:

41 5. Except as otherwise limited by this act, the authority shall have
42 power:

43 a. To make and alter bylaws for its organization and internal
44 management and, subject to agreements with noteholders and
45 bondholders, to make rules and regulations with respect to its projects,
46 its school facilities projects, operations, properties and facilities.

- 1 b. To adopt an official seal and alter the same at pleasure.
- 2 c. To sue and be sued.
- 3 d. To make and enter into all contracts and agreements necessary
4 or incidental to the performance of its duties and the exercise of its
5 powers under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and
6 P.L. , c. (C.)(now pending before the Legislature as this bill).
- 7 e. To enter into agreements or other transactions with and accept
8 grants and the cooperation of the United States or any agency thereof
9 or any State agency in furtherance of the purposes of this act,
10 including but not limited to the development, maintenance, operation
11 and financing of any project or school facilities project, and to do any
12 and all things necessary in order to avail itself of this aid and
13 cooperation.
- 14 f. To receive and accept aid or contributions from any source of
15 money, property, labor or other things of value, to be held, used and
16 applied to carry out the purposes of [this act] P.L.1981, c.120
17 (C.52:18A-78.1 et seq. and P.L. , c. (C.)(now pending before the
18 Legislature as this bill) subject to such conditions upon which this aid
19 and these contributions may be made, including but not limited to,
20 gifts or grants from any department or agency of the United States or
21 any State agency for any purpose consistent with [this act] P.L.1981,
22 c.120 (C.52:18A-78.1 et seq. and P.L. , c. (C.)(now pending before
23 the Legislature as this bill).
- 24 g. To acquire, own, hold, sell, assign, exchange, lease, mortgage
25 or otherwise dispose of real and personal property or any interest
26 therein in the exercise of its powers and the performance of its duties
27 under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and P.L. ,
28 c. (C.)(now pending before the Legislature as this bill).
- 29 h. To appoint an executive director and such other officers,
30 employees and agents as it may require for the performance of its
31 duties, and to fix their compensation, promote and discharge them, all
32 without regard to the provisions of Title 11 of the Revised Statutes.
- 33 i. To acquire, construct, reconstruct, rehabilitate, renovate,
34 preserve, improve, alter or repair or provide for the demolition,
35 construction, reconstruction, improvement, alteration or repair of any
36 project or school facilities project and let, award and enter into
37 construction contracts, purchase orders and other contracts with
38 respect thereto in such manner as the authority shall determine.
- 39 j. To arrange or contract with a county or municipality and any
40 relevant utility for the planning, replanning, opening, grading or
41 closing of streets, roads, roadways, alleys or other places, or for the
42 furnishing of facilities or for the acquisition by a county or
43 municipality of property or property rights or for the furnishing of
44 property or services, in connection with a project or school facilities
45 project.
- 46 k. To sell, lease, assign, transfer, convey, exchange, mortgage or

1 otherwise dispose of or encumber any project or school facilities
2 project or other property no longer needed to carry out the public
3 purposes of the authority and, in the case of the sale of any project or
4 school facilities project or property, to accept a purchase money
5 mortgage in connection therewith; and to lease, repurchase or
6 otherwise acquire and hold any project or school facilities project or
7 property which the authority has theretofore sold, leased or otherwise
8 conveyed, transferred or disposed of.

9 1. To grant options to purchase any project or school facilities
10 project or to renew any leases entered into by it in connection with any
11 of its projects or school facilities project, on such terms and conditions
12 as it deems advisable.

13 m. To acquire by purchase, lease or otherwise, on such terms and
14 conditions and in such manner as it may deem proper, or by the
15 exercise of the power of eminent domain, except with respect to lands
16 owned by the State or any public lands reserved for recreation and
17 conservation purposes, any land and other property, including railroad
18 lands and land under water, which it may determine is reasonably
19 necessary for any of its projects or school facilities project or for the
20 relocation or reconstruction of any highway by the authority and any
21 and all rights, title and interest in that land and other property,
22 including public lands, highways or parkways, owned by or in which
23 a State agency or local governmental agency has any right, title or
24 interest, or parts thereof or rights therein and any fee simple absolute
25 or any lesser interest in private property, and any fee simple absolute
26 in, easements upon or the benefit of restrictions upon, abutting
27 property to preserve and protect any project or school facilities
28 project.

29 n. To prepare or cause to be prepared plans, specifications,
30 designs and estimates of costs for the construction, reconstruction,
31 rehabilitation, improvement, alteration or repair of any project or
32 school facilities project, and from time to time to modify these plans,
33 specifications, designs or estimates.

34 o. To sell, lease, rent, sublease or otherwise dispose of any project
35 or any space embraced in any project to any State agency or to any
36 person, firm, partnership or corporation for sale, leasing, rental or
37 subleasing to any State agency, and, where applicable, to establish and
38 revise the purchase price, rents or other charges therefor; provided,
39 however, that the incurrence of any liabilities by a State agency under
40 any agreement entered into with the authority pursuant to the
41 aforesaid authorization, including, without limitation, the payment of
42 any and all rentals or other amounts required to be paid by the agency
43 thereunder, shall be subject to and dependent upon appropriations
44 being made from time to time by the Legislature for that purpose and
45 approval by the presiding officers, or such other officers as may be
46 provided by law, of both houses of any such lease.

1 p. To sell, lease, rent, sublease or otherwise dispose of, to any
2 person, firm, partnership or corporation, any surplus space in any
3 project over and above that sold, leased, rented, subleased or
4 otherwise disposed of to State agencies and to establish and revise the
5 purchase price, rents or charges therefor.

6 q. To approve of the selection of any tenant not a State agency
7 under a lease or sublease agreement for the use or occupation of any
8 portion of a building in which a project is located.

9 r. To manage or operate any project or school facilities project or
10 real or personal property related thereto whether owned or leased by
11 the authority or any State agency or any person, firm, partnership or
12 corporation, and to enter into agreements with any State agency, or
13 any local governmental agency, or local unit or with any person, firm,
14 association, partnership or corporation, either public or private, for the
15 purpose of causing any project or school facilities project or related
16 property to be managed.

17 s. To provide advisory, consultative, training and educational
18 services, technical assistance and advice to any person, firm,
19 association, partnership or corporation, either public or private, in
20 order to carry out the purposes of [this act] P.L.1981, c.120
21 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
22 the Legislature as this bill).

23 t. Subject to the provisions of any contract with noteholders or
24 bondholders to consent to any modification, amendment or revision of
25 any kind of any contract, lease or agreement of any kind to which the
26 authority is a party.

27 u. To determine, after holding a public hearing in the municipality
28 in which the project is to be located, except as otherwise provided in
29 section 6 of [this act] P.L.1981, c.120 (C.52:18A-78.6), and at any
30 time, with respect to a school facilities project, the location, type and
31 character of the project or school facilities project or any part thereof
32 and all other matters in connection with all or any part of the project
33 or school facilities project notwithstanding any land use plan, zoning
34 regulation, [building code] or similar regulation heretofore or
35 hereafter adopted by any municipality, county, public body corporate
36 and politic, or any other political subdivision of the State.

37 v. To borrow money and to issue its bonds and notes and to secure
38 the same and provide for the rights of the holders thereof as provided
39 in this act.

40 w. Subject to any agreement with bondholders or noteholders, to
41 invest moneys of the authority not required for immediate use,
42 including proceeds from the sale of any bonds or notes, in those
43 obligations, securities and other investments as the authority shall
44 deem prudent.

45 x. To procure insurance against any loss in connection with its
46 property and other assets and operations in such amounts and from

1 such insurers as it deems desirable.

2 y. To engage the services of architects, engineers, attorneys,
3 accountants, building contractors, urban planners, landscape architects
4 and financial experts and such other advisors, consultants and agents
5 as may be necessary in its judgment and to fix their compensation.

6 z. To enter into agreements or contracts, execute instruments, and
7 do and perform all acts or things necessary, convenient or desirable for
8 the purposes of the authority or to carry out any power expressly
9 provided pursuant to P.L.1981, c.120 (C.52:18A-78.1 et. seq.) and
10 P.L. , c. (C.)(now pending before the Legislature as this bill).

11 aa. To enter into agreements with the State Treasurer, the
12 Commissioner of Education, districts, ¹[community]¹ redevelopment
13 entities, the educational facilities authority and any other entity which
14 may be required in order to carry out the provisions of P.L. , c.
15 (C.) (now pending before the Legislature as this bill).

16 ¹[bb. Notwithstanding any provision of law to the contrary, upon
17 resolution of a municipal governing body, following a determination
18 by the Urban Coordinating Council designating the authority as the
19 community redevelopment entity which shall undertake a community
20 development school project pursuant to paragraph (c) of subsection
21 a. of section 6 of P.L. , c. (C.) (now pending before the
22 Legislature as this bill), to act as the redevelopment entity of that
23 municipality pursuant to the "Local Redevelopment and Housing
24 Law," P.L.1992, c.79 (C.40A:12A-1 et seq.).

25 cc.] bb.¹ To do any act necessary or convenient to the exercise of
26 the foregoing powers or reasonably implied therefrom.

27 (cf: P.L.1992, c.174, s.10)

28

29 53. Section 10 of P.L.1981, c.120 (C.52:18A-78.10) is amended
30 to read as follows:

31 10. a. No municipality shall modify or change the drawings, plans
32 or specifications for the construction, reconstruction, rehabilitation,
33 alteration or improvement of any project or school facilities project
34 of the authority, or the construction, plumbing, heating, lighting or
35 other mechanical branch of work necessary to complete the work in
36 question, nor to require that any person, firm or corporation employed
37 on any such work shall perform the work in any other or different
38 manner than that provided by the drawings, plans and specifications,
39 nor to require that any person, firm or corporation obtain any other
40 or additional authority, approval, permit or certificate from the
41 municipality in relation to the work being done, and the doing of the
42 work by any person, firm or corporation in accordance with the terms
43 of the drawings, plans, specifications or contracts shall not subject the
44 person, firm or corporation to any liability or penalty, civil or
45 criminal, other than as may be stated in the contracts or incidental to
46 the proper enforcement thereof; nor shall any municipality require the

1 authority or any State agency which leases or purchases the project,
2 or any person, firm, partnership or corporation which leases or
3 purchases the project for lease or purchase to a State agency, to
4 obtain any other or additional authority, approval, permit, certificate
5 or certificate of occupancy from the municipality as a condition of
6 owning, using, maintaining, operating or occupying any project
7 acquired, constructed, reconstructed, rehabilitated, altered or
8 improved by the authority or by any subsidiary thereof. The
9 foregoing provisions shall not preclude any municipality from
10 exercising the right of inspection for the purpose of requiring
11 compliance by any project with local requirements for operation and
12 maintenance, affecting the health, safety and welfare of the occupants
13 thereof, provided that the compliance does not require changes,
14 modifications or additions to the original construction of the project.

15 b. Each municipality in which any project or school facilities
16 project of the authority is located shall provide for the project or
17 school facilities project, whether then owned by the authority, any
18 subsidiary, any State agency or any person, firm, partnership or
19 corporation, police, fire, sanitation, health protection and other
20 municipal services of the same character and to the same extent as
21 those provided for other residents of the municipality.

22 c. In carrying out any project or school facilities project, the
23 authority may enter into contractual agreements with local
24 governmental agencies with respect to the furnishing of any
25 community, municipal or public facilities or services necessary or
26 desirable for the project or school facilities project, and any local
27 governmental agency may enter into these contractual agreements with
28 the authority and do all things necessary to carry out its obligations
29 under the same.

30 (cf: P.L.1983, c.138, s.7)

31

32 54. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is amended
33 to read as follows:

34 11. a. The authority, in the exercise of its authority to make and
35 enter into contracts and agreements necessary or incidental to the
36 performance of its duties and the execution of its powers, shall adopt
37 standing rules and procedures providing that no contract on behalf of
38 the authority shall be entered into for the doing of any work, or for the
39 hiring of equipment or vehicles, where the sum to be expended
40 exceeds the sum of \$7,500.00 unless the authority shall first publicly
41 advertise for bids therefor, and shall award the contract to the lowest
42 responsible bidder. Advertising shall not be required where the
43 contract to be entered into is one for the furnishing or performing of
44 services of a professional nature or for the supplying of any product
45 or the rendering of any service by a public utility subject to the
46 jurisdiction of the Board of Public Utilities and tariffs and schedules
47 of the charges made, charged, or exacted by the public utility for any

1 products to be supplied or services to be rendered are filed with the
2 board. This section shall not prevent the authority from having any
3 work done by its own employees, nor shall it apply to repairs, or to
4 the furnishing of materials, supplies or labor, or the hiring of
5 equipment or vehicles, when the safety or protection of its or other
6 public property or the public convenience requires, or the exigency of
7 the accomplishment of the projects or school facilities projects will not
8 allow advertisement. In that case, the board of directors of the
9 authority shall, by resolution, declare the exigency or emergency to
10 exist, and set forth in the resolution the nature thereof and the
11 approximate amount to be so expended.

12 b. (1) In undertaking any project or school facilities project where
13 the cost of construction, reconstruction, rehabilitation or improvement
14 will exceed \$25,000.00, the authority shall be subject to the rules and
15 regulations of the Division of ¹[Building and] Property Management
16 and¹ Construction concerning procedural requirements for the making,
17 negotiating or awarding of purchases, contracts or agreements; and
18 the authority, with the assistance of the division, may prepare, or
19 cause to be prepared, separate plans and specifications for:

20 (a) The plumbing and gas fitting and all work and materials kindred
21 thereto,

22 (b) The steam and hot water heating and ventilating apparatus,
23 steam power plants and all work and materials kindred thereto,

24 (c) The electrical work,

25 (d) Structural steel and ornamental iron work and materials, and

26 (e) General construction, which shall include all other work and
27 materials required to complete the building.

28 (2) The authority shall receive (a) separate bids for each of the
29 branches of work specified in paragraph (1) of this subsection; or (b)
30 bids for all the work and materials required to complete the project or
31 school facilities projects to be included in a single overall contract, in
32 which case there shall be set forth in the bid the name or names of all
33 subcontractors to whom the bidder will subcontract for the furnishing
34 of any of the work and materials specified in branches (a) through (d)
35 in paragraph (1) of this subsection; or (c) both.

36 (3) Contracts shall be awarded to the lowest responsible bidder in
37 each branch of work in the case of separate bids and to the single
38 lowest responsible bidder in the case of single bids. In the event that
39 a contract is advertised in accordance with subparagraph (c) of
40 paragraph (2) of this subsection, the contract shall be awarded in the
41 following manner: If the sum total of the amounts bid by the lowest
42 responsible bidder for each branch is less than the amount bid by the
43 lowest responsible bidder for all of the work and materials, the
44 authority shall award separate contracts for each of branches to the
45 lowest responsible bidder therefor, but if the sum total of the amount
46 bid by the lowest responsible bidder for each branch is not less than

1 the amount bid by the lowest responsible bidder for all the work and
2 materials, the authority shall award a single over-all contract to the
3 lowest responsible bidder for all of the work and materials.

4 Whenever a contract is awarded under subparagraph (b) or (c) of
5 paragraph (2) of this subsection, all payments required to be made by
6 the authority under the contract for work and materials supplied by a
7 subcontractor may, upon the certification of the contractor of the
8 amount due to the subcontractor, be paid directly to the
9 subcontractor. Payments to a subcontractor for work and materials
10 supplied in connection with the contract shall be made within 10
11 calendar days of the receipt of payment for that work or the delivery
12 of those materials by the subcontractor in accordance with the
13 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
14 regulations promulgated thereunder.

15 (4) All construction, reconstruction, rehabilitation or improvement
16 undertaken by the authority pursuant to this act shall be subject during
17 such undertaking to the supervision of the Division of Building and
18 Construction to the same extent as any project undertaken by the
19 State.

20 c. With respect to the lease or sale of any project or portion thereof
21 to any person, firm, partnership or corporation, for subsequent lease
22 to or purchase by a State agency, no agreement for that lease or sale
23 shall be entered into, unless the authority shall first publicly advertise
24 for bids therefor. The authority shall employ a person, firm,
25 partnership or corporation, independent from any other aspect or
26 component of the financing of or any ownership or leasehold interest
27 in that project, to assist in the bid procedure and evaluation.

28 (cf: P.L.1999, c.280, s.2)

29

30 55. Section 12 of P.L.1981, c.120 (C.52:18A-78.12) is amended
31 to read as follows:

32 12. a. If the authority shall find it necessary in connection with the
33 undertaking of any of its projects or school facilities projects to
34 change the location of any portion of any public highway, or road, it
35 may contract with any government agency, or public or private
36 corporation which may have jurisdiction over the public highway or
37 road to cause the public highway or road to be constructed at such
38 location as the authority shall deem most favorable. The cost of the
39 reconstruction and any damage incurred in changing the location of
40 the highway shall be ascertained and paid by the authority as a part of
41 the cost of the project or school facilities project. Any public highway
42 affected by the construction of any project or school facilities project
43 may be vacated or relocated by the authority in the manner now
44 provided by law for the vacation or relocation of public roads, and
45 any damages awarded on account thereof shall be paid by the
46 authority as a part of the cost of the project or school facilities project.

1 In all undertakings authorized by the subsection, the authority shall
2 consult and obtain the approval of the Commissioner of
3 Transportation.

4 b. In addition to the foregoing powers, the authority and its
5 authorized agents and employees may enter upon any lands, waters
6 and premises for the purpose of making surveys, soundings, drillings
7 and examinations as it may deem necessary or convenient for the
8 purposes of this act, all in accordance with due process of law, and
9 this entry shall not be deemed a trespass nor shall an entry for this
10 purpose be deemed an entry under any condemnation proceedings
11 which may be then pending. The authority shall make reimbursement
12 for any actual damages resulting to the lands, waters and premises as
13 a result of these activities.

14 c. The authority shall also have power to make reasonable
15 regulations for the installation, construction, maintenance, repair,
16 renewal, relocation and removal of tracks, pipes, mains, conduits,
17 cables, wires, towers, poles and other equipment and appliances,
18 herein called "public utility facilities" , or any public utility as defined
19 in R.S.48:2-13, in, on, along, over or under any project or school
20 facilities project. Whenever the authority shall determine that it is
21 necessary that any public utility facilities which now are, or hereafter
22 may be, located in, on, along, over or under any project or school
23 facilities project shall be relocated in the project or school facilities
24 project, or should be removed from the project or school facilities
25 project, the public utility owning or operating the facilities shall
26 relocate or remove the same in accordance with the order of the
27 authority. The cost and expenses of the relocation or removal,
28 including the cost of installing the facilities in a new location, or new
29 locations, and the cost of any lands, or any rights or interests in lands,
30 and any other rights, acquired to accomplish the relocation or
31 removal, shall be ascertained and paid by the authority as a part of the
32 cost of the project or school facilities project. In case of any
33 relocation or removal of facilities, as aforesaid, the public utility
34 owning or operating the same, its successors or assigns, may maintain
35 and operate the facilities, with the necessary appurtenances, in the
36 new location or new locations, for as long a period, and upon the
37 same terms and conditions, as it had the right to maintain and operate
38 the facilities in their former location or locations. In all undertakings
39 authorized by this subsection the authority shall consult and obtain the
40 approval of the Board of Public Utilities.

41 (cf: P.L.1981, c.120, s.12)

42

43 56. Section 28 of P.L.1981, c.120 (C.52:18A-78.28) is amended
44 to read as follows:

45 28. a. The authority shall adopt rules and regulations to establish
46 an affirmative action program for the hiring of minority workers
47 employed in the performance of construction contracts undertaken in

1 connection with any of its projects and school facilities projects, and
2 to expand the business opportunities of socially and economically
3 disadvantaged contractors and vendors seeking to provide materials
4 and services for those contracts, consistent with the provisions of the
5 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
6 The authority shall provide for the proper enforcement and
7 administration of these rules and regulations.

8 b. Within 180 days of the effective date of this act, but before
9 adoption of its rules and regulations concerning its affirmative action
10 program, the authority shall submit the proposed rules and regulations
11 to the presiding officers and the standing committees on state
12 government of both houses of the Legislature for their review.
13 (cf: P.L.1981, c.120, s.28)

14
15 57. Section 29 of P.L.1981, c.120 (C.52:18A-78.29) is amended
16 to read as follows:

17 29. The authority shall adopt rules and regulations requiring that
18 not less than the prevailing wage rate be paid to workers employed in
19 the performance of construction contracts undertaken in connection
20 with any of its projects or school facilities projects. The prevailing
21 wage rate shall be the rate determined by the Commissioner of Labor
22 ¹[and Industry] ¹pursuant to the provisions of P.L.1963, c.150
23 (C.34:11-56.25 et seq.).
24 (cf: P.L.1981, c.120, s.29)

25
26 58. Section 22 of P.L.1975, c.291 (C.40:55D-31) is amended to
27 read as follows:

28 22. a. Whenever the planning board shall have adopted any portion
29 of the master plan, the governing body or other public agency having
30 jurisdiction over the subject matter, before taking action necessitating
31 the expenditure of any public funds, incidental to the location,
32 character or extent of such project, shall refer the action involving
33 such specific project to the planning board for review and
34 recommendation in conjunction with such master plan and shall not act
35 thereon, without such recommendation or until 45 days have elapsed
36 after such reference without receiving such recommendation. This
37 requirement shall apply to action by a housing, parking, highway,
38 special district, or other authority, redevelopment agency, school
39 board or other similar public agency, State, county or municipal.

40 b. The planning board shall review and ¹[make recommendations]
41 issue findings¹ concerning any long-range facilities plan submitted to
42 the board pursuant to the "Educational Facilities Construction and
43 Financing Act," P.L. _____, c. _____ (C. _____) (now pending before the
44 Legislature as this bill), for the purpose of review of the extent to
45 which the long-range facilities plan is informed by, and consistent with,
46 ¹at least¹ the land use ¹plan element¹ and ¹[development proposals]

1 the housing element¹ contained within the municipal master plan
 2 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and
 3 ¹[the anticipated impact of individual school facilities projects
 4 contained in the plan on community development and redevelopment
 5 efforts and plans in the municipality. Upon receipt of a long-range
 6 facilities plan to be reviewed for this purpose, the planning board shall
 7 notify in writing the Urban Coordinating Council established pursuant
 8 to section 45 of P.L.1996, c.62 (C.55:19-60) and each public or
 9 private development corporation and each community redevelopment
 10 entity which is authorized to undertake projects in the municipality]
 11 such other elements of the municipal master plan as the planning board
 12 deems necessary to determine whether the prospective sites for school
 13 facilities contained in the long-range facilities plan promote more
 14 effective and efficient coordination of school construction with the
 15 development efforts of the municipality¹. The planning board shall
 16 devote at least one full meeting of the board to presentation and
 17 review of the long-range facilities plan prior to adoption of a
 18 resolution setting forth the board's findings ¹[pursuant to the
 19 "Educational Facilities Construction and Financing Act," P.L. , c.
 20 (C.) (now pending before the Legislature as this bill)]¹.
 21 (cf: P.L.1975, c.291, s.22)

22

23 ¹[59. Section 46 of P.L.1996, c.62 (C.55:19-61) is amended to
 24 read as follows:

25 46. The Urban Coordinating Council shall:

26 a. Ensure that State agencies coordinate responses and provide
 27 assistance to projects and programs outlined in neighborhood
 28 empowerment plans developed pursuant to section 49 of P.L.1996,
 29 c.62 (C.55:19-64), and projects and programs established by the New
 30 Jersey Redevelopment Authority, the New Jersey Economic
 31 Development Authority, and development initiatives proposed by
 32 municipal and county governments, including making available the
 33 resources of the departments of the State in implementing those
 34 programs;

35 b. Supervise and control the Office of Neighborhood Empowerment
 36 created pursuant to section 48 of P.L.1996, c.62 (C.55:19-63);

37 c. Make available the resources of its member agencies to assist
 38 local sponsors in implementing neighborhood empowerment plans;

39 d. Form interagency teams of State representatives. The
 40 membership of each interagency team shall be determined by the needs
 41 outlined in the neighborhood empowerment plan. Each interagency
 42 team shall serve as the primary link between the neighborhood and
 43 State government in responding to programming needs, shall be
 44 co-chaired by a case manager from the Office of Neighborhood
 45 Empowerment established pursuant to section 48 of P.L.1996, c.62
 46 (C.55:19-63); and by the community director, and shall include at least

1 one representative of the council;

2 e. Have authority to adopt, amend and repeal rules relating to the
3 exercise by the council and the Office of Neighborhood Empowerment
4 established pursuant to section 48 of P.L.1996, c.62 (C.55:19-63), of
5 their respective functions and duties pursuant to this act;

6 f. Publish an annual report on the status of redevelopment activity
7 which shall describe the progress toward achieving the goals of this
8 act; [and]

9 g. Assist in coordinating the activities of the New Jersey
10 Redevelopment Authority, municipalities, counties, public or private
11 county and municipal development agencies, district management
12 corporations created pursuant to section 4 of P.L.1972, c.134
13 (C.40:56-68), and community action boards established pursuant to
14 section 4 of P.L.1991, c.51 (C.52:27D-398) that have developed
15 neighborhood empowerment plans pursuant to section 49 of P.L.1996,
16 c.62 (C.55:19-64) or comprehensive community development plans;

17 h. Review and make determinations regarding resolutions of
18 municipal planning boards adopted pursuant to the "Educational
19 Facilities Construction and Financing Act," P.L. , c. (C.)
20 (now pending before the Legislature as this bill.);

21 i. Provide assistance to municipal planning boards in urban
22 development municipalities and in Level II districts pursuant to
23 P.L. , c. (C.) in their review of long-range facilities plans of
24 school districts;

25 j. Compile information and provide technical assistance to
26 municipal planning boards and community redevelopment entities in
27 urban development municipalities and in Level II districts respecting
28 State projects and programs which are of consequence for the planning
29 and financing of community development school projects in urban
30 development municipalities and in Level II districts ; and

31 k. Designate community development school projects pursuant to
32 P.L. , c. (C.) and adopt rules and regulations necessary for
33 the execution of the council's duties under that act.

34 (cf: P.L.1996, c.62, s.46.)¹

35

36 ¹[60.] 59.¹ Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is
37 amended to read as follows:

38 4. Notwithstanding the provisions of any other law to the contrary,
39 commencing July 1, 1998: after the deposit required pursuant to
40 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
41 of revenue collected annually from the cigarette tax imposed pursuant
42 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
43 revenue collected annually from the "Tobacco Products Wholesale
44 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
45 deposited in to the Health Care Subsidy Fund established pursuant to
46 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next

1 \$50,000,000 of revenue collected annually from the cigarette tax
 2 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
 3 [deposited in the School Construction and Renovation Fund as shall
 4 be established by law] appropriated annually to the New Jersey
 5 Education Facilities Authority for payment of debt service incurred by
 6 the authority for school facilities construction purposes.

7 (cf: P.L.1997, c.264, s.4)

8

9 ¹[61.] 60.¹ Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended
 10 to read as follows:

11 4. Tax bracket schedule. a. For the purpose of adding and
 12 collecting the tax imposed by this act, or an amount equal as nearly as
 13 possible or practicable to the average equivalent thereof, to be
 14 reimbursed to the vendor by the purchaser, the following formula shall
 15 be in force and effect:

16	Amount of Sale	Amount of Tax
17	\$0.01 to \$0.10	No Tax
18	0.11 to 0.22	\$0.01
19	0.23 to 0.38	0.02
20	0.39 to 0.56	0.03
21	0.57 to 0.72	0.04
22	0.73 to 0.88	0.05
23	0.89 to 1.10	0.06

24

25 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 26 collected on each part of a dollar in excess of a full dollar, in
 27 accordance with the above formula.

28 b. For charges paid by inserting coins into a coin operated
 29 telecommunications device available to the public the tax shall be
 30 computed to the nearest multiple of five cents of the tax otherwise due
 31 pursuant to subsection a. of this section, except that, if the amount of
 32 the tax is midway between multiples of five cents, the next higher
 33 multiple shall apply.

34 c. For the purpose of adding and collecting the sales and use tax at
 35 the rate imposed pursuant to section ¹[63] 62¹ of P.L. , c.
 36 (C.) (now pending before the Legislature as this bill) on and
 37 after August 1 of a fiscal year in which a certification is made to the
 38 Director of the Division of Taxation pursuant to subsection b. of that
 39 section ¹[63] 62¹ of P.L. , c. (C.) (now pending before the
 40 Legislature as this bill), or an amount equal as nearly as possible or
 41 practicable to the average equivalent thereof, the director shall
 42 promulgate tax collection formulas for the purpose of collecting the
 43 tax for the rate established pursuant to that section ¹[63] 62¹ of

1 P.L. , c. (C.) (now pending before the Legislature as this
2 bill).

3 (cf: P.L.1993, c.10, s.2)

4

5 ¹[62.] 61.¹ Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is
6 amended to read as follows:

7 31. Receipts from sales of tangible personal property and services
8 taxable under any municipal ordinance which was adopted pursuant to
9 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
10 1966 are exempt from the tax imposed under the Sales and Use Tax
11 Act, subject to the following conditions:

12 a. To the extent that the tax that is or would be imposed under
13 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
14 imposed by such ordinance, such sales shall not be exempt under this
15 section; and

16 b. Irrespective of the rate of tax imposed by such ordinance, such
17 sales shall be exempt only to the extent that the rate of taxation
18 imposed by the ordinance exceeds 6%, except that the combined rate
19 of taxation imposed under the ordinance and under this section shall
20 not exceed ~~[12%]~~ 11% on and after August 1 and through June 30 of
21 a fiscal year in which a certification is made to the Director of the
22 Division of Taxation pursuant to subsection b. of section ¹[63] 62¹ of
23 P.L. , c. (C.) (now pending before the Legislature as this
24 bill).

25 (cf: P.L.1992, c.11, s.5)

26

27 ¹[63.] 62.¹ (New section) a. The annual appropriations act for
28 each State fiscal year commencing with fiscal year 2001 shall
29 appropriate and distribute during the fiscal year the amount determined
30 by the Department of Education to be the amount of State debt service
31 aid determined pursuant to section 9 and 10 of P.L. , c. (C.)
32 (now pending before the Legislature as this bill) for the purposes of
33 those sections.

34 b. If the provisions of subsection a. of this section are not met on
35 the effective date of an annual appropriations act for the State fiscal
36 year, or if an amendment or supplement to an annual appropriations
37 act for the State fiscal year should violate the provisions of subsection
38 a. of this section, the Director of the Division of Budget and
39 Accounting in the Department of the Treasury shall, not later than five
40 days after the enactment of the annual appropriations act, or an
41 amendment or supplement thereto, that violates the provisions of
42 subsection a. of this section, certify to the Director of the Division of
43 Taxation that the requirements of subsection a. of this section have not
44 been met.

45 c. Upon certification to the Director of the Division of Taxation
46 pursuant to subsection b. of this section, then, notwithstanding the rate
47 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and

1 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
2 law to the contrary, the rate of tax imposed or paid on receipts from
3 sales or use within this State on or after August 1 of that fiscal year
4 through June 30 of that fiscal year shall be 5%.

5 d. The Director of the Division of Taxation, within 5 days of
6 receipt of a certification made pursuant to subsection b. of this section,
7 shall take such action as is necessary to notify all vendors of the rate
8 of tax on or after August 1 of that fiscal year through June 30 of that
9 fiscal year.

10 e. Any sales and use tax erroneously collected or paid at a rate of
11 6% instead of at a rate of 5% on receipts from sales or use within this
12 State on or after August 1 of that fiscal year through June 30 of that
13 fiscal year shall be subject to refund in the manner provided in section
14 20 of P.L.1966, c.30 (C.54:32B-20).

15

16 ¹[64.] 63.¹ (New section) The Director of the Division of
17 Taxation shall promulgate regulations on or before August 1 of a fiscal
18 year in which a certification is made to the Director of the Division of
19 Taxation pursuant to subsection b. of that section ¹[63] 62¹ of
20 P.L. , c. (C.) (now pending before the Legislature as this bill)
21 to provide tax rate transitional provisions for the imposition of the
22 appropriate rate of tax for: sales made and property delivered or
23 services performed, occupancies pursuant to prior contracts, leases or
24 other arrangements, admission charges made for admissions, certain
25 sales made pursuant to certain contracts either of a fixed price not
26 subject to change or modification, or entered into pursuant to the
27 obligation of a formal written bid which cannot be altered or
28 withdrawn; which involve dates over periods both before and after
29 August 1 of such a fiscal year.

30

31 ¹[65.] 64.¹ This act shall take effect immediately.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 11, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



1 **AN ACT** concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30 of this act shall be
9 known and may be cited as the “Educational Facilities Construction
10 and Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning and located as far
18 as possible in economically and socially viable communities.

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the
40 requirements of a thorough and efficient education, the State must also
41 protect the interests of taxpayers who will bear the burden of this
42 obligation. Design of school facilities should incorporate maximum
43 operating efficiencies and new technologies to advance the energy

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 efficiency of school facilities and the efficiency of other school
2 building systems, construction should be achieved in as efficient a
3 manner as possible, and a mechanism to assure proper maintenance of
4 new facilities should be established and implemented, in order to
5 reduce the overall cost of the program and to preserve this
6 infrastructure investment.

7 e. At the same time, the location of school facilities in the context
8 of the communities which they serve is important to both the
9 educational success of the schools and the development of those
10 communities. It is highly desirable, particularly in urban communities
11 where the State has indicated a particular concern respecting local
12 development efforts, that the planning and construction of schools be
13 integrated where possible into the economic and community
14 development efforts of local governments and community
15 redevelopment entities in order to promote more effective and efficient
16 use of land, resources and expertise and to better assure the future
17 viability of local neighborhoods and communities.

18

19 3. (New section) As used in sections 1 through 30 of this act,
20 unless the context clearly requires a different meaning:

21 "Abbott district" means an Abbott district as defined in section 3
22 of P.L.1996, c.138 (C.18A:7F-3);

23 "Area cost allowance" means \$131 per square foot for the school
24 year 1999-2000 and shall be inflated by an appropriate cost index for
25 the 2000-2001 school year. For subsequent school years, the area
26 cost allowance shall be as established in the biennial Report on the
27 Cost of Providing a Thorough and Efficient Education and inflated by
28 an appropriate cost index for the second year to which the report
29 applies. The area cost allowance used in determining preliminary
30 eligible costs of school facilities projects shall be that of the year of
31 application for approval of the project;

32 "Authority" means the New Jersey Economic Development
33 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1et seq.);

34 "Commissioner" means the Commissioner of Education;

35 "Core curriculum content standards" means the standards
36 established pursuant to the provisions of subsection a. of section 4 of
37 P.L.1996, c.138 (C.18A:7F-4);

38 "Cost index" means the average annual increase, expressed as a
39 decimal, in actual construction cost factors for the New York City and
40 Philadelphia areas during the second fiscal year preceding the budget
41 year as determined pursuant to regulations promulgated by the
42 authority pursuant to section 26 of this act;

43 "Debt service" means and includes payments of principal and
44 interest upon school bonds issued to finance the acquisition of school
45 sites and the purchase or construction of school facilities, additions to
46 school facilities, or the reconstruction, remodeling, alteration,

1 modernization, renovation or repair of school facilities, including
2 furnishings, equipment, architect fees and the costs of issuance of such
3 obligations and shall include payments of principal and interest upon
4 school bonds heretofore issued to fund or refund such obligations, and
5 upon municipal bonds and other obligations which the commissioner
6 approves as having been issued for such purposes. Debt service
7 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
8 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
9 (C.18A:58-33.2 et seq.) is excluded;

10 "Demonstration project" means a school facilities project selected
11 by the State Treasurer for construction by a redevelopment entity
12 pursuant to section 6 of this act;

13 "District" means a local or regional school district established
14 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
15 Statutes, a county special services school district established pursuant
16 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
17 county vocational school district established pursuant to article 3 of
18 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
19 operated school district established pursuant to P.L.1987, c.399
20 (C.18A:7A-34 et seq.);

21 "District aid percentage" means the number expressed as a
22 percentage derived from dividing the district's core curriculum
23 standards aid calculated pursuant to section 15 of P.L.1996, c.138
24 (C.18A:7F-15) as of the date of the commissioner's determination of
25 preliminary eligible costs by the district's T & E budget calculated
26 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
27 13) as of the date of the commissioner's determination of preliminary
28 eligible costs;

29 "Excess costs" means the additional costs, if any, which shall be
30 borne by the district, of a school facilities project which result from
31 design factors that are not required to meet the facilities efficiency
32 standards and not approved pursuant to paragraph (1) of subsection
33 g. of section 5 of this act or are not authorized as community design
34 features included in final eligible costs pursuant to subsection c. of
35 section 6 of this act;

36 "Facilities efficiency standards" means the standards developed by
37 the commissioner pursuant to subsection h. of section 4 of this act;

38 "Final eligible costs" means for school facilities projects to be
39 constructed by the authority, the final eligible costs of the school
40 facilities project as determined by the commissioner, in consultation
41 with the authority, pursuant to section 5 of this act; for demonstration
42 projects, the final eligible costs of the project as determined by the
43 commissioner and reviewed by the authority which may include the
44 cost of community design features determined by the commissioner to
45 be an integral part of the school facility and which were reviewed by
46 the authority and approved by the State Treasurer pursuant to section

1 6 of this act; and for districts whose district aid percentage is less than
2 60% and which elect not to have the authority construct a school
3 facilities project, final eligible costs as determined pursuant to
4 paragraph (1) of subsection h. of section 5 of this act;

5 "FTE" means a full-time equivalent student which shall be
6 calculated as follows: in districts that qualify for early childhood
7 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
8 each student in grades kindergarten through 12 shall be counted at
9 100% of the actual count of students, and each preschool student
10 approved by the commissioner to be served in the district shall be
11 counted at 50% or 100% of the actual count of preschool students for
12 an approved half-day or full-day program, respectively; in districts that
13 do not qualify for early childhood program aid pursuant to section 16
14 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
15 12 shall be counted at 100% of the actual count of students, in the
16 case of districts which operate a half-day kindergarten program each
17 kindergarten student shall be counted at 50% of the actual count of
18 kindergarten students, in the case of districts which operate a full-day
19 kindergarten program or which currently operate a half-day
20 kindergarten program but propose to build facilities to house a full-
21 day kindergarten program each kindergarten student shall be counted
22 at 100% of the actual count of kindergarten students, and preschool
23 students shall not be counted. In addition, each preschool
24 handicapped child who is entitled to receive a full-time program
25 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
26 count of these students in the district;

27 "Functional capacity" means the number of students that can be
28 housed in a building in order to have sufficient space for it to be
29 educationally adequate for the delivery of programs and services
30 necessary for student achievement of the core curriculum content
31 standards. Functional capacity is determined by dividing the existing
32 gross square footage of a school building by the minimum area
33 allowance per FTE student pursuant to subsection b. of section 8 of
34 this act for the grade level students contained therein. The difference
35 between the projected enrollment determined pursuant to subsection
36 a. of section 8 of this act and the functional capacity is the unhoused
37 students that are the basis upon which the additional costs of space to
38 provide educationally adequate facilities for the entire projected
39 enrollment are determined. The existing gross square footage for the
40 purposes of defining functional capacity is exclusive of existing spaces
41 that are not contained in the facilities efficiency standards but which
42 are used to deliver programs and services aligned to the core
43 curriculum content standards, used to provide support services directly
44 to students, or other existing spaces that the district can demonstrate
45 would be structurally or fiscally impractical to convert to other uses
46 contained in the facilities efficiency standards;

1 “Lease purchase payment” means and includes payment of
2 principal and interest for lease purchase agreements in excess of five
3 years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to
4 the effective date of P.L. , c. (C.) (now pending before the
5 Legislature as this bill) to finance the purchase or construction of
6 school facilities, additions to school facilities, or the reconstruction,
7 remodeling, alteration, modernization, renovation or repair of school
8 facilities, including furnishings, equipment, architect fees and issuance
9 costs. Approved lease purchase agreements in excess of five years
10 shall be accorded the same accounting treatment as school bonds;

11 “Level II district” means a district which is directed by the
12 commissioner to enter level II monitoring pursuant to the provisions
13 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

14 “Local share” means, in the case of a school facilities project to be
15 constructed by the authority, the total costs less the State share as
16 determined pursuant to section 5 of this act; in the case of a
17 demonstration project, the total costs less the State share as
18 determined pursuant to section 6 of this act; and in the case of a
19 school facilities project to be financed pursuant to section 15 of this
20 act, the total costs less the State share as determined pursuant to that
21 section;

22 “Local unit” means a county, municipality, board of education or
23 any other political subdivision or instrumentality authorized to
24 construct, operate and maintain a school facilities project and to
25 borrow money for those purposes pursuant to law;

26 “Local unit obligations” means bonds, notes, refunding bonds,
27 refunding notes, lease obligations and all other obligations of a local
28 unit which are issued or entered into for the purpose of paying for all
29 or a portion of the costs of a school facilities project, including
30 moneys payable to the authority;

31 “Long-range facilities plan” means the plan required to be
32 submitted to the commissioner by a district pursuant to section 4 of
33 this act;

34 “Maintenance” means expenditures which are approved for repairs
35 and replacements for the purpose of keeping a school facility open and
36 safe for use or in its original condition, including repairs and
37 replacements to a school facility’s heating, lighting, ventilation,
38 security and other fixtures to keep the facility or fixtures in effective
39 working condition. Maintenance shall not include contracted custodial
40 or janitorial services, expenditures for the cleaning of a school facility
41 or its fixtures, the care and upkeep of grounds or parking lots, and the
42 cleaning of, or repairs and replacements to, movable furnishings or
43 equipment, or other expenditures which are not required to maintain
44 the original condition over the school facility's useful life. Approved
45 maintenance expenditures shall be as determined by the commissioner
46 pursuant to regulations to be adopted by the commissioner pursuant

1 to section 26 of this act;

2 "Preliminary eligible costs" means the initial eligible costs of a
3 school facilities project as calculated pursuant to the formulas set forth
4 in section 7 of this act;

5 "Redevelopment entity" means a redevelopment entity authorized
6 by a municipal governing body to implement plans and carry out
7 redevelopment projects in the municipality pursuant to the "Local
8 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
9 seq);

10 "Report on the Cost of Providing a Thorough and Efficient
11 Education" or "Report" means the report issued by the commissioner
12 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

13 "School bonds" means, in the case of a school facilities project
14 which is to be constructed by the authority, a redevelopment entity,
15 or a district under section 15 of this act, bonds, notes or other
16 obligations issued by a district to finance the local share; and, in the
17 case of a school facilities project which is not to be constructed by the
18 authority, a redevelopment entity, or a district under section 15 of this
19 act, bonds, notes or other obligations issued by a district to finance the
20 total costs;

21 "School enrollment" means the number of FTE students other than
22 evening school students, including post-graduate students and post-
23 secondary vocational students, who, on the last school day prior to
24 October 16 of the current school year, are recorded in the registers of
25 the school;

26 "School facility" means and includes any structure, building or
27 facility used wholly or in part for academic purposes by a district, but
28 shall exclude athletic stadiums, grandstands, and any structure,
29 building or facility used solely for school administration;

30 "School facilities project" means the acquisition, demolition,
31 construction, improvement, repair, alteration, modernization,
32 renovation, reconstruction or maintenance of all or any part of a
33 school facility or of any other personal property necessary for, or
34 ancillary to, any school facility, and shall include fixtures, furnishings
35 and equipment, and shall also include, but is not limited to, site
36 acquisition, site development, the services of design professionals,
37 such as engineers and architects, construction management, legal
38 services, financing costs and administrative costs and expenses
39 incurred in connection with the project;

40 "Special education services pupil" means a pupil receiving specific
41 services pursuant to chapter 46 of Title 18A of the New Jersey
42 Statutes;

43 "State aid" means State municipal aid and State school aid;

44 "State debt service aid" means for school bonds issued for school
45 facilities projects approved by the commissioner after the effective
46 date of P.L. , c. (C.) (now pending before the Legislature as this

1 bill) of districts which elect not to have the authority or a
2 redevelopment entity construct the project or which elect not to
3 finance the project under section 15 of this act, the amount of State
4 aid determined pursuant to section 9 of this act; and for school bonds
5 or certificates of participation issued for school facilities projects
6 approved by the commissioner prior to the effective date of P.L. ,
7 c. (C.) (now pending before the Legislature as this bill) the
8 amount of State aid determined pursuant to section 10 of this act;

9 "State municipal aid" means business personal property tax
10 replacement revenues, State urban aid and State revenue sharing, as
11 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
12 other similar forms of State aid payable to the local unit and to the
13 extent permitted by federal law, federal moneys appropriated or
14 apportioned to the municipality or county by the State;

15 "State school aid" means the funds made available to school
16 districts pursuant to sections 15 and 17 of P.L.1996, c.138
17 (C.18A:7F-15 and 17);

18 "State share" means the State's proportionate share of the final
19 eligible costs of a school facilities project to be constructed by the
20 authority as determined pursuant to section 5 of this act; in the case
21 of a demonstration project, the State's proportionate share of the final
22 eligible costs of the project as determined pursuant to sections 5 and
23 6 of this act; and in the case of a school facilities project to be financed
24 pursuant to section 15 of this act, the State share as determined
25 pursuant to that section;

26 "Total costs" means, in the case of a school facilities project which
27 is to be constructed by the authority or a redevelopment entity or
28 financed pursuant to section 15 of this act, the final eligible costs plus
29 excess costs if any; and in the case of a school facilities project which
30 is not to be constructed by the authority or a redevelopment entity or
31 financed pursuant to section 15 of this act, the total cost of the
32 project as determined by the district;

33

34 4. (New section) a. Beginning in the 1999-2000 school year and
35 in every school year thereafter ending with a "0" or a "5", each district
36 shall prepare and submit to the commissioner a long-range facilities
37 plan that details the district's school facilities needs and the district's
38 plan to address those needs for the ensuing five years. The long-range
39 facilities plan shall incorporate the facilities efficiency standards and
40 shall be filed with the commissioner no later than October 1, 2000 and
41 no later than October 1 of the other filing years for approval in
42 accordance with those standards. For those Abbott districts that have
43 submitted long-range facilities plans to the commissioner prior to the
44 effective date of P.L. , c. (C.) (now pending before the
45 Legislature as this bill), this subsection shall not be read to require an
46 additional filing by October 1, 2000.

1 b. Notwithstanding any other law or regulation to the contrary,
2 an application for a school facilities project pursuant to section 5 of
3 this act shall not be approved unless the district has filed a long-range
4 facilities plan that is consistent with the application and the plan has
5 been approved by the commissioner; except that prior to October 1,
6 2000, the commissioner may approve an application if the project is
7 necessary to protect the health or safety of occupants of the school
8 facility, or is related to required early childhood education programs,
9 or is related to a school facility in which the functional capacity is less
10 than 90% of the facilities efficiency standards based on current school
11 enrollment, or the district received bids on the school facilities project
12 prior to the effective date of P.L. , c. (C.) (now pending before
13 the Legislature as this bill) and the district demonstrates that further
14 delay will negatively affect the cost of the project.

15 c. An amendment to a long-range facilities plan may be submitted
16 at any time to the commissioner for review and approval.

17 d. Each long-range facilities plan shall include a cohort survival
18 methodology or other methodology approved by the commissioner,
19 accompanied by a certification by a qualified demographer retained by
20 the district that serves as the basis for identifying the capacity and
21 program needs detailed in the long-range facilities plan.

22 e. The long-range facilities plan shall include an educational
23 adequacy inventory of all existing school facilities in the district, the
24 identification of all deficiencies in the district's current inventory of
25 school facilities, which includes the identification of those deficiencies
26 that involve emergent health and safety concerns, and the district's
27 proposed plan for future construction and renovation. The long-range
28 facilities plan submissions shall conform to the guidelines, criteria and
29 format prescribed by the commissioner.

30 f. Each district shall determine the number of "unhoused students"
31 for the ensuing five-year period calculated pursuant to the provisions
32 of section 8 of this act.

33 g. Each district shall submit the long-range facilities plan to the
34 planning board of the municipality or municipalities in which the
35 district is situate for the planning board's review and findings pursuant
36 to section 22 of P.L.1975, c.291 (C.40:55D-31).

37 h. The commissioner shall develop, for the March 2002 Report on
38 the Cost of Providing a Thorough and Efficient Education and for
39 subsequent reports, facilities efficiency standards for elementary,
40 middle, and high schools consistent with the core curriculum school
41 delivery assumptions in the report and sufficient for the achievement
42 of the core curriculum content standards, and for the provision of
43 required programs in Abbott districts and early childhood education
44 programs in the districts in which these programs are required by the
45 State. The area allowances per FTE student in each class of the
46 district shall be derived from these facilities efficiency standards.

1 The facilities efficiency standards developed by the commissioner
2 shall not be construction design standards but rather shall represent the
3 instructional spaces, specialized instructional areas, and administrative
4 spaces that are determined by the commissioner to be educationally
5 adequate to support the achievement of the core curriculum content
6 standards and for the provision of required programs in Abbott
7 districts and early childhood education programs in the districts in
8 which these programs are required. A district may design, at its
9 discretion, the educational and other spaces to be included within the
10 school facilities project. The design of the project may eliminate
11 spaces in the facilities efficiency standards, include spaces not in the
12 facilities efficiency standards, or size spaces differently than in the
13 facilities efficiency standards upon a demonstration of the adequacy of
14 the school facilities project to deliver the core curriculum content
15 standards pursuant to paragraph (2) of subsection g. of section 5 of
16 this act.

17 Within a reasonable period of time after the effective date of
18 P.L. , c. (C.) (now pending before the Legislature as this bill),
19 the commissioner shall publish the facilities efficiency standards
20 developed for the 2000-2001, 2001-2002, and 2002-2003 school years
21 in the New Jersey Register. Within a reasonable period of time after
22 30 days after publication in the New Jersey Register, the commissioner
23 shall file the facilities efficiency standards with the Office of
24 Administrative Law and those standards shall become effective
25 immediately upon filing with the Office of Administrative Law.
26 During the 30-day period the commissioner shall provide an
27 opportunity for public comment on the proposed facilities efficiency
28 standards.

29 i. Within 90 days of the commissioner's receipt of a long-range
30 facilities plan for review, the commissioner shall determine whether the
31 plan is fully and accurately completed and whether all information
32 necessary for a decision on the plan has been filed by the district. If
33 the commissioner determines that the plan is complete, the
34 commissioner shall promptly notify the district in writing and shall
35 have 60 days from the date of that notification to determine whether
36 to approve the plan or not. If the commissioner determines that the
37 plan is not complete, the commissioner shall notify the district in
38 writing. The district shall provide to the commissioner whatever
39 information the commissioner determines is necessary to make the plan
40 accurate and complete. The district shall submit that information to
41 the commissioner, and the commissioner shall have 60 days from the
42 date of receipt of accurate and complete information to determine
43 whether to approve the plan or not.

44 j. Notwithstanding any provision of subsection i. of this section,
45 if at any time the number of long-range facilities plans filed by school
46 districts with the commissioner and pending review exceeds 20% of

1 the number of school districts in New Jersey, the commissioner may
2 extend by 60 days the deadline for reviewing each plan pending at that
3 time.

4 k. By July 1, 2001, the commissioner shall provide the Legislature
5 with recommendations to address the circumstances of districts which
6 are contiguous with two or more Abbott districts. The
7 recommendations shall address the issues of the financing of school
8 facilities projects and the funding of the educational and other
9 programs required within these districts as a result of their unique
10 demographic situation.

11

12 5. (New section) a. The authority shall construct and finance the
13 school facilities projects of Abbott districts, level II districts, and
14 districts with a district aid percentage equal to or greater than 60%.

15 b. Any district whose district aid percentage is less than 60% may
16 elect to have the authority undertake the construction of a school
17 facilities project in the district and the State share shall be determined
18 pursuant to this section. In the event that the district elects not to
19 have the authority undertake the construction of the project, State
20 support for the project shall be determined pursuant to section 9 or
21 section 15 of this act, as applicable.

22 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
23 contrary, the procedures for obtaining approval of a school facilities
24 project shall be as set forth in this act; provided that any district
25 whose district aid percentage is less than 60%, which elects not to
26 have the authority or a redevelopment entity undertake the
27 construction of the project, shall also be required to comply with the
28 provisions of N.J.S.18A:18A-16.

29 d. Any district seeking to initiate a school facilities project shall
30 apply to the commissioner for approval of the project. The application
31 shall, at a minimum, contain the following information: a description
32 of the school facilities project; a schematic drawing of the project or,
33 at the option of the district, preliminary plans and specifications; a
34 delineation and description of each of the functional components of the
35 project; the number of unhoused students to be housed in the project;
36 the area allowances per FTE student as calculated pursuant to section
37 8 of this act; and the estimated cost to complete the project as
38 determined by the district.

39 e. The commissioner shall review each proposed school facilities
40 project to determine whether it is consistent with the district's long-
41 range facilities plan and whether it complies with the facilities
42 efficiency standards and the area allowances per FTE student derived
43 from those standards. The commissioner shall make a decision on a
44 district's application within 90 days from the date he determines that
45 the application is fully and accurately completed and that all
46 information necessary for a decision has been filed by the district, or

1 from the date of the last revision made by the district. If the
2 commissioner is not able to make a decision within 90 days, he shall
3 notify the district in writing explaining the reason for the delay and
4 indicating the date on which a decision on the project will be made,
5 provided that the date shall not be later than 60 days from the
6 expiration of the original 90 days set forth in this subsection. If the
7 decision is not made by the subsequent date indicated by the
8 commissioner, then the project shall be deemed approved and the
9 preliminary eligible costs shall equal the proposed cost of the project.

10 f. If the commissioner determines that the school facilities project
11 complies with the facilities efficiency standards and the district's long-
12 range facilities plan and does not exceed the area allowance per FTE
13 student derived from those standards, the commissioner shall calculate
14 the preliminary eligible costs of the project pursuant to the formulas
15 set forth in section 7 of this act; except that in the case of a county
16 special services school district or a county vocational school district,
17 the commissioner shall calculate the preliminary eligible costs to equal
18 the amount determined by the board of school estimate and approved
19 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
20 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

21 g. If the commissioner determines that the school facilities project
22 is inconsistent with the facilities efficiency standards or exceeds the
23 area allowances per FTE student derived from those standards, the
24 commissioner shall notify the district.

25 (1) The commissioner shall approve area allowances in excess of
26 the area allowances per FTE student derived from the facilities
27 efficiency standards if the board of education or State district
28 superintendent, as appropriate, demonstrates that school facilities
29 needs related to required programs cannot be addressed within the
30 facilities efficiency standards and that all other proposed spaces are
31 consistent with those standards. The commissioner shall approve area
32 allowances in excess of the area allowances per FTE student derived
33 from the facilities efficiency standards if the additional area allowances
34 are necessary to accommodate centralized facilities to be shared
35 among two or more school buildings within the district and the
36 centralized facilities represent a more cost effective alternative.

37 (2) The commissioner may waive a facilities efficiency standard if
38 the board of education or State district superintendent, as appropriate,
39 demonstrates to the commissioner's satisfaction that the waiver will
40 not adversely affect the educational adequacy of the school facility,
41 including the ability to deliver the programs and services necessary to
42 enable all students to achieve the core curriculum content standards.

43 (3) To house the district's central administration, a district may
44 request an adjustment to the approved areas for unhoused students of
45 2.17 square feet for each FTE student in the projected total district
46 school enrollment if the proposed administrative offices will be housed

1 in a school facility and the district demonstrates either that the existing
2 central administrative offices are obsolete or that it is more practical
3 to convert those offices to instructional space. To the extent that
4 existing administrative space will continue to be used for
5 administrative purposes, the space shall be included in the formulas set
6 forth in section 7 of this act.

7 If the commissioner approves excess facilities efficiency standards
8 or additional area allowances pursuant to paragraphs (1), (2), or (3)
9 of this subsection, the commissioner shall calculate the preliminary
10 eligible costs based upon the additional area allowances or excess
11 facilities efficiency standards pursuant to the formulas set forth in
12 section 7 of this act. In the event that the commissioner does not
13 approve the excess facilities efficiency standards or additional area
14 allowances, the district may either: modify its submission so that the
15 school facilities project meets the facilities efficiency standards; or pay
16 for the excess costs.

17 (4) The commissioner shall approve spaces in excess of, or
18 inconsistent with, the facilities efficiency standards, hereinafter
19 referred to as nonconforming spaces, upon a determination by the
20 district that the spaces are necessary to comply with State or federal
21 law concerning individuals with disabilities. A district may apply for
22 additional State aid for nonconforming spaces that will permit pupils
23 with disabilities to be educated to the greatest extent possible in the
24 same buildings or classes with their nondisabled peers. The
25 nonconforming spaces may: (a) allow for the return of pupils with
26 disabilities from private facilities; (b) permit the retention of pupils
27 with disabilities who would otherwise be placed in private facilities; (c)
28 provide space for regional programs in a host school building that
29 houses both disabled and nondisabled pupils; and (d) provide space for
30 the coordination of regional programs by a county special services
31 school district, educational services commission, jointure commission,
32 or other agency authorized by law to provide regional educational
33 services in a school building that houses both disabled and nondisabled
34 pupils. A district's State support ratio shall be adjusted to equal the
35 lesser of the sum of its district aid percentage as defined in section 3
36 of this act plus 0.25, or 100% for any nonconforming spaces approved
37 by the commissioner pursuant to this paragraph.

38 h. Upon approval of a school facilities project and determination
39 of the preliminary eligible costs:

40 (1) In the case of a district whose district aid percentage is less
41 than 60% and which has elected not to have the authority undertake
42 the construction of the school facilities project, the commissioner shall
43 notify the district whether the school facilities project is approved and,
44 if so approved, the preliminary eligible costs and the excess costs, if
45 any. Following the determination of preliminary eligible costs and the
46 notification of project approval, the district may appeal to the

1 commissioner for an increase in those costs if the detailed plans and
2 specifications completed by a design professional for the school
3 facilities project indicate that the cost of constructing that portion of
4 the project which is consistent with the facilities efficiency standards
5 and does not exceed the area allowances per FTE student exceeds the
6 preliminary eligible costs as determined by the commissioner for the
7 project by 10% or more. The district shall file its appeal within 30
8 days of the preparation of the plans and specifications. If the district
9 chooses not to file an appeal, then the final eligible costs shall equal
10 the preliminary eligible costs.

11 The appeal shall outline the reasons why the preliminary eligible
12 costs calculated for the project are inadequate and estimate the amount
13 of the adjustment which needs to be made to the preliminary eligible
14 costs. The commissioner shall forward the appeal information to the
15 authority for its review and recommendation. If the additional costs
16 are the result of factors that are within the control of the district or are
17 the result of design factors that are not required to meet the facilities
18 efficiency standards, the authority shall recommend to the
19 commissioner that the preliminary eligible costs be accepted as the
20 final eligible costs. If the authority determines the additional costs are
21 not within the control of the district or are the result of design factors
22 required to meet the facilities efficiency standards, the authority shall
23 recommend to the commissioner a final eligible cost based on its
24 experience for districts with similar characteristics. The commissioner
25 shall make a determination on the appeal within 30 days of its receipt.
26 If the commissioner does not approve an adjustment to the school
27 facilities project's preliminary eligible costs, the commissioner shall
28 issue his findings in writing on the reasons for the denial and on why
29 the preliminary eligible costs as originally calculated are sufficient.

30 (2) In all other cases, the commissioner shall promptly prepare and
31 submit to the authority a preliminary project report which shall
32 consist, at a minimum, of the following information: a complete
33 description of the school facilities project; the actual location of the
34 project; the total square footage of the project together with a
35 breakdown of total square footage by functional component; the
36 preliminary eligible costs of the project; the project's priority ranking
37 determined pursuant to subsection m. of this section; any other
38 factors to be considered by the authority in undertaking the project;
39 and the name and address of the person from the district to contact
40 in regard to the project.

41 i. Upon receipt by the authority of the preliminary project report,
42 the authority, upon consultation with the district, shall prepare detailed
43 plans, schedules and specifications which contain the authority's
44 estimated cost and schedule to complete the school facilities project.
45 The authority shall transmit to the commissioner the authority's
46 recommendations in regard to the project which shall, at a minimum,

1 contain the detailed plans and specifications; whether the school
2 facilities project can be completed within the preliminary eligible costs;
3 and any other factors which the authority determines should be
4 considered by the commissioner.

5 (1) In the event that the authority determines that the school
6 facilities project can be completed within the preliminary eligible costs:
7 the final eligible costs shall be deemed to equal the preliminary eligible
8 costs; the commissioner shall be deemed to have given final approval
9 to the project; and the preliminary project report shall be deemed to be
10 the final project report delivered to the authority pursuant to
11 subsection j. of this section.

12 (2) In the event that the authority determines that the school
13 facilities project cannot be completed within the preliminary eligible
14 costs, prior to the submission of the authority's recommendations to
15 the commissioner, the authority shall, in consultation with the district
16 and the commissioner, determine whether changes can be made in the
17 project which will result in a reduction in costs while at the same time
18 meeting the facilities efficiency standards approved by the
19 commissioner.

20 (a) If the authority determines that changes in the school facilities
21 project are possible so that the project can be accomplished within the
22 scope of the preliminary eligible costs while still meeting the facilities
23 efficiency standards, the authority shall so advise the commissioner,
24 whereupon the commissioner shall: calculate the final eligible costs to
25 equal the preliminary eligible costs; give final approval to the project
26 with the changes noted; and issue a final project report to the
27 authority pursuant to subsection j. of this section.

28 (b) If the authority determines that it is not possible to make
29 changes in the school facilities project so that it can be completed
30 within the preliminary eligible costs either because the additional costs
31 are the result of factors outside the control of the district or the
32 additional costs are required to meet the facilities efficiency standards,
33 the authority shall recommend to the commissioner that the
34 preliminary eligible costs be increased accordingly, whereupon the
35 commissioner shall: calculate the final eligible costs to equal the sum
36 of the preliminary eligible costs plus the increase recommended by the
37 authority; give final approval to the project; and issue a final project
38 report to the authority pursuant to subsection j. of this section.

39 (c) If the additional costs are the result of factors that are within
40 the control of the district or are the result of design factors that are
41 not required to meet the facilities efficiency standards or approved
42 pursuant to paragraph (1) of subsection g. of this section, the authority
43 shall recommend to the commissioner that the preliminary eligible
44 costs be accepted, whereupon the commissioner shall: calculate the
45 final eligible costs to equal the preliminary eligible costs and specify
46 the excess costs which are to be borne by the district; give final

1 approval to the school facilities project; and issue a final project report
2 to the authority pursuant to subsection j. of this section; provided that
3 the commissioner may approve final eligible costs which are in excess
4 of the preliminary eligible costs if, in his judgment, the action is
5 necessary to meet the educational needs of the district.

6 (d) For a school facilities project constructed by the authority, the
7 authority shall be responsible for any costs of construction, but only
8 from the proceeds of bonds issued by the authority pursuant to this
9 act, which exceed the amount originally projected by the authority and
10 approved for financing by the authority, provided that the excess is the
11 result of an underestimate of labor or materials costs by the authority.
12 After receipt by the authority of the final project report, the district
13 shall be responsible only for the costs associated with changes, if any,
14 made at the request of the district to the scope of the school facilities
15 project.

16 j. The authority shall not commence the acquisition or
17 construction of a school facilities project unless the commissioner
18 transmits to the authority a final project report and the district
19 complies with the approval requirements for the local share, if any,
20 pursuant to section 11 of this act. The final project report shall
21 contain all of the information contained in the preliminary project
22 report and, in addition, shall contain: the final eligible costs; the excess
23 costs, if any; the total costs which equals the final eligible costs plus
24 excess costs, if any; the State share; and the local share.

25 k. For the Abbott districts, the State share shall be 100% of the
26 final eligible costs. For all other districts, the State share shall be an
27 amount equal to 115% of the district aid percentage; except that the
28 State share shall not be less than 40% of the final eligible costs;

29 l. The local share for school facilities projects constructed by the
30 authority or a redevelopment entity shall equal the final eligible costs
31 plus any excess costs less the State share.

32 m. The commissioner shall establish, in consultation with the
33 Abbott districts, a priority ranking of all school facilities projects in the
34 Abbott districts based upon his determination of critical need, and shall
35 establish priority categories for all school facilities projects in non-
36 Abbott districts. The commissioner shall rank projects from Tier I to
37 Tier IV in terms of critical need according to the follow prioritization:

38 Tier I: health and safety, including electrical system upgrades;
39 required early childhood education programs; unhoused students/class
40 size reduction as required to meet the standards of the
41 "Comprehensive Educational Improvement and Financing Act of
42 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

43 Tier II: educational adequacy - specialized instructional spaces,
44 media centers, cafeteriums, and other non-general classroom spaces
45 contained in the facilities efficiency standards; special education spaces
46 to achieve the least restrictive environment;

1 Tier III: technology projects; regionalization or consolidation
2 projects;

3 Tier IV: other local objectives.

4 n. The provisions of the “Public School Contracts Law,”
5 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
6 project constructed by a district but shall not be applicable to projects
7 constructed by the authority or a redevelopment entity pursuant to the
8 provisions of this act.

9 o. In the event that a district whose district aid percentage is less
10 than 60% elects not to have the authority undertake construction of a
11 school facilities project, any proceeds of school bonds issued by the
12 district for the purpose of funding the project which remain unspent
13 upon completion of the project shall be used by the district to reduce
14 the outstanding principal amount of the school bonds.

15 p. Upon completion by the authority of a school facilities project,
16 if the cost of construction and completion of the project is less than
17 the total costs, the district shall be entitled to receive a portion of the
18 local share based on a pro rata share of the difference based on the
19 ratio of the State share to the local share.

20 q. The authority shall determine the cause of any costs of
21 construction which exceed the amount originally projected by the
22 authority and approved for financing by the authority.

23 r. In the event that a district has engaged architectural services
24 that have been prequalified by the authority to prepare the documents
25 required for initial proposal of a school facilities project, the district
26 shall, if permitted by the terms of the district's contract for
27 architectural services, assign the contract for architectural services to
28 the authority, provided that the fees for the architectural services shall
29 not exceed the fees normally paid by the authority for such services.

30 s. The commissioner may authorize the authority to provide funds
31 to Abbott districts prior to the approval of a school facilities project
32 to enable an Abbott district to finance site acquisition and preliminary
33 design work.

34
35 6. (New section) The provisions of section 5 of P.L. , c. (C.)
36 (now pending before the Legislature as this bill) shall pertain to school
37 facilities projects designated to be demonstration projects except as
38 otherwise provided in this section.

39 a. For the initial three full fiscal years following the effective date
40 of this act, the State Treasurer may designate up to six school facilities
41 projects which the State Treasurer determines to be in the best
42 interests of the State and of the districts to be demonstration projects
43 pursuant to the provisions of this section.

44 b. A district and municipality may apply to the authority for the
45 designation of a school facilities project contained in a long-range
46 facilities plan submitted to the commissioner pursuant to section 4 of

1 P.L. , c. (C.) (now pending before the Legislature as this bill)
2 to be a demonstration project to provide for the coordination of local
3 economic development, redevelopment or community development
4 with a school facilities project. The application shall be accompanied
5 by substantively, parallel resolutions requesting the designation
6 adopted by the board of education of the district and the governing
7 body of the municipality. The application shall set forth: (1) a plan
8 for carrying out the redevelopment project as a whole, including the
9 construction of the school facilities project; (2) the name of the
10 redevelopment entity to undertake the project under the "Local
11 Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et
12 seq.); (3) a description of how the project fits into a redevelopment
13 plan adopted or to be adopted by the municipal governing body
14 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a
15 description of the community design features to be included in the
16 school facilities project.

17 c. The authority shall evaluate the request to determine whether
18 the school facilities project is suitable for designation as a
19 demonstration project and whether the proposed redevelopment entity
20 is suitable for designation as the entity to construct the demonstration
21 project based upon consideration of the following factors:

22 (1) whether the demonstration project furthers definite local
23 objectives as to appropriate land uses, density of population, and
24 improved traffic and public transportation, public utilities, recreational
25 and community facilities and other public improvements;

26 (2) whether the demonstration project provides significant social
27 and economic benefits to the municipality, its neighborhoods and
28 residents;

29 (3) whether the development of the school facilities project is
30 consistent with the local development plan;

31 (4) the extent to which the school facilities project contains
32 community design features which can be used by the community;

33 (5) whether the redevelopment entity has the current capacity to
34 construct the demonstration project;

35 (6) whether the redevelopment entity has the appropriate prior
36 experience in developing similar types of projects; and

37 (7) whether there exist donations from private entities for the
38 purpose of the demonstration project.

39 d. The authority's review of the proposed school facilities project
40 for designation as a demonstration project under this section shall
41 commence upon approval by the commissioner of the school facilities
42 project pursuant to section 5 of P.L. , c. (C.) (now pending
43 before the Legislature as this bill). Upon approval by the
44 commissioner of the school facilities project, and recommendation by
45 the authority that the school facilities project be a demonstration
46 project, the recommendation of the authority shall be forwarded to the

1 State Treasurer who shall determine whether the school facilities
2 project should be designated as a demonstration project. At the same
3 time as the authority forwards its recommendation to the State
4 Treasurer, the authority shall forward its recommendation to the
5 Urban Coordinating Council for review pursuant to subsection i. of
6 this section.

7 e. In addition to the requirements set forth in section 5 of this
8 act, a demonstration project may request inclusion in the final eligible
9 costs of the school facilities project, of all or any portion of the cost
10 of any community design features including any area, rooms,
11 equipment, recreational area or playground included in the school
12 facilities project which are to be used in common by students of the
13 district and by residents of the community, but there shall not be
14 included in the final eligible costs any portion of the cost of any
15 features which are not an integral part of the school building and
16 grounds and are not related to the advancement of the educational
17 success of district students. The commissioner shall approve the
18 inclusion of the community design features as part of the school
19 facilities project if he finds that the inclusion of the community design
20 features as part of the school facilities project would be conducive to
21 the usefulness and success of the project for both the students of the
22 district and the residents of the community. The commissioner may
23 condition his approval upon the adoption by the district of policies
24 suitable for assuring continuing community or educational access to
25 the community design features.

26 f. The cost of the community design features approved by the
27 commissioner shall be reviewed by the authority. The district shall
28 submit the documentation required by the authority for the authority
29 to make its determination. The authority shall, in its recommendation
30 to the commissioner pursuant to section 5 of this act, include its
31 recommendation with respect to the cost of the community design
32 features. The commissioner shall make the final determination with
33 respect to the inclusion of the cost of community design features in the
34 final eligible costs.

35 g. The authority shall provide funding for the State's share of the
36 final eligible costs of a school facilities project to be constructed as
37 part of a demonstration project pursuant to an agreement among the
38 authority, the redevelopment entity and the district which shall, in
39 addition to any other terms and conditions, set forth the terms for
40 disbursement of the State share and provide for the monitoring of
41 construction by the authority.

42 h. Upon completion of a demonstration project by a
43 redevelopment entity, the district shall submit to the commissioner a
44 plan to provide for the maintenance of the project and shall enter into
45 a contract which provides for that maintenance.

46 i. The Urban Coordinating Council shall review the

1 recommendations of the authority with respect to the demonstration
2 projects and shall advise the authority, redevelopment entity and the
3 district regarding the potential availability of funding for the
4 demonstration project, including, but not limited to, sources of funds
5 for acquisition, clearance, site remediation, and assemblage of land and
6 the development, redevelopment, construction or rehabilitation of any
7 structure or improvement included in the project.

8

9 7. (New section) a. Preliminary eligible costs for construction of
10 new school facilities and additions to school facilities, characterized by
11 an increase in the square footage of the school facility, shall be
12 approved only if necessary for reasons of unhoused students.
13 Unhoused students are the number of students to be housed in a
14 school building, but which cannot be housed in an existing building
15 without additional space or a new building in order to maintain
16 educational adequacy; or which are temporarily being housed in space
17 that was originally designed or intended for instruction in specialized
18 areas including, but not limited to, science, art, music, other hands-on
19 experiences and comprehensive health and physical education.
20 Unhoused students are calculated by subtracting the projected
21 enrollment for a school building from its functional capacity.

22 Preliminary eligible costs for construction of new school facilities
23 and additions to school facilities pursuant to this subsection shall be
24 calculated as follows:

25 Preliminary eligible costs = $AU \times C$ plus other allowable costs

26 where

27 AU is the approved area for unhoused students; and

28 C is the area cost allowance.

29 b. Preliminary eligible costs shall be approved for a rehabilitation
30 project which means the reconstruction, remodeling, alteration,
31 modernization, renovation or repair of school facilities but only for the
32 purpose of keeping the school building functional for its original
33 purpose or for new purposes that can be accomplished without
34 increasing the gross square footage of the original facility.

35 Preliminary eligible costs for rehabilitation projects pursuant to this
36 subsection shall be calculated as follows:

37 Preliminary eligible costs = estimated actual costs.

38 All school facilities shall be deemed suitable for rehabilitation
39 unless a pre-construction evaluation undertaken by the district
40 demonstrates to the satisfaction of the commissioner that the structure
41 might pose a risk to the safety of the occupants even after
42 rehabilitation, or that rehabilitation is not cost-effective. Whenever a
43 district determines to undertake new construction rather than a
44 rehabilitation project, the district shall undertake a preconstruction
45 evaluation to determine whether, because of health and safety or
46 efficiency, it would be more feasible to replace rather than renovate

1 the school facility. When the district demonstrates to the satisfaction
2 of the commissioner that replacement is more feasible, the district shall
3 be authorized to have the school facility replaced rather than renovated
4 and the preliminary eligible costs shall be determined pursuant to
5 subsection a. of this section. The estimated costs of a rehabilitation
6 project shall contain only those costs necessary for compliance with
7 the Uniform Construction Code, health and safety, and educational
8 adequacy as determined pursuant to the facilities efficiency standards
9 and paragraph (1) of subsection g. of section 5 of this act.

10 c. When construction done in lieu of rehabilitation projects
11 qualifies as new construction, the approved area for unhoused students
12 shall be determined by the commissioner, with consideration of the
13 existing school facilities in the district.

14 d. Preliminary eligible costs for construction done in lieu of
15 rehabilitation projects which does not meet the requirements of
16 subsection b. of this section shall be determined in accordance with the
17 methodology for aiding rehabilitation projects, with the preliminary
18 eligible costs determined pursuant to subsection b. of this section.

19 e. Preliminary eligible costs for purchase of an existing facility to
20 be used as a school facility shall be determined in accordance with the
21 methodology for new construction, with preliminary eligible costs
22 determined pursuant to subsection a. of this section.

23 f. Notwithstanding the provisions of subsections a. and b. of this
24 section, preliminary eligible costs for any addition or reconstruction,
25 remodeling, alteration, modernization, renovation or repair made to a
26 purchased facility within five years of purchase shall be determined as
27 follows:

28 Preliminary eligible costs = $(ACP-PC) \times (C/CP)$ plus other
29 allowable costs

30 where

31 ACP is the preliminary eligible costs for the facilities purchase
32 pursuant to subsection e. of this section;

33 PC is the purchase cost for the facility;

34 C is the area cost allowance at the time of application for the
35 renovation; and

36 CP is the area cost allowance at the time of purchase of the
37 facility.

38 Preliminary eligible costs so calculated shall not be less than
39 zero.

40 g. Other allowable costs shall include the costs of site
41 development, acquisition of land or other real property interests
42 necessary to effectuate the school facilities project, fees for the
43 services of design professionals, including architects, engineers,
44 construction managers and other design professionals, legal fees, and
45 the costs associated with financing the school facilities project. Other
46 allowable costs for school facilities projects to be undertaken by the

1 authority shall be determined by the authority. Other allowable costs
 2 for school facilities projects to be undertaken by a district or, in the
 3 case of a demonstration project, by a redevelopment entity shall be
 4 equal to the actual costs unless the commissioner, in consultation with
 5 the authority, determines these costs to be unreasonable in light of the
 6 experience of similarly situated districts.

7
 8 8. (New section) a. The number of unhoused students shall be
 9 calculated as the number of FTE students who are projected to be
 10 enrolled in preschool handicapped, preschool, kindergarten, grades 1
 11 through 12, and special education services pupil educational programs
 12 provided in a district within five years, which are in excess of the
 13 functional capacity of the district's current school facilities or the
 14 functional capacity of the school facilities which will be available
 15 within five years other than the school facilities for which the
 16 preliminary eligible costs are determined, based upon the district's
 17 long-range facilities plan. The determination of unhoused capacity
 18 shall separately consider projected enrollments and functional
 19 capacities at the early childhood and elementary (preschool through
 20 grade 5), middle (grades 6 through 8), and high school (grades 9
 21 through 12) levels. For the purpose of calculating the district's
 22 unhoused students, special education services students shall be
 23 considered part of the grade level to which the students' chronological
 24 age corresponds. In the event that the commissioner approves a
 25 school facilities project which involves the construction of a new
 26 school facility to replace an existing school facility, which shall
 27 accommodate both the unhoused students and the students in the
 28 existing school facility, the calculation of the number of unhoused
 29 students shall include the number of students currently attending the
 30 existing facility which is to be replaced.

31 b. Approved area for unhoused students (AU) shall be determined
 32 according to the following formula:

$$33 \quad AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$$

34 where

35 UEC, UE, UM, UH are the numbers of unhoused students in the
 36 early childhood, elementary, middle, and high school enrollment
 37 categories, respectively; and

38 SEC, SE, SM, SH are the area allowances per FTE student in
 39 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
 40 and grades 9 through 12, respectively. Area allowances shall be
 41 determined based on the grade level of a student regardless of the
 42 grade configurations used in the school buildings of the district.

43 The minimum area allowance per FTE student shall be as follows:

44		
45	Preschool through grade 5	125 sq. ft.
46	Grades 6 through 8	136 sq. ft.

1 Grades 9 through 12 151 sq. ft.

2

3 The commissioner, in consultation with the State Treasurer and the
4 Commissioner of the Department of Community Affairs, shall adopt
5 regulations that establish a process for the consideration of special
6 circumstances, in addition to those provided in section 5 of this act, in
7 which the area allowances per FTE student established pursuant to this
8 subsection may be adjusted. Any decision made by the commissioner
9 pursuant to those regulations shall be made in consultation with the
10 State Treasurer and the Commissioner of the Department of
11 Community Affairs.

12

13 9. (New section) a. State debt service aid for capital investment
14 in school facilities for a district whose district aid percentage is less
15 than 60% and which elects not to have the building authority construct
16 a school facilities project or to finance the project under section 15 of
17 this act, shall be distributed upon a determination of preliminary
18 eligible costs by the commissioner, according to the following formula:

19 Aid is the sum of A for each issuance of school bonds issued for a
20 school facilities project approved by the commissioner after the
21 effective date of P.L. , c. (C.) (now pending before the
22 Legislature as this bill)

23 where

24 $A = B \times AC/P \times (DAP \times 1.15) \times M$, with $AC/P = 1$

25 whenever AC/P would otherwise yield a number greater than one,

26 and where:

27 B is the district's debt service for the individual issuance for the
28 fiscal year;

29 AC is the preliminary eligible costs determined pursuant to section
30 7 of this act;

31 P is the principal of the individual issuance plus any other funding
32 sources approved for the school facilities project;

33 DAP is the district's district aid percentage as defined pursuant to
34 section 3 of this act; and

35 M is a factor representing the degree to which a district has
36 fulfilled maintenance requirements for a school facilities project
37 determined pursuant to subsection b. of this section.

38 For county special services school districts, DAP shall be that of
39 the county vocational school district in the same county.
40 Notwithstanding any provision of this subsection to the contrary, State
41 debt service aid shall not be less than 40% of the preliminary eligible
42 cost.

43 b. The maintenance factor (M) shall be 1.0 except when one of the
44 following conditions applies, in which case the maintenance factor
45 shall be as specified:

46 (1) Effective ten years from the date of the enactment of P.L. ,

1 c. (C) (now pending before the Legislature as this bill), the
 2 maintenance factor for aid for reconstruction, remodeling, alteration,
 3 modernization, renovation or repair, or for an addition to a school
 4 facility, shall be zero for all school facilities projects for which the
 5 district fails to demonstrate over the ten years preceding issuance a net
 6 investment in maintenance of the related school facility of at least 2%
 7 of the replacement cost of the school facility, determined pursuant to
 8 subsection b. of section 7 of this act using the area cost allowance of
 9 the year ten years preceding the year in which the school bonds are
 10 issued.

11 (2) For new construction, additions, and school facilities aided
 12 under subsection b. of section 7 of this act supported by financing
 13 issued for projects approved by the commissioner after the effective
 14 date of P.L. , c. (C) (now pending before the Legislature as
 15 this bill), beginning in the fourth year after occupancy of the school
 16 facility, the maintenance factor shall be reduced according to the
 17 following schedule for all school facilities projects for which the
 18 district fails to demonstrate in the prior fiscal year an investment in
 19 maintenance of the related school facility of at least two-tenths of 1 %
 20 of the replacement cost of the school facility, determined pursuant to
 21 subsection b. of section 7 of this act.

22

23 Maintenance Percentage	Maintenance Factor (M)
24 .199% - .151%	75%
25 .150% - .100%	50%
26 Less than .100%	Zero

27

28 (3) Within one year of the enactment of P.L. , c. (C) (now
 29 pending before the Legislature as this bill), the commissioner shall
 30 promulgate rules requiring districts to develop a long-range
 31 maintenance plan and specifying the expenditures that qualify as an
 32 appropriate investment in maintenance for the purposes of this
 33 subsection.

34 c. Any district which obtained approval from the commissioner
 35 since September 1, 1998 and prior to the effective date of P.L. ,
 36 c. (C) (now pending before the Legislature as this bill) of the
 37 educational specifications for a school facilities project or obtained
 38 approval from the Department of Community Affairs or the
 39 appropriately licensed municipal code official since September 1, 1998
 40 of the final construction plans and specifications, and the district has
 41 issued debt, may elect to have the final eligible costs of the project
 42 determined pursuant to section 5 of this act and to receive debt service
 43 aid under this section or under section 10 of this act.

44 Any district which received approval from the commissioner for a
 45 school facilities project at any time prior to the effective date of
 46 P.L. , c. (C) (now pending before the Legislature as this bill),

1 and has not issued debt, other than short term notes, may submit an
2 application pursuant to section 5 of this act to have the final eligible
3 costs of the project determined pursuant to that section and to have
4 the authority construct the project; or, at its discretion, the district
5 may choose to receive debt service aid under this section or under
6 section 10 of this act or to receive a grant under section 15 of this act.

7
8 10. (New section) For each issuance of school bonds or
9 certificates of participation issued for a school facilities project
10 approved by the commissioner prior to the effective date of P.L. ,
11 c. (C.) (now pending before the Legislature as this bill):

12 Aid is the sum of A

13 where

14 $A = B \times \text{CCSAID/TEBUD}$

15 and where

16 B is the district's total debt service or lease purchase payment for
17 the individual issuance for the fiscal year, provided that for the
18 purpose of determining debt service or lease purchase payment under
19 this section the cost of site acquisition may be included;

20 CCSAID is the district's core curriculum standards aid amount
21 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
22 and

23 TEBUD is the district's T&E budget determined pursuant to
24 section 13 of P.L.1996, c.138(C.18A:7F-13).

25 For county special services school districts, CCSAID/TEBUD shall
26 be that of the county vocational school district in the same county.

27
28 11. (New section) A school facilities project shall not be
29 constructed unless the local share of the project, if any, is approved
30 in accordance with the provisions for the approval of capital projects
31 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
32 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

33
34 12. (New section) A district, other than a State-operated school
35 district, that sought approval pursuant to section 11 of this act of a
36 school facilities project without excess costs but failed to receive that
37 approval, and within the three years prior to that, sought and failed to
38 receive approval of that school facilities project with or without excess
39 costs, may submit the project to the commissioner and request that the
40 commissioner approve the project and authorize the issuance of school
41 bonds for the local share of the project. Upon receipt of the request,
42 the commissioner shall review the school facilities project and
43 determine whether the project is necessary for the provision of a
44 thorough and efficient system of education in the district. If the
45 commissioner concludes that the project is necessary, the
46 commissioner may approve the project without excess costs and

1 authorize the issuance of school bonds to fund the local share. In
2 addition to the amount of taxes determined by the legal voters of the
3 district at the annual school election, the secretary of the board of
4 education shall certify the amount required for the repayment of the
5 interest and principal of the bonds required to fund the local share
6 amount approved by the commissioner in the same manner required
7 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
8 and the amount so certified shall be included in the taxes assessed,
9 levied and collected in the municipality or municipalities comprising
10 the school district for those purposes.

11 Any school facilities project authorized pursuant to this section
12 shall be constructed by the authority. Nothing in this section shall
13 preclude a State-operated school district from using the process
14 established pursuant to section 2 of P.L.1991, c.139 (C.18A:7A-46.2)
15 to obtain the approval of the commissioner to undertake a school
16 facilities project.

17

18 13. (New section) a. The authority shall be responsible for the
19 financing, planning, design, construction management, acquisition,
20 construction, and completion of school facilities projects. Upon
21 submission to the authority of a final project report, the authority shall
22 undertake the acquisition, construction, and all other appropriate
23 actions necessary to complete the project. When the final eligible
24 costs of a school facilities project are less than or equal to \$500,000,
25 the authority may, in its discretion, authorize a district to undertake
26 the acquisition, construction and all other appropriate actions
27 necessary to complete the project and enter into a grant agreement
28 with the district for the payment of the State share.

29 b. The authority shall undertake the financing of school facilities
30 projects pursuant to the provisions of this act. The authority may, in
31 its discretion and upon consultation with the district, finance only the
32 State share of the school facilities project or the State share and the
33 local share of the project. In the event that the authority finances only
34 the State share of a project, the authority shall not commence
35 acquisition or construction of the project until the authority receives
36 the local share from the district.

37 c. In order to implement the arrangements established for school
38 facilities projects which are to be constructed by the authority and
39 financed pursuant to this section, a district shall enter into an
40 agreement with the authority and the commissioner containing the
41 terms and conditions determined by the parties to be necessary to
42 effectuate the project.

43 d. Upon completion by the authority of a school facilities project,
44 the district shall enter into an agreement with the authority to provide
45 for the maintenance of the project by the district. In the event that the
46 school facilities project is constructed by a district, upon the

1 completion of the project, the district shall submit to the commissioner
2 a plan to provide for the maintenance of the project by the district.
3 Any agreement or plan shall contain, in addition to any other terms and
4 provisions, a requirement for the establishment of a maintenance
5 reserve fund, the funding levels of which shall be as set forth in
6 regulations adopted by the commissioner pursuant to section 26 of this
7 act.

8
9 14. (New section) Notwithstanding any other provisions of law
10 to the contrary:

11 a. The authority shall have the power, pursuant to the provisions
12 of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and
13 refunding bonds, incur indebtedness and borrow money secured, in
14 whole or in part, by monies received pursuant to sections 17, 18 and
15 19 of this act for the purposes of: financing all or a portion of the
16 costs of school facilities projects and any costs related to the issuance
17 thereof, including, but not limited to, the administrative, insurance,
18 operating and other expenses of the authority to undertake the
19 financing, design, construction and maintenance of school facilities
20 projects; lending moneys to local units to pay the costs of all or a
21 portion of school facilities projects and any costs related to the
22 issuance thereof; funding the grants to be made pursuant to section 15
23 of this act; and financing the acquisition of school facilities projects to
24 permit the refinancing of debt by the district pursuant to section 16 of
25 this act.

26 The authority may establish reserve funds to further secure bonds
27 and refunding bonds issued pursuant to this section and may issue
28 bonds to pay for the administrative, insurance and operating costs of
29 the authority in carrying out the provisions of this act. In addition to
30 its bonds and refunding bonds, the authority shall have the power to
31 issue subordinated indebtedness, which shall be subordinate in lien to
32 the lien of any or all of its bonds or refunding bonds as the authority
33 may determine.

34 b. The authority shall issue the bonds or refunding bonds in such
35 manner as it shall determine in accordance with the provisions of this
36 act and P.L.1974, c.80 (C.34:1B-1 et seq.); provided that
37 notwithstanding any other law to the contrary, no resolution adopted
38 by the authority authorizing the issuance of bonds or refunding bonds
39 pursuant to this section shall be adopted or otherwise made effective
40 without the approval in writing of the State Treasurer; and refunding
41 bonds issued to refund bonds issued pursuant to this section shall be
42 issued on such terms and conditions as may be determined by the
43 authority and the State Treasurer. The authority may, in any
44 resolution authorizing the issuance of bonds or refunding bonds issued
45 pursuant to this section, pledge the contract with the State Treasurer
46 provided for pursuant to section 18 of this act, or any part thereof, or

1 may pledge all or any part of the repayments of loans made to local
2 units pursuant to section 19 of this act for the payment or redemption
3 of the bonds or refunding bonds, and covenant as to the use and
4 disposition of money available to the authority for payment of the
5 bonds and refunding bonds. All costs associated with the issuance of
6 bonds and refunding bonds by the authority for the purposes set forth
7 in this act may be paid by the authority from amounts it receives from
8 the proceeds of the bonds or refunding bonds, and from amounts it
9 receives pursuant to sections 17, 18, and 19 of this act. The costs
10 may include, but shall not be limited to, any costs relating to the
11 issuance of the bonds or refunding bonds, administrative costs of the
12 authority attributable to the making and administering of loans and
13 grants to fund school facilities projects, and costs attributable to the
14 agreements entered into pursuant to subsection d. of this section.

15 c. Each issue of bonds or refunding bonds of the authority shall be
16 special obligations of the authority payable out of particular revenues,
17 receipts or funds, subject only to any agreements with the holders of
18 bonds or refunding bonds, and may be secured by other sources of
19 revenue, including, but not limited to, one or more of the following:

20 (1) Pledge of the revenues and other receipts to be derived from
21 the payment of local unit obligations and any other payment made to
22 the authority pursuant to agreements with any local unit, or a pledge
23 or assignment of any local unit obligations, and the rights and interest
24 of the authority therein;

25 (2) Pledge of rentals, receipts and other revenues to be derived
26 from leases or other contractual arrangements with any person or
27 entity, public or private, including one or more local units, or a pledge
28 or assignment of those leases or other contractual arrangements and
29 the rights and interests of the authority therein;

30 (3) Pledge of all moneys, funds, accounts, securities and other
31 funds, including the proceeds of the bonds;

32 (4) Pledge of the receipts to be derived from payments of State
33 aid to the authority pursuant to section 21 of this act;

34 (5) Pledge of the contract or contracts with the State Treasurer
35 pursuant to section 18 of this act;

36 (6) Pledge of any sums remitted to the local unit by donation from
37 any person or entity, public or private, subject to the approval of the
38 State Treasurer;

39 (7) A mortgage on all or any part of the property, real or personal,
40 comprising a school facilities project then owned or thereafter to be
41 acquired, or a pledge or assignment of mortgages made to the
42 authority by any person or entity, public or private, including one or
43 more local units and rights and interests of the authority therein; and

44 (8) The receipt of any grants, reimbursements or other payments
45 from the federal government.

46 d. The resolution authorizing the issuance of bonds or refunding

1 bonds pursuant to this section may also provide for the authority to
2 enter into any revolving credit agreement, agreement establishing a
3 line of credit or letter of credit, reimbursement agreement, interest rate
4 exchange agreement, currency exchange agreement, interest rate floor
5 or cap, options, puts or calls to hedge payment, currency, rate, spread
6 or similar exposure or similar agreements, float agreements, forward
7 agreements, insurance contracts, surety bonds, commitments to
8 purchase or sell bonds, purchase or sale agreements, or commitments
9 or other contracts or agreements and other security agreements
10 approved by the authority in connection with the issuance of the bonds
11 or refunding bonds pursuant to this section. In addition, the authority
12 may, in anticipation of the issuance of the bonds or the receipt of
13 appropriations, grants, reimbursements or other funds, including,
14 without limitation, grants from the federal government for school
15 facilities projects, issue notes, the principal of or interest on which, or
16 both, shall be payable out of the proceeds of notes, bonds or other
17 obligations of the authority or appropriations, grants, reimbursements
18 or other funds or revenues of the authority.

19 e. The authority is authorized to engage, subject to the approval
20 of the State Treasurer and in such manner as the State Treasurer shall
21 determine, the services of financial advisors and experts, placement
22 agents, underwriters, appraisers, and other advisors, consultants and
23 agents as may be necessary to effectuate the financing of school
24 facilities projects.

25 f. Bonds and refunding bonds issued by the authority pursuant to
26 this section shall be special and limited obligations of the authority
27 payable from, and secured by, funds and moneys determined by the
28 authority in accordance with this section. Notwithstanding any other
29 provision of law or agreement to the contrary, any bonds and
30 refunding bonds issued by the authority pursuant to this section shall
31 not be secured by the same property as bonds and refunding bonds
32 issued by the authority to finance projects other than school facilities
33 projects. Neither the members of the authority nor any other person
34 executing the bonds or refunding bonds shall be personally liable with
35 respect to payment of interest and principal on these bonds or
36 refunding bonds. Bonds or refunding bonds issued pursuant to this
37 section shall not be a debt or liability of the State or any agency or
38 instrumentality thereof, except as otherwise provided by this
39 subsection, either legal, moral or otherwise, and nothing contained in
40 this act shall be construed to authorize the authority to incur any
41 indebtedness on behalf of or in any way to obligate the State or any
42 political subdivision thereof, and all bonds and refunding bonds issued
43 by the authority shall contain a statement to that effect on their face.

44 g. The State hereby pledges and covenants with the holders of any
45 bonds or refunding bonds issued pursuant to this act that it will not
46 limit or alter the rights or powers vested in the authority by this act,

1 nor limit or alter the rights or powers of the State Treasurer in any
2 manner which would jeopardize the interest of the holders or any
3 trustee of the holders, or inhibit or prevent performance or fulfillment
4 by the authority or the State Treasurer with respect to the terms of any
5 agreement made with the holders of the bonds or refunding bonds or
6 agreements made pursuant to subsection d. of this section; except that
7 the failure of the Legislature to appropriate moneys for any purpose
8 of this act shall not be deemed a violation of this section.

9 h. The authority may charge to and collect from local units,
10 districts, the State and any other person, any fees and charges in
11 connection with the authority's actions undertaken with respect to
12 school facilities projects, including, but not limited to, fees and charges
13 for the authority's administrative, organization, insurance, operating
14 and other expenses incident to the financing, planning, design,
15 construction management, acquisition, construction, completion and
16 placing into service and maintenance of school facilities projects.
17 Notwithstanding any provision of this act to the contrary, no Level II
18 district or a district whose district aid percentage is greater than or
19 equal to 60% but less than 100% shall be responsible for the payment
20 of any fees and charges related to the authority's operating expenses.
21

22 15. (New section) In the case of a district whose district aid
23 percentage is less than 60% and which elects not to have the authority
24 undertake the construction of the school facilities project, for any
25 project approved by the commissioner after the effective date of this
26 act, the district may elect to receive a one-time grant for the State
27 share of the project rather than annual debt service aid under section
28 9 of this act. The State share payable to the district shall equal the
29 product of the project's final eligible costs and 115% of the district aid
30 percentage or 40%, whichever is greater. The authority shall provide
31 grant funding for the State's share of the final eligible costs of a school
32 facilities project pursuant to an agreement between the district and the
33 authority which shall, in addition to other terms and conditions, set
34 forth the terms of disbursement of the State share. The funding of the
35 State share shall not commence until the district secures financing for
36 the local share.
37

38 16. (New section) In addition to the other powers and duties
39 which have been granted to the authority, whenever any local unit
40 finances the construction or acquisition of a school facilities project
41 which would otherwise qualify under this act except that the debt was
42 issued prior to the effective date of this act, the authority may
43 refinance the debt issued by the local unit through the issuance of
44 bonds secured by repayments of loans made to the local units and may
45 purchase the work or improvement and lease the same to the district,
46 subject to the approval of the State Treasurer; except that the amount

1 of the purchase price for a school facilities project shall not exceed the
2 original cost. Each loan to a local unit pursuant to this section shall
3 be evidenced by local unit obligations and shall be authorized and
4 issued as provided by law. Notwithstanding the provisions of any law
5 to the contrary, the local unit obligations may be sold at private sale
6 to the authority at any price, whether or not less than par value, and
7 shall be subject to redemption prior to maturity at any times and at any
8 prices as the authority and the local unit may agree. All powers, rights,
9 obligations and duties granted to or imposed upon the authority,
10 districts, State departments and agencies or others by this act in
11 respect to school facilities projects shall apply to the same extent with
12 respect to any refinance of debt pursuant to this section; except that
13 any action otherwise required to be taken at a particular time in the
14 implementation of a school facilities project may, when the
15 circumstances require in connection with a refinance of debt pursuant
16 to this section, be taken with the same effect as if taken at that
17 particular time. Upon repayment of the bonds or provision for
18 repayment of bonds issued by the authority to refinance the debt of the
19 local unit, the school facilities project shall be transferred to the
20 district.

21

22 17. (New section) In each fiscal year the State Treasurer shall pay
23 from the General Fund to the authority, in accordance with a contract
24 between the State Treasurer and the authority as authorized pursuant
25 to section 18 of this act, an amount equal to the debt service amount
26 due to be paid in the State fiscal year on the bonds or refunding bonds
27 of the authority issued or incurred pursuant to section 14 of this act
28 and any additional costs authorized pursuant to that section; provided
29 that all such payments from the General Fund shall be subject to and
30 dependent upon appropriations being made from time to time by the
31 Legislature for those purposes, and provided further that all payments
32 shall be used only to pay for the costs of school facilities projects and
33 the costs of financing those projects.

34

35 18. (New section) The State Treasurer and the authority are
36 authorized to enter into one or more contracts to implement the
37 payment arrangement provided for in section 17 of this act. The
38 contract shall provide for payment by the State Treasurer of the
39 amounts required pursuant to section 17 of this act and shall set forth
40 the procedure for the transfer of monies for the purpose of that
41 payment. The contract shall contain terms and conditions as
42 determined by the parties and shall, where appropriate, contain terms
43 and conditions necessary and desirable to secure any bonds or
44 refunding bonds of the authority issued or incurred pursuant to this
45 act; provided that notwithstanding any other provision of law or
46 regulation of the authority to the contrary, the authority shall be paid

1 only such funds as shall be determined by the contract, and the
2 incurrence of any obligation of the State under the contract, including
3 any payments to be made thereunder from the General Fund, shall be
4 subject to and dependent upon appropriations being made from time
5 to time by the Legislature for the purposes of this act.

6
7 19. (New section) a. The authority may make and contract to
8 make loans to local units in accordance with and subject to the
9 provisions of this act to finance all or any portion of the cost of a
10 school facilities project which the local unit may lawfully undertake or
11 acquire and for which the local unit is authorized by law to borrow
12 money; or to refund obligations of the local unit which were issued to
13 provide funds to pay for the cost of a school facilities project. The
14 loans may be made subject to the terms and conditions the authority
15 determines to be consistent with the purposes of this act. Each loan
16 by the authority and the terms and conditions thereof shall be subject
17 to approval by the State Treasurer.

18 b. Each loan to a local unit shall be evidenced by local unit
19 obligations and shall be authorized and issued as provided by law.
20 Notwithstanding the provisions of any other law to the contrary, the
21 local unit obligations may be sold at private sale to the authority at any
22 price, whether or not less than par value, and shall be subject to
23 redemption prior to maturity at any times and at any prices as the
24 authority and the local unit may agree. Each loan to a local unit and
25 the local unit obligations issued to evidence the loan shall bear interest
26 at a rate or rates per annum, including zero interest, and shall be
27 repaid in whole or in part, as the authority and the local unit may
28 agree, with the approval of the State Treasurer.

29
30 20. (New section) A local unit may purchase, lease, rent, sublease
31 or otherwise acquire any school facilities project or any space within
32 a project and pay the amounts as may be agreed upon between the
33 local unit and the authority as the purchase price, rent or other charge
34 therefor; provided that the terms and conditions of the agreement
35 between the authority and the local unit relating to the purchase, lease,
36 rental or sublease shall be subject to the approval of the State
37 Treasurer.

38
39 21. (New section) a. In the event that a local unit has failed or is
40 unable to pay to the authority in full when due any local unit
41 obligations issued by the local unit to the authority, including, but not
42 limited to, any lease or sublease obligations, or any other monies owed
43 by the district to the authority, to assure the continued operation and
44 solvency of the authority, the State Treasurer shall pay directly to the
45 authority an amount sufficient to satisfy the deficiency from State aid
46 payable to the local unit; provided that if the local unit is a school

1 district, the State aid shall not include any State aid which may
2 otherwise be restricted pursuant to the provisions of P.L.1996, c.138
3 (C.18A:7F-1 et seq.). As used in this section, local unit obligations
4 include the principal or interest on local unit obligations or payment
5 pursuant to a lease or sublease of a school facilities project to a local
6 unit, including the subrogation of the authority to the right of the
7 holders of those obligations, any fees or charges payable to the
8 authority, and any amounts payable by a local unit under a service
9 contract or other contractual arrangement the payments under which
10 are pledged to secure any local unit obligations issued to the authority
11 by another local unit.

12 b. If the authority requires, and if there has been a failure or
13 inability of a local unit to pay its local unit obligations to the authority
14 for a period of 30 days, the chairman or the executive director of the
15 authority shall certify to the State Treasurer, with written notice to the
16 fiscal officer of the local unit, the amount remaining unpaid, and the
17 State Treasurer shall pay that amount to the authority; or if the right
18 to receive those payments has been pledged or assigned to a trustee
19 for the benefit of the holders of bonds or refunding bonds of the
20 authority, to that trustee, out of the State aid payable to the local unit,
21 until the amount so certified has been paid. Notwithstanding any
22 provision of this act to the contrary, the State Treasurer's obligation
23 to pay the authority pursuant to this section shall not extend beyond
24 the amount of State aid payable to the local unit.

25 c. The amount paid to the authority pursuant to this section shall
26 be deducted from the appropriation or apportionment of State aid
27 payable to the local unit and shall not obligate the State to make, nor
28 entitle the local unit to receive, any additional appropriation or
29 apportionment. The obligation of the State Treasurer to make
30 payments to the authority or trustee and the right of the authority or
31 trustee to receive those payments shall be subject and subordinate to
32 the rights of holders of qualified bonds issued prior to the effective
33 date of this act pursuant to P.L.1976, c.38 (C.40A:3-1 et seq.) and
34 P.L.1976, c.39 (C.18A:24-85 et seq.).

35
36 22. (New section) a. The authority shall have the power to accept
37 and use any funds appropriated and paid by the State to the authority
38 for the purposes for which the appropriations are made. The authority
39 shall have the power to apply for and receive and accept
40 appropriations or grants of property, money, services or
41 reimbursements for money previously spent and other assistance
42 offered or made available to it by or from any person, government
43 agency, public authority or any public or private entity whatever for
44 any lawful corporate purpose of the authority, including, without
45 limitation, grants, appropriations or reimbursements from the federal
46 government, and to apply and negotiate for the same upon such terms

1 and conditions as may be required by any person, government agency,
2 authority or entity as the authority may determine to be necessary,
3 convenient or desirable.

4 b. The authority shall establish a financial incentive program for the
5 purpose of promoting donations to school facilities projects. Any
6 entity which makes a donation approved by the State Treasurer to the
7 preliminary eligible costs of a school facilities project shall receive an
8 incentive payment pursuant to the provisions of this subsection. The
9 amount of the incentive payment shall equal 50% of the fair market
10 value of the donation but shall not in any one year exceed one-half of
11 the amount of taxes paid or otherwise due from the donor pursuant to
12 the provisions of the "New Jersey Gross Income Tax Act," P.L.1976,
13 c.47 (C.54A:1-1 et seq.), or the "Corporation Business Tax Act,"
14 P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable, for the tax year in
15 which the donation is made. The fair market value of a non-cash
16 donation shall be determined by the State Treasurer. The carry-
17 forward for incentive payments shall not be inconsistent with that
18 allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a donation
19 by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in the case
20 of a donation by a corporation.

21 All incentive payments made pursuant to this section shall be funded
22 by and shall be subject to annual appropriations to the authority for
23 this purpose, and shall in no way rely upon funds raised by the
24 issuance of bonds for school facilities projects.

25
26 23. (New section) Not less than the prevailing wage rate
27 determined by the Commissioner of Labor pursuant to the provisions
28 of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers
29 employed in the performance of construction contracts in connection
30 with any school facilities project that is undertaken by the authority,
31 a redevelopment entity, or a district.

32
33 24. (New section) The commissioner, in consultation with the State
34 Treasurer, shall annually submit to the Governor, the Joint Budget
35 Oversight Committee, the President of the Senate and the Speaker of
36 the General Assembly a report on the school facilities construction
37 program established pursuant to the provisions of this act. The report
38 shall be submitted no later than August 1 of each year and shall
39 include, but not be limited to, the following information for the prior
40 fiscal year: the number of school facilities projects approved by the
41 commissioner pursuant to section 5 of this act; the number of projects
42 constructed by the authority and the amount of time that it has taken
43 the authority to complete those projects; the amount of bonds issued
44 by the authority for the construction and renovation of school
45 facilities; the number of projects constructed by districts; the number
46 of demonstration projects approved; the number of approved projects

1 which exceeded the facilities efficiency standards, the components of
2 those projects which exceeded the standards, and the amount of
3 construction by individual districts and Statewide estimated to have
4 exceeded the standards; and recommendations for changes in the
5 school facilities construction program established pursuant to this act.

6
7 25. (New section) Notwithstanding the provisions of P.L.1999,
8 c.138 to the contrary concerning the conditions on the appropriation
9 and reappropriation of the balance in the School Construction and
10 Renovation Fund, the unexpended balance in the School Construction
11 and Renovation Fund on the effective date of this act is appropriated
12 to the authority to be used to pay for school facilities projects and the
13 administrative, insurance, and other operating cost of the authority
14 incurred in connection with those projects.

15
16 26. (New section) a. The commissioner shall adopt, pursuant to the
17 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
18 seq.), rules and regulations necessary to implement the provisions of
19 sections 1 through 12 of this act; except that notwithstanding any
20 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
21 commissioner may adopt, immediately upon filing with the Office of
22 Administrative Law, such rules and regulations as the commissioner
23 deems necessary to implement the provisions of sections 1 through 12
24 of this act which shall be effective for a period not to exceed 12
25 months. Determinations made by the commissioner pursuant to this
26 act and the rules and regulations adopted by the commissioner to
27 implement this act shall be considered to be final agency action and
28 appeal of that action shall be directly to the Appellate Division of the
29 Superior Court. The regulations shall thereafter be amended, adopted
30 or re-adopted by the State Board of Education in accordance with the
31 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

32 b. The authority shall adopt, pursuant to the “Administrative
33 Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et seq.), and in
34 consultation with the State Treasurer, rules and regulations necessary
35 to implement the provisions of sections 13 through 22 of this act;
36 except that notwithstanding any provision of P.L.1968, c.410
37 (C.52:14B-1 et seq.) to the contrary, the authority may adopt,
38 immediately upon filing with the Office of Administrative Law, such
39 rules and regulations as the authority deems necessary to implement
40 the provisions of sections 13 through 22 of this act which shall be
41 effective for a period not to exceed 12 months and shall thereafter be
42 amended, adopted or re-adopted by the authority, in accordance with
43 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

44 c. Any regulations adopted to implement this act shall include
45 provisions to ensure that all programs necessary to comply with
46 *Abbott v. Burke*, 153 N.J. 480 (1998) (*Abbott V*), are approved.

1 27. (New section) All property of the authority shall be exempt from
2 levy and sale by virtue of an execution and no execution of other
3 judicial process shall issue against the same nor shall any judgment
4 against the authority be a charge or lien upon its property; provided
5 that nothing herein contained shall apply to or limit the rights of the
6 holder of any bonds, notes or other obligations to pursue any remedy
7 for the enforcement of any pledge or lien given by the authority on or
8 with respect to any project, school facilities project, or any revenues
9 or other moneys.

10
11 28. (New section) If any clause, sentence, paragraph, section or
12 part of this act shall be adjudged by any court of competent
13 jurisdiction to be invalid, the judgment shall not affect, impair or
14 invalidate the remainder thereof, but shall be confined in its operation
15 to the clause, sentence, paragraph, section or part thereof directly
16 involved in the controversy in which the judgment shall have been
17 rendered.

18
19 29. (New section) This act shall be construed liberally to effectuate
20 the legislative intent and the purposes of this act as complete and
21 independent authority for the performance of each act and thing herein
22 authorized and all powers herein granted shall be broadly interpreted
23 to effectuate the intent and purposes and not as a limitation of
24 powers.

25
26 30. (New section) There shall be appropriated annually for the
27 purposes of this act up to \$100,000,000 from monies made available
28 to the State from tobacco companies under the nationwide settlement
29 of the respective actions by the various states against those companies,
30 entered into by this State in the Master Settlement Agreement in State
31 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
32 Court, Chancery Division, Middlesex County, No.C.254-96.

33
34 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
35 read as follows:

36 11. Each school district and county vocational school district shall
37 make an annual report of its progress in conforming to the standards
38 for the evaluation of school performance adopted pursuant to section
39 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
40 shall include but not be limited to:

- 41 a. Demographic data related to each school;
- 42 b. Results of designated assessment programs, including Statewide
43 assessment programs established pursuant to law and regulation;
- 44 c. Information on each school's fiscal operation, including the
45 budget of each school;
- 46 d. (Deleted by amendment, P.L.1996, c.138).
- 47 e. Plans and programs for professional improvement;

1 f. Plans to carry out innovative educational programs designed to
2 improve the quality of education;

3 g. Recommendations for school improvements during the ensuing
4 year; and

5 h. Such additional information as may be prescribed by the
6 commissioner.

7 [Additionally, the State Board of Education may require each
8 district to submit a facilities survey, including current use practices and
9 projected capital project needs.]

10 The district reports shall be submitted to the commissioner annually
11 on a date to be prescribed by the commissioner, who shall make them
12 the basis for an annual report to the Governor and the Legislature,
13 describing the condition of education in New Jersey, the efforts of
14 New Jersey schools in meeting the standards of a thorough and
15 efficient education, the steps underway to correct deficiencies in
16 school performance, and the progress of New Jersey schools in
17 comparison to other state education systems in the United States.

18 (cf: P.L.1996, c.138, s.36)

19

20 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
21 read as follows:

22 1. a. In any State-operated school district created pursuant to the
23 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
24 established a Capital Project Control Board, hereinafter the board,
25 which shall be responsible for the review of any capital project
26 proposed by the State district superintendent provided that the State
27 district superintendent proposes that the capital project be financed in
28 whole or in part by school bonds or notes, or through a lease purchase
29 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
30 shall also be responsible for the certification to the State district
31 superintendent of schools and the Commissioner of Education of the
32 necessity for the capital project and the certification of the
33 appropriation to be made by the governing body of the municipality.

34 b. The board shall consist of five voting members. One member
35 shall be appointed by the Commissioner of Education and two
36 members shall be appointed by the chief executive officer with the
37 consent of a majority of the full membership of the local governing
38 body of the municipality or municipalities in which the school district
39 is located. If the school district is comprised of two municipalities,
40 each municipality shall be entitled to one member, appointed by the
41 executive officer with the consent of the governing body. If the school
42 district is comprised of more than two municipalities, each of the two
43 municipalities with the largest population according to the most recent
44 federal decennial census shall be entitled to one member, appointed by
45 the executive officer with the consent of the governing body.
46 However, if a local governing body fails to agree upon the selection of

1 either board member appointed by an executive officer, then the
2 Commissioner of Education shall make the appointment. One member
3 shall be appointed by the Director of the Division of Local
4 Government Services in the Department of Community Affairs who
5 shall have experience in the area of local finance and capital projects.
6 The fifth member shall be the State district superintendent of schools
7 who shall serve ex-officio and shall act as chairperson of the board.
8 The board members, except for the State district superintendent, shall
9 each serve for a term of one year commencing on July 1 of each year
10 and expiring on June 30 of the following year. Any vacancy in the
11 membership of the board shall be filled for the unexpired term in the
12 manner provided by the original appointment. Members of the board
13 may be employees of the State or any subdivision thereof. All
14 members of the board shall serve without compensation.

15 c. The board shall meet from time to time upon the request of the
16 State district superintendent. All meetings of the board shall be
17 conducted pursuant to the provisions of the "Open Public Meetings
18 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
19 superintendent, or his designee, shall be charged with the responsibility
20 of preparing a transcript of the proceedings and all votes shall be
21 recorded in writing.

22 (cf: P.L.1991, c.139, s.1)

23

24 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
25 read as follows:

26 2. The board shall hear the recommendation of the State district
27 superintendent concerning any proposed capital project, which is to be
28 financed in whole or in part by school bonds or notes, or through a
29 lease purchase agreement pursuant to subsection f. of
30 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
31 the proposed capital project to determine whether the project will
32 assist the State-operated school district in providing a thorough and
33 efficient system of education in that district. In making this
34 determination it may take into consideration factors such as the
35 conditions in the school district, any applicable educational goals, the
36 objectives and standards established by the State, the need for the
37 capital project, the reasonableness of the amount to be expended for
38 the capital project, the estimated time for the undertaking and
39 completion of the capital project, and any other factors which the
40 board may deem necessary including the relationship of the capital
41 project to the long-term capital budget or plan of the school district
42 and the fiscal implications thereof.

43 Following its review and within 60 days of the date on which the
44 State district superintendent submits the recommendation to the board,
45 the board shall adopt a resolution as to whether the State-operated
46 school district should undertake the capital project and providing its

1 reasons therefor. The board shall adopt a resolution indicating the
2 necessity for the capital project and shall also fix and determine by
3 resolution the amount necessary to be raised locally for the capital
4 project. If the board fails to act within 60 days of the submission date,
5 the State district superintendent shall submit the recommendation to
6 the commissioner who shall approve or disapprove the capital project.
7 If the board makes a decision which is contrary to the recommendation
8 of the superintendent, the superintendent may, within 30 days from the
9 date of the board's action, submit the matter to the commissioner for
10 final decision. If the commissioner determines that a capital project
11 should be undertaken, the commissioner shall so notify the board and
12 shall indicate the amount necessary to be raised locally for the capital
13 project. Upon notification, the board shall adopt a resolution
14 indicating the necessity for the capital project and shall also fix and
15 determine by resolution the amount necessary for the capital project
16 as indicated by the commissioner. Certified copies of any resolution
17 requesting the authorization and issuance of bonds and notes or the
18 authorization of a lease purchase agreement shall be delivered to the
19 State district superintendent, the Commissioner of Education, the
20 Director of the Division of Local Government Services in the
21 Department of Community Affairs and the governing body of the
22 municipality or municipalities in which the school district is located.
23 The board shall not approve or recommend any capital project which
24 is inconsistent with the provisions of N.J.S.18A:21-1.

25 (cf: P.L.1991, c.139, s.2)

26

27 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
28 read as follows:

29 3. Notwithstanding the provisions of any law to the contrary, the
30 cost of any capital project authorized pursuant to this act which is to
31 be funded by bonds or notes and certified by the board to the State
32 district superintendent, the Commissioner of Education, the Director
33 of the Division of Local Government Services in the Department of
34 Community Affairs and the governing body of the municipality or
35 municipalities in which the school district is located shall be financed
36 by the issuance of school bonds or notes pursuant to the provisions of
37 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
38 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
39 other obligations shall be authorized, issued, sold and delivered in the
40 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).

41 (cf: P.L.1991, c.139, s.3)

42

43 35. N.J.S.18A:20-4.2 is amended to read as follows:

44 18A:20-4.2 The board of education of any school district may, for
45 school purposes:

46 (a) Purchase, take and condemn lands within the district and lands

1 not exceeding 50 acres in extent without the district but situate in a
2 municipality or municipalities adjoining the district, but no more than
3 25 acres may be so acquired in any one such municipality, without the
4 district, except with the consent, by ordinance, of such municipality;

5 (b) Grade, drain and landscape lands owned or to be acquired by it
6 and improve the same in like manner;

7 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
8 repair or furnish buildings;

9 (d) Borrow money therefor, with or without mortgage; in the case
10 of a type II district without a board of school estimate, when
11 authorized so to do at any annual or special school election; and in the
12 case of a type II district having a board of school estimate, when the
13 amount necessary to be provided therefor shall have been fixed,
14 determined and certified by the board of school estimate; and in the
15 case of a type I district, when an ordinance authorizing expenditures
16 for such purpose is finally adopted by the governing body of a
17 municipality comprised within the district; provided, however, that no
18 such election shall be held nor shall any such resolution of a school
19 estimate board or ordinance of a municipal governing body be
20 introduced to authorize any lease of any building for a term exceeding
21 one year, until the proposed terms of such lease have been reviewed
22 and approved by the Commissioner of Education and the Local
23 Finance Board in the Department of Community Affairs;

24 (e) Construct, purchase, lease or otherwise acquire a building with
25 the federal government, the State, a political subdivision thereof or any
26 other individual or entity properly authorized to do business in the
27 State; provided that: (1) the noneducational uses of the building are
28 compatible with the establishment and operation of a school, as
29 determined by the Commissioner of Education; (2) the portion of the
30 building to be used as a school meets regulations of the Department of
31 Education; (3) the board of education has complied with the
32 provisions of law and regulations relating to the selection and approval
33 of sites; and (4) in the case of a lease, that any lease in excess of five
34 years shall be approved by the Commissioner of Education and the
35 Local Finance Board in the Department of Community Affairs;

36 (f) Acquire [by lease purchase agreement a site and school
37 building; provided that the site and building meet guidelines and
38 regulations of the Department of Education and that any lease
39 purchase agreement in excess of five years shall be approved by the
40 Commissioner of Education as in the best interest of the school district
41 after determining that the relationship of the proposed lease purchase
42 project to the district's goals and objectives established pursuant to
43 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
44 provided that for any lease purchase agreement in excess of five years
45 the Local Finance Board in the Department of Community Affairs shall
46 determine within 30 days that the cost and the financial terms and

1 conditions of the agreement are reasonable], with the approval of
2 either the commissioner, or voters or board of school estimate, as
3 applicable, improvements or additions to school buildings through
4 lease purchase agreements not in excess of five years. The agreement
5 shall be recorded as an expenditure of the General Fund of the district.
6 The commissioner shall approve the agreement only upon a
7 demonstration by the district that the lease purchase payments and any
8 operating expenses related to the agreement can be included within the
9 district's net budget spending growth limitation and will not result in
10 the need for approval by the voters or board of school estimate, as
11 appropriate, of additional spending proposals to maintain existing
12 instructional programs and extracurricular activities. If the
13 commissioner cannot approve the agreement, the board of education
14 may frame a separate question to authorize the lease purchase
15 agreement and obtain voter or board of school estimate approval to
16 enter into the agreement. A district may, without separate prior
17 approval of the commissioner, also acquire equipment through a lease
18 purchase agreement not in excess of five years, provided that the
19 amount of the first installment and each subsequent installment for the
20 lease purchase payments is included in the budget that is advertised
21 and submitted for approval to the voters of the district or the board of
22 school estimate, as appropriate. As used herein, a "lease purchase
23 agreement" refers to any agreement which gives the board of
24 education as lessee the option of purchasing the leased [premises]
25 equipment or improvements or additions to existing school buildings
26 during or upon termination of the lease, with credit toward the
27 purchase price of all or part of rental payments which have been made
28 by the board of education in accordance with the lease. As part of
29 such a transaction [approved by the Commissioner of Education], the
30 board of education may transfer or lease land or rights in land,
31 including any building thereon, after publicly advertising for proposals
32 for the transfer for nominal or fair market value, to the party selected
33 by the board of education, by negotiation or otherwise, after
34 determining that the proposal is in the best interest of the taxpayers of
35 the district, to construct or to improve and to lease or to own or to
36 have ownership interests in the site and the school building to be
37 leased pursuant to such lease purchase agreement, notwithstanding the
38 provisions of any other law to the contrary. The land and any building
39 thereon which is described in a lease purchase agreement entered into
40 pursuant to this amendatory act, shall be deemed to be and treated as
41 property of the school district, used for school purposes pursuant to
42 R.S.54:4-3.3, and shall not be considered or treated as property leased
43 to another whose property is not exempt, and shall not be assessed as
44 real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any
45 lease purchase agreement authorized by this section shall contain a
46 provision making payments thereunder subject to the annual

1 appropriation of funds sufficient to meet the required payments or
2 shall contain an annual cancellation clause and shall require all
3 construction contracts let by public school districts or let by
4 developers or owners of property used for school purposes to be
5 competitively bid, pursuant to [P.L.1977, c.114 (N.J.S.18A:18A-1 et
6 seq.)] N.J.S.18A:18A-1 et seq.;

7 (g) Establish with an individual or entity authorized to do business
8 in the State a tenancy in common, condominium, horizontal property
9 regime or other joint ownership arrangement on a site contributed by
10 the school district; provided the following conditions are met:

11 (1) The individual or entity agrees to construct on the site, or
12 provide for the construction thereon, a building or buildings for use of
13 the board of education separately or jointly with the individual or
14 entity, which shall be subject to the joint ownership arrangement;

15 (2) The provision of the building shall be at no cost or at a reduced
16 cost to the board of education;

17 (3) The school district shall not make any payment for use of the
18 building other than its pro rata share of costs of maintenance and
19 improvements;

20 (4) The noneducational uses of the building are compatible with the
21 establishment and operation of a school, as determined by the
22 Commissioner of Education;

23 (5) The portion of the building to be used as a school, and the site,
24 meet regulations of the Department of Education; and

25 (6) Any such agreement shall be approved by the Commissioner
26 of Education and the Local Finance Board in the Department of
27 Community Affairs;

28 (h) Acquire through sale and lease-back textbooks and
29 non-consumable instructional materials provided that the sale price and
30 principal amount of the lease-back do not exceed the fair market value
31 of the textbooks and instructional materials and that the interest rate
32 applied in the lease-back is consistent with prevailing market rates or
33 is less.

34 (cf: P.L.1998, c.55, s.1)

35

36 36. N.J.S.18A:22-18 is amended to read as follows:

37 18A:22-18. When a board of education of a type I district shall
38 determine by resolution that it is necessary to sell school bonds to
39 raise money for any capital project authorized by law, it shall prepare
40 and deliver to each member of the board of school estimate a
41 statement of the amount of money estimated to be necessary for such
42 purpose. The statement shall include the amount needed to be raised
43 by school bonds, the final eligible costs of the project as approved by
44 the commissioner pursuant to section 5 of P.L. .c. (C.) (now
45 pending before the Legislature as this bill) and in the case of a
46 demonstration project pursuant to section 6 of P.L. , c. (C.)

1 (now pending before the Legislature as this bill), and, if applicable,
2 the amount of any costs of the project which are in addition to the final
3 eligible costs.

4 (cf: P.L.1993, c.83, s.6)

5
6 37. N.J.S.18A:22-19 is amended to read as follows:

7 18A:22-19. The board of school estimate shall fix and determine the
8 local share amount necessary for said purpose and shall certify such
9 amount separately to the board of education and to the governing body
10 of the municipality.

11 (cf: N.J.S.18A:22-19)

12
13 38. N.J.S.18A:22-27 is amended to read as follows:

14 18A:22-27. Whenever the board of education in a type II school
15 district having a board of school estimate shall, by resolution adopted
16 by recorded roll call affirmative vote of two thirds of its full
17 membership, determine that it is necessary to sell school bonds to raise
18 money for any capital project, it shall, by such resolution, estimate the
19 amount necessary to be raised for such project or projects, itemizing
20 such estimate so as to make it readily understandable, and the
21 secretary of the board of education shall certify a copy of such
22 resolution to each member of the board of school estimate of the
23 district. The resolution shall include the amount needed to be raised
24 by school bonds, the final eligible costs of the project as approved by
25 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
26 pending before the Legislature as this bill) and in the case of a
27 demonstration project pursuant to section 6 of P.L. , c. (C.)
28 (now pending before the Legislature as this bill), and, if applicable,
29 the amount of any costs of the project which are in addition to the final
30 eligible costs.

31 (cf: P.L.1993, c.83, s.8)

32
33 39. N.J.S.18A:22-28 is amended to read as follows:

34 18A:22-28. The board of education of such district shall also, upon
35 delivery of such certificate to the members of the board of school
36 estimate, fix a date, place and time for the holding of a public hearing
37 by the board of school estimate with respect to the amount of money
38 to be raised locally for such project or projects, which date shall be not
39 less than 15 nor more than 30 days after the date of such delivery, and
40 shall cause notice of such public hearing and such resolution, including
41 a statement that said resolution will be on file and open to
42 examination to the public between reasonable hours to be fixed and at
43 a place to be named therein from the date of such notice until the date
44 of said public hearing, to be published at least once and not less than
45 seven days before such public hearing in at least one newspaper,
46 published in each municipality comprised within the school district,

1 and if no newspaper is published in any such municipality, then, as to
2 such municipality, in at least one newspaper circulating in the
3 municipality, and said board of education shall cause said resolution
4 to be on file and open to the examination of the public accordingly and
5 to be produced at said public hearing for the information of those
6 attending the same.

7 (cf: N.J.S.18A:22-28)

8

9 40. N.J.S.18A:22-29 is amended to read as follows:

10 18A:22-29. On the date and at the time and place so fixed for such
11 public hearing, the board of school estimate shall grant the taxpayers
12 and other interested persons an opportunity to present objections and
13 to be heard with respect to said resolution and the amount of money
14 necessary to be raised locally for such project or projects and with
15 respect to the various items and projects for which the same is to be
16 raised.

17 (cf: N.J.S.18A:22-29)

18

19 41. N.J.S.18A:22-30 is amended to read as follows:

20 18A:22-30. At or after such hearing the board of school estimate
21 shall fix and determine the amount of money necessary to be raised
22 locally for said project or projects, and the secretary of said board
23 shall certify said amount to the board of education of the district and
24 to the board or body of each municipality comprised therein which has
25 power to make appropriations of money to be raised by taxes in such
26 municipality. The board of education of the district and the governing
27 body of each such municipality comprising the district shall apportion
28 the amount so to be appropriated, assessed, levied and raised in each
29 of such municipalities, as nearly as may be, on the same basis and by
30 the application of the same standards as are provided by law for
31 apportionment of appropriations by county tax boards.

32 (cf: N.J.S.18A:22-30)

33

34 42. N.J.S.18A:22-39 is amended to read as follows:

35 18A:22-39. Whenever the undertaking of any capital project or
36 projects to be paid for from the proceeds of an issue or issue of bonds
37 is submitted to the voters of a type II district at an annual or special
38 school election for their approval or disapproval, the board shall frame
39 and adopt by a recorded roll call majority vote of its full membership
40 the question or questions to be submitted so that each project is
41 submitted in a separate question, or all or any number of them are
42 submitted in one question, which shall state the project or projects so
43 submitted and the amounts to be raised for each of the projects so
44 separately submitted or for each or for all of the projects so jointly
45 submitted, as the case may be, but any proposal for the purchase of
46 land shall be sufficient to authorize the taking and condemning of such

1 land. If the project is to be constructed by the New Jersey Economic
2 Development Authority or a redevelopment entity or by the district
3 with a grant pursuant to section 15 of P.L. , c. (C.) (now pending
4 before the Legislature as this bill), the referendum shall, when framed
5 as a single question, request approval for the local share and shall
6 disclose the final eligible costs of the project as approved by the
7 commissioner pursuant to section 5 of P.L. , c. (C.) (now
8 pending before the Legislature as this bill) and in the case of a
9 demonstration project pursuant to section 6 of P.L. , c. (C.) (now
10 pending before the Legislature as this bill), and, if applicable, the
11 amount of any costs of the project which are in addition to the final
12 eligible costs. If the school facilities project is not to be constructed
13 by the New Jersey Economic Development Authority or a
14 redevelopment entity or by the district with a grant pursuant to section
15 15 of P.L. , c. (C.) (now pending before the Legislature as this
16 bill), the referendum shall, when framed as a single question, request
17 approval for the total costs of the project, shall disclose State debt
18 service aid for the project and, if applicable, the amount of any costs
19 of the project which are in addition to the final eligible costs of the
20 project. When a project is framed in more than one question, a
21 summary shall be included in the explanatory statement which
22 accompanies the questions that includes the total costs of the project,
23 total State debt service aid, and, if applicable, the amount of the costs
24 of the project which are in addition to the final eligible costs of the
25 project, and any individual question containing costs in addition to the
26 final eligible costs shall include the amount of those additional costs.

27 The statement of additional costs in any ballot question and in any
28 explanatory statement that accompanies a ballot question shall describe
29 the additional costs as follows: "This project includes \$(insert
30 amount) for school facility construction elements in addition to the
31 facilities efficiency standards developed by the Commissioner of
32 Education."

33 (cf: P.L.1993, c.83, s.12)

34

35 43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read as
36 follows:

37 2. The Legislature hereby finds and determines that:

38 a. Department of Labor [and Industry] statistics of recent years
39 indicate a continuing decline in manufacturing employment within the
40 State, which is a contributing factor to the drastic unemployment
41 existing within the State, which far exceeds the national average, thus
42 adversely affecting the economy of the State and the prosperity,
43 safety, health and general welfare of its inhabitants and their standard
44 of living; that there is an urgent need to protect and enhance the
45 quality of the natural environment and to reduce, abate and prevent
46 environmental pollution derived from the operation of industry,

1 utilities and commerce within the State; and that the availability of
2 financial assistance and suitable facilities are important inducements to
3 new and varied employment promoting enterprises to locate in the
4 State, to existing enterprises to remain and expand in the State, and
5 to industry, utilities and commerce to reduce, abate and prevent
6 environmental pollution.

7 b. The provision of buildings, structures and other facilities to
8 increase opportunity for employment in manufacturing, industrial,
9 commercial, recreational, retail and service enterprises in the State is
10 in the public interest and it is a public purpose for the State to induce
11 and to accelerate opportunity for employment in such enterprises.

12 c. In order to aid in supplying these needs and to assist in the
13 immediate reduction of unemployment and to provide sufficient
14 employment for the citizens of the State in the future, it is necessary
15 and in the public interest to aid and encourage the immediate
16 commencement of new construction projects of all types, to induce
17 and facilitate the acquisition and installation at an accelerated rate of
18 such devices, equipment and facilities as may be required to reduce,
19 abate and prevent environmental pollution by industry, utilities and
20 commerce.

21 d. The availability of financial assistance by the State will reduce
22 present unemployment and improve future employment opportunities
23 by encouraging and inducing the undertaking of such construction
24 projects, the location, retaining or expanding of employment
25 promoting enterprises within the State, and the accelerated acquisition
26 and installation of energy saving improvements and pollution control
27 devices, equipment and facilities.

28 e. In many municipalities in our State substantial and persistent
29 unemployment exists; and many existing residential, industrial,
30 commercial and manufacturing facilities within such municipalities are
31 either obsolete, inefficient, dilapidated or are located without regard
32 to the master plans of such municipalities; and the obsolescence and
33 abandonment of existing facilities will increase with further
34 technological advances, the provision of modern, efficient facilities in
35 other states and the difficulty which many municipalities have in
36 attracting new facilities; and that many existing and planned
37 employment promoting facilities are far from or not easily accessible
38 to the places of residence of substantial numbers of unemployed and
39 underemployed persons.

40 f. By virtue of their architectural and cultural heritage, their
41 positions as principal centers of communication and transportation
42 and their concentration of productive and energy efficient facilities,
43 many municipalities are capable of ameliorating the conditions of
44 deterioration which impede sound community growth and
45 development; and that building a proper balance of housing, industrial
46 and commercial facilities and increasing the attractiveness of such

1 municipalities to persons of all income levels is essential to restoring
2 such municipalities as desirable places to live, work, shop and enjoy
3 life's amenities; that the accomplishment of these objectives is beyond
4 remedy solely by the regulatory process in the exercise of the police
5 power and cannot be dealt with effectively by the ordinary operations
6 of private enterprise without the powers provided herein, and that the
7 exercise of the powers herein provided is critical to continuing the
8 process of revitalizing such municipalities and will serve an urgent
9 public use and purpose.

10 The Legislature further determines that in order to aid in remedying
11 the aforesaid conditions and to further and implement the purposes of
12 this act, that there shall be created a body politic and corporate having
13 the powers, duties and functions provided in this act; and that the
14 authority and powers conferred under this act, and the expenditure of
15 moneys pursuant thereto constitute a serving of a valid public purpose;
16 and that the enactment of the provisions hereinafter set forth is in the
17 public interest and for the public benefit and good, and is hereby so
18 declared to be as a matter of express legislative determination.

19 The Legislature further finds and determines that:

20 g. It is essential that this and future generations of young people be
21 given the fullest opportunity to learn and develop their intellectual
22 capacities; that institutions of public elementary and secondary
23 education within the State be provided with the appropriate additional
24 means required to assist these young citizens in achieving the required
25 levels of learning and the complete development of their intellectual
26 abilities; and that the resources of the State be employed to meet the
27 tremendous demand for public elementary and secondary educational
28 opportunities.

29 h. Public elementary and secondary educational facilities are an
30 integral part of the effort in this State to provide educational
31 opportunities; it is the purpose of P.L. , c. (C.)(now pending
32 before the Legislature as this bill) to provide a measure of assistance
33 and an alternative method of financing to enable school districts to
34 provide the facilities which are so critically needed; the inventory of
35 public elementary and secondary school buildings and the equipment
36 and capital resources currently available are aging, both
37 chronologically and technologically; and the current funding at the
38 federal, State, and local levels and the current mechanisms for
39 construction of these capital projects are inadequate to meet the
40 demonstrated need for school facilities, and these inadequacies
41 necessitate additional sources of funding and the coordination of
42 construction activities at the State level to meet those needs.

43 i. While the credit status of New Jersey's school districts is sound,
44 it can be economically more reasonable to finance the costs of
45 developing the educational infrastructure of the State's public
46 elementary and secondary schools by providing for the funding of

1 capital projects through the issuance of bonds, notes or other
2 obligations by the New Jersey Economic Development Authority, to
3 be retired through annual payments made by the State subject to
4 appropriation by the State Legislature, and to provide for the use of
5 the proceeds of those bonds, notes or other obligations to pay for
6 educational infrastructure projects; and such a structure would
7 substantially reduce the costs of financing and provide for a more
8 efficient use of the funds available for the development of the
9 educational infrastructure.

10 j. The New Jersey Economic Development Authority has
11 substantial and significant experience in undertaking major capital
12 construction projects, has a system of internal controls and procedures
13 to ensure the integrity of construction activities, and is therefore the
14 appropriate entity to undertake the planning, design, construction, and
15 operation of educational infrastructure projects; and by authorizing the
16 New Jersey Economic Development Authority to undertake these
17 activities, there will be achieved economies of scale, better
18 coordination of resources, more effective financial management and
19 control and increased monitoring and quality control of school district
20 construction.

21 (cf: P.L.1983, c.282, s.1)

22

23 44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as
24 follows:

25 3. As used in this act, unless a different meaning clearly appears
26 from the context:

27 a. "Authority" means the New Jersey Economic Development
28 Authority, created by section 4 of this act.

29 b. "Bonds" means bonds or other obligations issued by the
30 authority pursuant to this act [or], "Economic Recovery Bonds or
31 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
32 bonds, notes, other obligations and refunding bonds issued by the
33 authority pursuant to P.L. , c. (C.)(now pending before the
34 Legislature as this bill).

35 c. "Cost" means the cost of the acquisition, construction,
36 reconstruction, repair, alteration, improvement and extension of any
37 building, structure, facility including water transmission facilities, or
38 other improvement; the cost of machinery and equipment; the cost of
39 acquisition, construction, reconstruction, repair, alteration,
40 improvement and extension of energy saving improvements or
41 pollution control devices, equipment or facilities; the cost of lands,
42 rights-in-lands, easements, privileges, agreements, franchises, utility
43 extensions, disposal facilities, access roads and site development
44 deemed by the authority to be necessary or useful and convenient for
45 any project or school facilities project or in connection therewith;
46 discount on bonds; cost of issuance of bonds; engineering and

1 inspection costs; costs of financial, legal, professional and other
2 estimates and advice; organization, administrative, insurance,
3 operating and other expenses of the authority or any person prior to
4 and during any acquisition or construction, and all such expenses as
5 may be necessary or incident to the financing, acquisition, construction
6 or completion of any project or school facilities project or part thereof,
7 and also such provision for reserves for payment or security of
8 principal of or interest on bonds during or after such acquisition or
9 construction as the authority may determine.

10 d. "County" means any county of any class.

11 e. "Development property" means any real or personal property,
12 interest therein, improvements thereon, appurtenances thereto and air
13 or other rights in connection therewith, including land, buildings,
14 plants, structures, systems, works, machinery and equipment acquired
15 or to be acquired by purchase, gift or otherwise by the authority within
16 an urban growth zone.

17 f. "Person" means any person, including individuals, firms,
18 partnerships, associations, societies, trusts, public or private
19 corporations, or other legal entities, including public or governmental
20 bodies, as well as natural persons. "Person" shall include the plural as
21 well as the singular.

22 g. "Pollution control project" means any device, equipment,
23 improvement, structure or facility, or any land and any building,
24 structure, facility or other improvement thereon, or any combination
25 thereof, whether or not in existence or under construction, or the
26 refinancing thereof in order to facilitate improvements or additions
27 thereto or upgrading thereof, and all real and personal property
28 deemed necessary thereto, having to do with or the end purpose of
29 which is the control, abatement or prevention of land, sewer, water,
30 air, noise or general environmental pollution, including, but not limited
31 to, any air pollution control facility, noise abatement facility, water
32 management facility, thermal pollution control facility, radiation
33 contamination control facility, wastewater collection system,
34 wastewater treatment works, sewage treatment works system, sewage
35 treatment system or solid waste disposal facility or site; provided that
36 the authority shall have received from the Commissioner of the State
37 Department of Environmental Protection or his duly authorized
38 representative a certificate stating the opinion that, based upon
39 information, facts and circumstances available to the State Department
40 of Environmental Protection and any other pertinent data, (1) said
41 pollution control facilities do not conflict with, overlap or duplicate
42 any other planned or existing pollution control facilities undertaken or
43 planned by another public agency or authority within any political
44 subdivision, and (2) that such facilities, as designed, will be a pollution
45 control project as defined in this act and are in furtherance of the
46 purpose of abating or controlling pollution.

1 h. "Project" means: (1) (a) acquisition, construction,
2 reconstruction, repair, alteration, improvement and extension of any
3 building, structure, facility, including water transmission facilities or
4 other improvement, whether or not in existence or under construction,
5 (b) purchase and installation of equipment and machinery, (c)
6 acquisition and improvement of real estate and the extension or
7 provision of utilities, access roads and other appurtenant facilities; and
8 (2) (a) the acquisition, financing, or refinancing of inventory, raw
9 materials, supplies, work in process, or stock in trade, or (b) the
10 financing, refinancing or consolidation of secured or unsecured debt,
11 borrowings, or obligations, or (c) the provision of financing for any
12 other expense incurred in the ordinary course of business; all of which
13 are to be used or occupied by any person in any enterprise promoting
14 employment, either for the manufacturing, processing or assembly of
15 materials or products, or for research or office purposes, including,
16 but not limited to, medical and other professional facilities, or for
17 industrial, recreational, hotel or motel facilities, public utility and
18 warehousing, or for commercial and service purposes, including, but
19 not limited to, retail outlets, retail shopping centers, restaurant and
20 retail food outlets, and any and all other employment promoting
21 enterprises, including, but not limited to, motion picture and television
22 studios and facilities and commercial fishing facilities, commercial
23 facilities for recreational fishermen, fishing vessels, aquaculture
24 facilities and marketing facilities for fish and fish products and (d)
25 acquisition of an equity interest in, including capital stock of, any
26 corporation; or any combination of the above, which the authority
27 determines will: (i) tend to maintain or provide gainful employment
28 opportunities within and for the people of the State, or (ii) aid, assist
29 and encourage the economic development or redevelopment of any
30 political subdivision of the State, or (iii) maintain or increase the tax
31 base of the State or of any political subdivision of the State, or (iv)
32 maintain or diversify and expand employment promoting enterprises
33 within the State; and (3) the cost of acquisition, construction,
34 reconstruction, repair, alteration, improvement and extension of an
35 energy saving improvement or pollution control project which the
36 authority determines will tend to reduce the consumption in a building
37 devoted to industrial or commercial purposes, or in an office building,
38 of nonrenewable sources of energy or to reduce, abate or prevent
39 environmental pollution within the State; and (4) the acquisition,
40 construction, reconstruction, repair, alteration, improvement,
41 extension, development, financing or refinancing of infrastructure and
42 transportation facilities or improvements related to economic
43 development and of cultural, recreational and tourism facilities or
44 improvements related to economic development and of capital facilities
45 for primary and secondary schools and of mixed use projects
46 consisting of housing and commercial development; and (5) the

1 establishment, acquisition, construction, rehabilitation, improvement,
2 and ownership of port facilities as defined in section 3 of P.L.1997,
3 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
4 any person for costs in connection with any project, or the refinancing
5 of any project or portion thereof, if determined by the authority as
6 necessary and in the public interest to maintain employment and the
7 tax base of any political subdivision and will facilitate improvements
8 thereto or the completion thereof, and (ii) development property and
9 any construction, reconstruction, improvement, alteration, equipment
10 or maintenance or repair, or planning and designing in connection
11 therewith. For the purpose of carrying out mixed use projects
12 consisting of both housing and commercial development, the authority
13 may enter into agreements with the New Jersey Housing and Mortgage
14 Finance Agency for loan guarantees for any such project in accordance
15 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
16 that purpose shall allocate to the New Jersey Housing and Mortgage
17 Finance Agency, under such agreements, funding available pursuant to
18 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
19 shall not include a school facilities project.

20 i. "Revenues" means receipts, fees, rentals or other payments to be
21 received on account of lease, mortgage, conditional sale, or sale, and
22 payments and any other income derived from the lease, sale or other
23 disposition of a project, moneys in such reserve and insurance funds
24 or accounts or other funds and accounts, and income from the
25 investment thereof, established in connection with the issuance of
26 bonds or notes for a project or projects, and fees, charges or other
27 moneys to be received by the authority in respect of projects or school
28 facilities projects and contracts with persons.

29 j. "Resolution" means any resolution adopted or trust agreement
30 executed by the authority, pursuant to which bonds of the authority
31 are authorized to be issued.

32 k. "Energy saving improvement" means the construction, purchase
33 and installation in a building devoted to industrial or commercial
34 purposes of any of the following, designed to reduce the amount of
35 energy from nonrenewable sources needed for heating and cooling that
36 building: insulation, replacement burners, replacement high efficiency
37 heating and air conditioning units, including modular boilers and
38 furnaces, water heaters, central air conditioners with or without heat
39 recovery to make hot water for industrial or commercial purposes or
40 in office buildings, and any solar heating or cooling system
41 improvement, including any system which captures solar radiation to
42 heat a fluid which passes over or through the collector element of that
43 system and then transfers that fluid to a point within the system where
44 the heat is withdrawn from the fluid for direct usage or storage. These
45 systems shall include, but not necessarily be limited to, systems
46 incorporating flat plate, evacuated tube or focusing solar collectors.

1 The foregoing list shall not be construed to be exhaustive, and shall
2 not serve to exclude other improvements consistent with the legislative
3 intent of this amendatory act.

4 l. "Urban growth zone" means any area within a municipality
5 receiving State aid pursuant to the provisions of P.L.1978, c.14
6 (C.52:27D-178 et seq.) or a municipality certified by the
7 Commissioner of Community Affairs to qualify under such law in
8 every respect except population, which area has been so designated
9 pursuant to an ordinance of the governing body of such municipality.

10 m. "District" means a local or regional school district established
11 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
12 Statutes, a county special services school district established pursuant
13 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
14 county vocational school district established pursuant to article 3 of
15 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
16 operated school district established pursuant to P.L.1987, c.399
17 (C.18A:7A-34 et seq.).

18 n. "Local unit" means a county, municipality, board of education or
19 any other political entity authorized to construct, operate and maintain
20 a school facilities project and to borrow money for those purposes
21 pursuant to Title 18A of the New Jersey Statutes.

22 o. "Refunding bonds" means bonds, notes or other obligations
23 issued to refinance bonds previously issued by the authority pursuant
24 to P.L.1974, c.80 (C34:1B-1 et seq.) and P.L. , c. (C.)(now
25 pending before the Legislature as this bill).

26 p. "School facilities project" means the acquisition, demolition,
27 construction, improvement, repair, alteration, modernization,
28 renovation, reconstruction or maintenance of all or any part of a
29 school facility or of any other personal property necessary for, or
30 ancillary to, any school facility, and shall include fixtures, furnishings
31 and equipment, and shall also include, but is not limited to, site
32 acquisition, site development, the services of design professionals,
33 such as engineers and architects, construction management, legal
34 services, financing costs and administrative costs and expenses
35 incurred in connection with the project.

36 q. "School facility" means and includes any structure, building or
37 facility used wholly or in part for academic purposes by a district, but
38 shall exclude athletic stadiums, grandstands, and any structure,
39 building or facility used solely for school administration.

40 (cf: P.L.1997, c.150, s.22)

41
42 45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read
43 as follows:

44 4. a. There is hereby established in, but not of, the Department of
45 [Commerce and Economic Development] the Treasury a public body
46 corporate and politic, with corporate succession, to be known as the

1 "New Jersey Economic Development Authority." The authority is
2 hereby constituted as an instrumentality of the State exercising public
3 and essential governmental functions, and the exercise by the authority
4 of the powers conferred by this act shall be deemed and held to be an
5 essential governmental function of the State.

6 b. The authority shall consist of the Commissioner of Banking, the
7 ~~Commissioner of Commerce and Economic Development~~ Chief
8 Executive Officer and Secretary of the New Jersey Commerce and
9 Economic Growth Commission, the Commissioner of Labor, the
10 Commissioner of Education, and the State Treasurer, who shall be
11 members ex officio, and ~~six~~ eight public members appointed by the
12 Governor ~~[with the advice and consent of the Senate, of which one]~~
13 as follows: two public ~~[member]~~ members (who shall not be ~~[a~~
14 ~~legislator]~~ legislators) shall be appointed by the Governor upon
15 recommendation of the Senate President ~~[and one]; two~~ public
16 ~~[member]~~ members (who shall not be ~~[a legislator]~~ legislators) shall
17 be appointed by the Governor upon recommendation of the Speaker
18 of the General Assembly; and four public members shall be appointed
19 by the Governor, with the advice and consent of the Senate, all for
20 terms of three years. ~~[The first two public member positions on the~~
21 ~~authority that are or become vacant on or after the effective date of~~
22 ~~P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of~~
23 ~~the Governor upon the recommendation of the Senate President and~~
24 ~~the Speaker of the General Assembly, respectively.]~~ Each member
25 shall hold office for the term of his appointment and until his successor
26 shall have been appointed and qualified. A member shall be eligible for
27 reappointment. Any vacancy in the membership occurring other than
28 by expiration of term shall be filled in the same manner as the original
29 appointment but for the unexpired term only. In the event the
30 authority shall by resolution determine to accept the declaration of an
31 urban growth zone by any municipality, the mayor or other chief
32 executive officer of such municipality shall ex officio be a member of
33 the authority for the purpose of participating and voting on all matters
34 pertaining to such urban growth zone.

35 The Governor shall appoint ~~[with the advice and consent of the~~
36 ~~Senate,]~~ three alternate members of the authority~~[, of which]~~ as
37 follows: one alternate member (who shall not be a legislator) shall be
38 appointed by the Governor upon the recommendation of the Senate
39 President~~[, and]; one~~ alternate member (who shall not be a legislator)
40 shall be appointed by the Governor upon the recommendation of the
41 Speaker of the General Assembly ; and one alternate member shall be
42 appointed by the Governor with the advice and consent of the Senate,
43 all for terms of three years. ~~[The first two alternate member positions~~
44 ~~on the authority that are or become vacant on or after the effective~~
45 ~~date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by~~

1 appointment of the Governor upon the recommendation of the Senate
2 President and the Speaker of the General Assembly, respectively.]
3 The chairperson may authorize an alternate member, in order of
4 appointment, to exercise all of the powers, duties and responsibilities
5 of such member, including, but not limited to, the right to vote on
6 matters before the authority.

7 Each alternate member shall hold office for the term of his
8 appointment and until his successor shall have been appointed and
9 qualified. An alternate member shall be eligible for reappointment.
10 Any vacancy in the alternate membership occurring other than by the
11 expiration of a term shall be filled in the same manner as the original
12 appointment but for the unexpired term only. Any reference to a
13 member of the authority in this act shall be deemed to include alternate
14 members unless the context indicates otherwise.

15 The terms of office of the members and alternate members of the
16 authority appointed by the Governor who are serving on the effective
17 date of P.L. , c. (C.) (now pending before the Legislature as this
18 bill) shall expire upon the appointment by the Governor of eight public
19 members and three alternate members. The initial appointments of the
20 eight public members shall be as follows: the two members appointed
21 upon the recommendation of the President of the Senate and the two
22 members appointed upon the recommendation of the Speaker of the
23 General Assembly shall serve terms of three years; two members shall
24 serve terms of two years; and two members shall serve terms of one
25 year. The initial appointments of the alternate members shall be as
26 follows: the alternate member appointed upon the recommendation of
27 the President of the Senate shall serve a term of three years; the
28 alternate member appointed upon the recommendation of the Speaker
29 of the General Assembly shall serve a term of two years; and one
30 alternate member shall serve a term of one year.

31 c. Each member appointed by the Governor may be removed from
32 office by the Governor, for cause, after a public hearing, and may be
33 suspended by the Governor pending the completion of such hearing.
34 Each member before entering upon his duties shall take and subscribe
35 an oath to perform the duties of his office faithfully, impartially and
36 justly to the best of his ability. A record of such oaths shall be filed in
37 the office of the Secretary of State.

38 d. [The Commissioner of Commerce and Economic Development
39 may, at his discretion, serve as the chairperson of the authority or may
40 appoint one of the six public members of the authority as chairperson.
41 Any such designation or appointment shall be made in writing and shall
42 be delivered to the authority and to the Governor and shall continue
43 in effect until revoked or amended by a writing delivered to the
44 authority and the Governor.] A chairperson shall be appointed by the
45 Governor, with the advice and consent of the Senate, from the public
46 members. The members of the authority shall elect from their

1 remaining number a vice chairperson and a treasurer thereof. The
2 authority shall employ an executive director who shall be its secretary
3 and chief executive officer. The powers of the authority shall be
4 vested in the members thereof in office from time to time and [six]
5 seven members of the authority shall constitute a quorum at any
6 meeting thereof. Action may be taken and motions and resolutions
7 adopted by the authority at any meeting thereof by the affirmative vote
8 of at least [six] seven members of the authority. No vacancy in the
9 membership of the authority shall impair the right of a quorum of the
10 members to exercise all the powers and perform all the duties of the
11 authority.

12 e. Each member of the authority shall execute a bond to be
13 conditioned upon the faithful performance of the duties of such
14 member in such form and amount as may be prescribed by the Director
15 of the Division of Budget and Accounting in the Department of the
16 Treasury. Such bonds shall be filed in the office of the Secretary of
17 State. At all times thereafter the members and treasurer of the
18 authority shall maintain such bonds in full force and effect. All costs
19 of such bonds shall be borne by the authority.

20 f. The members of the authority shall serve without
21 compensation, but the authority shall reimburse its members for actual
22 expenses necessarily incurred in the discharge of their duties.
23 Notwithstanding the provisions of any other law, no officer or
24 employee of the State shall be deemed to have forfeited or shall forfeit
25 his office or employment or any benefits or emoluments thereof by
26 reason of his acceptance of the office of ex officio member of the
27 authority or his services therein.

28 g. Each ex officio member of the authority may designate an
29 officer or employee of his department to represent him at meetings of
30 the authority, and each such designee may lawfully vote and otherwise
31 act on behalf of the member for whom he constitutes the designee.
32 Any such designation shall be in writing delivered to the authority and
33 shall continue in effect until revoked or amended by writing delivered
34 to the authority.

35 h. The authority may be dissolved by act of the Legislature on
36 condition that the authority has no debts or obligations outstanding or
37 that provision has been made for the payment or retirement of such
38 debts or obligations. Upon any such dissolution of the authority, all
39 property, funds and assets thereof shall be vested in the State.

40 i. A true copy of the minutes of every meeting of the authority
41 shall be forthwith delivered by and under the certification of the
42 secretary thereof to the Governor. No action taken at such meeting
43 by the authority shall have force or effect until 10 days, Saturdays,
44 Sundays, and public holidays excepted, after the copy of the minutes
45 shall have been so delivered, unless during such 10-day period the
46 Governor shall approve the same in which case such action shall

1 become effective upon such approval. If, in that 10-day period, the
2 Governor returns such copy of the minutes with veto of any action
3 taken by the authority or any member thereof at such meeting, such
4 action shall be null and void and of no effect. The powers conferred
5 in this subsection i. upon the Governor shall be exercised with due
6 regard for the rights of the holders of bonds and notes of the authority
7 at any time outstanding, and nothing in, or done pursuant to, this
8 subsection i. shall in any way limit, restrict or alter the obligation or
9 powers of the authority or any representative or officer of the
10 authority to carry out and perform in every detail each and every
11 covenant, agreement or contract at any time made or entered into by
12 or on behalf of the authority with respect to its bonds or notes or for
13 the benefit, protection or security of the holders thereof.

14 j. On or before March 31 in each year, the authority shall make
15 an annual report of its activities for the preceding calendar year to the
16 Governor and the Legislature. Each such report shall set forth a
17 complete operating and financial statement covering the authority's
18 operations during the year. The authority shall cause an audit of its
19 books and accounts to be made at least once in each year by certified
20 public accountants and cause a copy thereof to be filed with the
21 Secretary of State and the Director of the Division of Budget and
22 Accounting in the Department of the Treasury.

23 k. The Director of the Division of Budget and Accounting in the
24 Department of the Treasury and his legally authorized representatives
25 are hereby authorized and empowered from time to time to examine
26 the accounts, books and records of the authority including its receipts,
27 disbursements, contracts, sinking funds, investments and any other
28 matters relating thereto and to its financial standing.

29 l. No member, officer, employee or agent of the authority shall
30 be interested, either directly or indirectly, in any project or school
31 facilities project, or in any contract, sale, purchase, lease or transfer of
32 real or personal property to which the authority is a party.

33 (cf: P.L.1995, c.227)

34

35 46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as
36 follows:

37 5. The authority shall have the following powers:

38 a. To adopt bylaws for the regulation of its affairs and the conduct
39 of its business;

40 b. To adopt and have a seal and to alter the same at pleasure;

41 c. To sue and be sued;

42 d. To acquire in the name of the authority by purchase or
43 otherwise, on such terms and conditions and such manner as it may
44 deem proper, or by the exercise of the power of eminent domain in the
45 manner provided by the Eminent Domain Act of 1971, P.L.1971,
46 c.361 (C.20:3-1 et seq.), any lands or interests therein or other

1 property which it may determine is reasonably necessary for any
2 project or school facilities project; provided, however, that the
3 authority in connection with any project shall not take by exercise of
4 the power of eminent domain any real property except upon consent
5 thereto given by resolution of the governing body of the municipality
6 in which such real property is located; and provided further that the
7 authority shall be limited in its exercise of the power of eminent
8 domain in connection with any project to municipalities receiving State
9 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
10 to municipalities which had a population, according to the latest
11 federal decennial census, in excess of 10,000;

12 e. To enter into contracts with a person upon such terms and
13 conditions as the authority shall determine to be reasonable, including,
14 but not limited to, reimbursement for the planning, designing,
15 financing, construction, reconstruction, improvement, equipping,
16 furnishing, operation and maintenance of the project or the school
17 facilities project and to pay or compromise any claims arising
18 therefrom;

19 f. To establish and maintain reserve and insurance funds with
20 respect to the financing of the project or the school facilities project;

21 g. To sell, convey or lease to any person all or any portion of a
22 project or school facilities project, for such consideration and upon
23 such terms as the authority may determine to be reasonable;

24 h. To mortgage, pledge or assign or otherwise encumber all or any
25 portion of a project , school facilities project or revenues, whenever
26 it shall find such action to be in furtherance of the purposes of this act
27 and P.L. , c. (C.)(now pending before the Legislature as this
28 bill);

29 i. To grant options to purchase or renew a lease for any of its
30 projects or school facilities projects on such terms as the authority may
31 determine to be reasonable;

32 j. To contract for and to accept any gifts or grants or loans of funds
33 or property or financial or other aid in any form from the United States
34 of America or any agency or instrumentality thereof, or from the State
35 or any agency, instrumentality or political subdivision thereof, or from
36 any other source and to comply, subject to the provisions of the act
37 and P.L. , c. (C.)(now pending before the Legislature as this
38 bill), with the terms and conditions thereof;

39 k. In connection with any application for assistance under this act
40 or P.L. , c. (C.)(now pending before the Legislature as this bill)
41 or commitments therefor, to require and collect such fees and charges
42 as the authority shall determine to be reasonable;

43 l. To adopt, amend and repeal regulations to carry out the
44 provisions of this act and P.L. , c. (C.)(now pending before the
45 Legislature as this bill);

46 m. To acquire, purchase, manage and operate, hold and dispose of

- 1 real and personal property or interests therein, take assignments of
2 rentals and leases and make and enter into all contracts, leases,
3 agreements and arrangements necessary or incidental to the
4 performance of its duties;
- 5 n. To purchase, acquire and take assignments of notes, mortgages
6 and other forms of security and evidences of indebtedness;
- 7 o. To purchase, acquire, attach, seize, accept or take title to any
8 project or school facilities project by conveyance or by foreclosure,
9 and sell, lease, manage or operate any project or school facilities
10 project for a use specified in this act and P.L. , c. (C.)(now
11 pending before the Legislature as this bill);
- 12 p. To borrow money and to issue bonds of the authority and to
13 provide for the rights of the holders thereof, as provided in this act and
14 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 15 q. To extend credit or make loans to any person for the planning,
16 designing, acquiring, constructing, reconstructing, improving,
17 equipping and furnishing of a project or school facilities project, which
18 credits or loans may be secured by loan and security agreements,
19 mortgages, leases and any other instruments, upon such terms and
20 conditions as the authority shall deem reasonable, including provision
21 for the establishment and maintenance of reserve and insurance funds,
22 and to require the inclusion in any mortgage, lease, contract, loan and
23 security agreement or other instrument, such provisions for the
24 construction, use, operation and maintenance and financing of a
25 project or school facilities project as the authority may deem necessary
26 or desirable;
- 27 r. To guarantee up to 90% of the amount of a loan to a person, if
28 the proceeds of the loan are to be applied to the purchase and
29 installation, in a building devoted to industrial or commercial
30 purposes, or in an office building, of an energy improvement system;
- 31 s. To employ consulting engineers, architects, attorneys, real estate
32 counselors, appraisers, and such other consultants and employees as
33 may be required in the judgment of the authority to carry out the
34 purposes of the act and P.L. , c. (C.)(now pending before the
35 Legislature as this bill), and to fix and pay their compensation from
36 funds available to the authority therefor, all without regard to the
37 provisions of Title 11A of the New Jersey Statutes;
- 38 t. To do and perform any acts and things authorized by this act and
39 P.L. , c. (C.)(now pending before the Legislature as this bill)
40 under, through or by means of its own officers, agents and employees,
41 or by contract with any person;
- 42 u. To procure insurance against any losses in connection with its
43 property, operations or assets in such amounts and from such insurers
44 as it deems desirable;
- 45 v. To do any and all things necessary or convenient to carry out its
46 purposes and exercise the powers given and granted in the act and

- 1 P.L. , c. (C.)(now pending before the Legislature as this bill);
2 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
3 maintain or repair or provide for the construction, reconstruction,
4 improvement, alteration, equipping or maintenance or repair of any
5 development property and lot, award and enter into construction
6 contracts, purchase orders and other contracts with respect thereto,
7 upon such terms and conditions as the authority shall determine to be
8 reasonable, including, but not limited to, reimbursement for the
9 planning, designing, financing, construction, reconstruction,
10 improvement, equipping, furnishing, operation and maintenance of any
11 such development property and the settlement of any claims arising
12 therefrom and the establishment and maintenance of reserve funds with
13 respect to the financing of such development property;
- 14 x. When authorized by the governing body of a municipality
15 exercising jurisdiction over an urban growth zone, to construct, cause
16 to be constructed or to provide financial assistance to projects in an
17 urban growth zone which shall be exempt from the terms and
18 requirements of the land use ordinances and regulations, including, but
19 not limited to, the master plan and zoning ordinances, of such
20 municipality; and
- 21 y. To enter into business employment incentive agreements as
22 provided in the "Business Employment Incentive Program Act,"
23 P.L.1996, c.26 (C.34:1B-124 et al.)[.];
- 24 z. To undertake school facilities projects and to enter into
25 agreements or contracts, execute instruments, and do and perform all
26 acts or things necessary, convenient or desirable for the purposes of
27 the authority to carry out any power expressly provided pursuant to
28 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
29 pending before the Legislature as this bill), including, but not limited
30 to, entering into contracts with the State Treasurer, the Commissioner
31 of Education, districts and any other entity which may be required in
32 order to carry out the provisions of P.L. , c. (C.)(now pending
33 before the Legislature as this bill);
- 34 aa. To enter into leases, rentals or other disposition of a real
35 property interest in and of any school facilities project to or from any
36 local unit pursuant to P.L. , c. (C.)(now pending before the
37 Legislature as this bill);
- 38 bb. To make and contract to make loans or leases and to make
39 grants to local units to finance the cost of school facilities projects and
40 to acquire and contract to acquire bonds, notes or other obligations
41 issued or to be issued by local units to evidence the loans or leases, all
42 in accordance with the provisions of P.L. , c. (C.)(now pending
43 before the Legislature as this bill);
- 44 cc. Subject to any agreement with holders of its bonds issued to
45 finance a project or school facilities project, obtain as security or to
46 provide liquidity for payment of all or any part of the principal of and

1 interest and premium on the bonds of the authority or for the purchase
2 upon tender or otherwise of the bonds, lines of credit, letters of credit,
3 reimbursement agreements, interest rate exchange agreements,
4 currency exchange agreements, interest rate floors or caps, options,
5 puts or calls to hedge payment, currency, rate, spread or similar
6 exposure or similar agreements, float agreements, forward agreements,
7 insurance contract, surety bond, commitment to purchase or sell
8 bonds, purchase or sale agreement, or commitments or other contracts
9 or agreements, and other security agreements or instruments in any
10 amounts and upon any terms as the authority may determine and pay
11 any fees and expenses required in connection therewith;

12 dd. To charge to and collect from local units, the State and any
13 other person, any fees and charges in connection with the authority's
14 actions undertaken with respect to school facilities projects, including,
15 but not limited to, fees and charges for the authority's administrative,
16 organization, insurance, operating and other expenses incident to the
17 financing, construction and placing into service and maintenance of
18 school facilities projects.

19 (cf: P.L.1996, c.26, s.16)

20

21 47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to read
22 as follows:

23 1. The New Jersey Economic Development Authority shall adopt
24 rules and regulations requiring that not less than the prevailing wage
25 rate be paid to workers employed in the performance of construction
26 contracts undertaken in connection with [Authority financial
27 assistance] any of its projects or school facilities projects. The
28 prevailing wage rate shall be the rate determined by the Commissioner
29 of Labor [and Industry] pursuant to the provisions of P.L.1963,
30 c.150 (C.34:11-56.25 et seq.).

31 (cf: P.L.1979, c.303, s.1)

32

33 48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to read
34 as follows:

35 4. a. The New Jersey Economic Development Authority shall adopt
36 rules and regulations to establish an affirmative action program for the
37 hiring of minority workers employed in the performance of
38 construction contracts undertaken in connection with any of its
39 projects [receiving Authority assistance] and school facilities
40 projects, and to expand the business opportunities of socially and
41 economically disadvantaged contractors and vendors seeking to
42 provide materials and services for those contracts, consistent with the
43 provisions of the "Law Against Discrimination," P.L.1945, c.169
44 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
45 proper enforcement and administration of such rules and regulations.

46 b. Within 180 days of the effective date of P.L. , c. (C.)(now

1 pending before the Legislature as this bill), but before adoption of its
2 rules and regulations concerning its affirmative action program, the
3 authority shall submit the proposed rules and regulations to the
4 presiding officers and the standing committees on State government
5 of both houses of the Legislature for their review.

6 (cf: P.L.1979, c.303, s.4)

7

8 49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read
9 as follows:

10 15. The exercise of the powers granted by this act and P.L. , c.
11 (C.)(now pending before the Legislature as this bill) shall constitute
12 the performance of an essential governmental function and the
13 authority shall not be required to pay any taxes or assessments upon
14 or in respect of a project or school facilities project, or any property
15 or moneys of the authority, and the authority, its projects and school
16 facilities projects, property and moneys and any bonds and notes
17 issued under the provisions of this act and P.L. , c. (C.)(now
18 pending before the Legislature as this bill), their transfer and the
19 income therefrom, including any profit made on the sale thereof, shall
20 at all times be free from taxation of every kind by the State except for
21 transfer, inheritance and estate taxes and by any political subdivision
22 of the State; provided, that any person occupying a project whether
23 as lessee, vendee or otherwise shall, as long as title thereto shall
24 remain in the authority, pay to the political subdivision in which such
25 project is located a payment in lieu of taxes which shall equal the
26 taxes on real and personal property, including water and sewer service
27 charges or assessments, which such person would have been required
28 to pay had it been the owner of such property during the period for
29 which such payment is made and neither the authority nor its projects,
30 properties, money or bonds and notes shall be obligated, liable or
31 subject to lien of any kind for the enforcement, collection or payment
32 thereof. If and to the extent the proceedings under which the bonds
33 authorized to be issued under the provisions of this act so provide, the
34 authority may agree to cooperate with such person occupying a
35 project, in connection with any administrative or judicial proceedings
36 for determining the validity or amount of such payments and may
37 agree to appoint or designate and reserve the right in and for such
38 person to take all action which the authority may lawfully take in
39 respect of such payments and all matters relating thereto, provided
40 such person shall bear and pay all costs and expenses of the authority
41 thereby incurred at the request of such person or by reason of any
42 such action taken by such person in behalf of the authority. If such
43 person occupying a project has paid the amounts in lieu of taxes
44 required by this section to be paid such person shall not be required
45 to pay any such taxes as to which a payment in lieu thereof has been
46 made to the State or to any political subdivision, any other statute to

1 the contrary notwithstanding.

2 (cf: P.L.1974, c.80, s.15)

3

4 50. (New section) In the exercise of powers granted by P.L. ,
5 c. (C.)(now pending before the Legislature as this bill) in
6 connection with any school facilities project, any and all claims,
7 damages, losses, liabilities or costs that the authority may incur shall
8 be payable only from the amounts made available to the authority
9 pursuant to that act. In connection with any agreement or contract
10 entered into by the authority relating to any school facilities project,
11 there shall be no recovery against the authority for punitive or
12 consequential damages arising out of contract nor shall there be any
13 recovery against the authority for claims based upon implied
14 warranties or upon contracts implied in law.

15

16 51. (New section) a. No municipality shall modify or change the
17 drawings, plans or specifications for the construction, reconstruction,
18 rehabilitation, alteration or improvement of any school facilities
19 project of the authority, or the construction, plumbing, heating,
20 lighting or other mechanical branch of work necessary to complete the
21 work in question, nor to require that any person, firm or corporation
22 employed on any such work shall perform the work in any other or
23 different manner than that provided by the drawings, plans and
24 specifications, nor to require that any person, firm or corporation
25 obtain any other or additional authority, approval, permit or certificate
26 from the municipality in relation to the work being done, and the doing
27 of the work by any person, firm or corporation in accordance with the
28 terms of the drawings, plans, specifications or contracts shall not
29 subject the person, firm or corporation to any liability or penalty, civil
30 or criminal, other than as may be stated in the contracts or incidental
31 to the proper enforcement thereof; nor shall any municipality require
32 the authority or any person, firm, partnership or corporation which
33 leases or purchases the school facilities project for lease or purchase
34 to a State agency, to obtain any other or additional authority,
35 approval, permit, certificate or certificate of occupancy from the
36 municipality as a condition of owning, using, maintaining, operating or
37 occupying any school facilities project acquired, constructed,
38 reconstructed, rehabilitated, altered or improved by the authority or by
39 any subsidiary thereof. The foregoing provisions shall not preclude
40 any municipality from exercising the right of inspection for the purpose
41 of requiring compliance by any school facilities project with local
42 requirements for operation and maintenance affecting the health, safety
43 and welfare of the occupants thereof, provided that the compliance
44 does not require changes, modifications or additions to the original
45 construction of the school facilities project.

46 b. Each municipality in which any school facilities project of the

1 authority is located shall provide for the school facilities project,
2 whether then owned by the authority, any subsidiary, any State agency
3 or any person, firm, partnership or corporation, police, fire, sanitation,
4 health protection and other municipal services of the same character
5 and to the same extent as those provided for other residents of the
6 municipality.

7 c. In carrying out any school facilities project, the authority may
8 enter into contractual agreements with local government agencies with
9 respect to the furnishing of any community, municipal or public
10 facilities or services necessary or desirable for the school facilities
11 project, and any local government agency may enter into these
12 contractual agreements with the authority and do all things necessary
13 to carry out its obligations.

14

15 52. (New section) a. The authority, in the exercise of its authority
16 to make and enter into contracts and agreements for school facilities
17 projects necessary or incidental to the performance of its duties and
18 the execution of its powers, shall adopt standing rules and procedures
19 providing that no contract on behalf of the authority in connection
20 with a school facilities project shall be entered into for the doing of
21 any work, or for the hiring of equipment or vehicles, where the sum to
22 be expended exceeds the sum of \$7,500 unless the authority shall first
23 publicly advertise for bids therefor, and shall award the contract to the
24 lowest responsible bidder. Advertising shall not be required where
25 the contract to be entered into is one for the furnishing or performing
26 of services of a professional nature or for the supplying of any product
27 or the rendering of any service by a public utility subject to the
28 jurisdiction of the Board of Public Utilities and tariffs and schedules
29 of the charges made, charged, or exacted by the public utility for any
30 products to be supplied or services to be rendered are filed with the
31 board. This section shall not prevent the authority from having any
32 work done by its own employees, nor shall it apply to repairs, or to
33 the furnishing of materials, supplies or labor, or the hiring of
34 equipment or vehicles, when the safety or protection of its or other
35 public property or the public convenience requires, or the exigency of
36 the accomplishment of the school facilities projects will not allow
37 advertisement. In that case, the board of directors of the authority
38 shall, by resolution, declare the exigency or emergency to exist, and
39 set forth in the resolution the nature thereof and the approximate
40 amount to be so expended.

41 b. (1) In undertaking any school facilities project where the cost of
42 construction, reconstruction, rehabilitation or improvement will exceed
43 \$25,000 the authority shall be subject to the rules and regulations of
44 the Division of Property Management and Construction concerning
45 procedural requirements for the making, negotiating or awarding of
46 purchases, contracts or agreements and the prequalification and

1 classification of bidders; and the authority, with the assistance of the
2 division, may prepare, or cause to be prepared, separate plans and
3 specifications for:

4 (a) The plumbing and gas fitting and all work and materials kindred
5 thereto,

6 (b) The steam and hot water heating and ventilating apparatus,
7 steam power plants and all work and materials kindred thereto,

8 (c) The electrical work,

9 (d) Structural steel and ornamental iron work and materials, and

10 (e) General construction, which shall include all other work and
11 materials required to complete the building.

12 (2) The authority shall receive (a) separate bids for each of the
13 branches of work specified in paragraph (1) of this subsection; or (b)
14 bids for all the work and materials required to complete the school
15 facilities projects to be included in a single overall contract, in which
16 case there shall be set forth in the bid the name or names of all
17 subcontractors to whom the bidder will subcontract for the furnishing
18 of any of the work and materials specified in branches (a) through (d)
19 in paragraph (1) of this subsection; or (c) both.

20 (3) Contracts shall be awarded to the lowest responsible bidder in
21 each branch of work in the case of separate bids and to the single
22 lowest responsible bidder in the case of single bids. In the event that
23 a contract is advertised in accordance with subparagraph (c) of
24 paragraph (2) of this subsection, the contract shall be awarded in the
25 following manner: If the sum total of the amounts bid by the lowest
26 responsible bidder for each branch is less than the amount bid by the
27 lowest responsible bidder for all of the work and materials, the
28 authority shall award separate contracts for each of branches to the
29 lowest responsible bidder therefor, but if the sum total of the amount
30 bid by the lowest responsible bidder for each branch is not less than
31 the amount bid by the lowest responsible bidder for all the work and
32 materials, the authority shall award a single over-all contract to the
33 lowest responsible bidder for all of the work and materials.

34 Whenever a contract is awarded under subparagraph (b) or (c) of
35 paragraph (2) of this subsection, all payments required to be made by
36 the authority under the contract for work and materials supplied by a
37 subcontractor may, upon the certification of the contractor of the
38 amount due to the subcontractor, be paid directly to the
39 subcontractor. Payments to a subcontractor for work and materials
40 supplied in connection with the contract shall be made within 10
41 calendar days of the receipt of payment for that work or the delivery
42 of those materials by the subcontractor in accordance with the
43 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
44 regulations promulgated thereunder.

45 (4) All construction, reconstruction, rehabilitation or improvement
46 of school facilities projects undertaken by the authority pursuant to

1 the provisions of P.L. , c. (C.) (now pending before the
2 Legislature as this bill) shall be subject during such undertaking to the
3 supervision of the Division of Property Management and Construction
4 to the same extent as any project undertaken by the State.

5
6 53. (New section) a. If the authority shall find it necessary in
7 connection with the undertaking of any school facilities project to
8 change the location of any portion of any public highway or road, it
9 may contract with any government agency, or public or private
10 corporation which may have jurisdiction over the public highway or
11 road to cause the public highway or road to be constructed at such
12 locations as the authority shall deem most favorable. The cost of the
13 reconstruction and any damage incurred in changing the location of the
14 highway shall be ascertained and paid by the authority as part of the
15 cost of the school facilities project. Any public highway affected by
16 the construction of any school facilities project may be vacated or
17 relocated by the authority in the manner now provided by law for the
18 vacation or relocation of public roads, and any damages awarded on
19 account thereof shall be paid by the authority as a part of the cost of
20 the school facilities project. In all undertakings authorized by this
21 subsection, the authority shall consult and obtain the approval of the
22 Commissioner of Transportation.

23 b. The authority and its authorized agents and employees may enter
24 upon any lands, waters and premises for the purpose of making
25 surveys, soundings, drillings and examinations as it may deem
26 necessary or convenient for the purposes of this act, all in accordance
27 with due process of law, and this entry shall not be deemed a trespass
28 nor shall an entry for this purpose be deemed an entry under any
29 condemnation proceedings which may be then pending. The authority
30 shall make reimbursement for any actual damages resulting to the
31 lands, waters and premises as a result of these activities.

32 c. The authority shall have the power to make reasonable
33 regulations for the installation, construction, maintenance, repair,
34 renewal, relocation and removal of tracks, pipes, mains, conduits,
35 cables, wires, towers, poles and other equipment and appliances,
36 herein called "public utility facilities," or any public utility as defined
37 in R.S.48:2-13, in, on, along, over or under any school facilities
38 project. Whenever the authority shall determine that it is necessary
39 that any public utility facilities which now are, or hereafter may be,
40 located in, on, along, over or under any school facilities project shall
41 be relocated in the school facilities project, or should be removed from
42 the school facilities project, the public utility owning or operating the
43 facilities shall relocate or remove them in accordance with the order
44 of the authority. The cost and expenses of the relocation or removal,
45 including the cost of installing the facilities in a new location or new
46 locations, and the cost of any lands, or any rights or interests in lands,

1 and any other rights, acquired to accomplish the relocation or removal,
2 shall be ascertained and paid by the authority as a part of the cost of
3 the school facilities project. In case of any relocation or removal of
4 facilities, the public utility owning or operating them, its successors or
5 assigns, may maintain and operate the facilities, with the necessary
6 appurtenances, in the new location or new locations, for as long a
7 period, and upon the same terms and conditions, as it had the right to
8 maintain and operate the facilities in their former location or locations.
9 In all undertakings authorized by this subsection the authority shall
10 consult and obtain the approval of the Board of Public Utilities.

11

12 54. (New section) Notwithstanding the provisions of any law to
13 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
14 pending before the Legislature as this bill) shall be fully negotiable
15 within the meaning and for all purposes of Title 12A of the New Jersey
16 Statutes, and each holder or owner of such a bond or other obligation,
17 or of any coupon appurtenant thereto, by accepting the bond or
18 coupon shall be conclusively deemed to have agreed that the bond or
19 coupon is and shall be fully negotiable within the meaning and for all
20 purposes of Title 12A.

21

22 55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to
23 read as follows:

24 22. a. Whenever the planning board shall have adopted any portion
25 of the master plan, the governing body or other public agency having
26 jurisdiction over the subject matter, before taking action necessitating
27 the expenditure of any public funds, incidental to the location,
28 character or extent of such project, shall refer the action involving
29 such specific project to the planning board for review and
30 recommendation in conjunction with such master plan and shall not act
31 thereon, without such recommendation or until 45 days have elapsed
32 after such reference without receiving such recommendation. This
33 requirement shall apply to action by a housing, parking, highway,
34 special district, or other authority, redevelopment agency, school
35 board or other similar public agency, State, county or municipal.

36 b. The planning board shall review and issue findings concerning
37 any long-range facilities plan submitted to the board pursuant to the
38 "Educational Facilities Construction and Financing Act," P.L. _____,

39 c. (C. _____) (now pending before the Legislature as this bill), for the
40 purpose of review of the extent to which the long-range facilities plan
41 is informed by, and consistent with, at least the land use plan element
42 and the housing element contained within the municipal master plan
43 adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and
44 such other elements of the municipal master plan as the planning board
45 deems necessary to determine whether the prospective sites for school
46 facilities contained in the long range facilities plan promote more

1 effective and efficient coordination of school construction with the
 2 development efforts of the municipality. The planning board shall
 3 devote at least one full meeting of the board to presentation and
 4 review of the long-range facilities plan prior to adoption of a
 5 resolution setting forth the board's findings.

6 (cf: P.L.1975, c.291, s.22)

7
 8 56. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to
 9 read as follows:

10 4. Notwithstanding the provisions of any other law to the contrary,
 11 commencing July 1, 1998: after the deposit required pursuant to
 12 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
 13 of revenue collected annually from the cigarette tax imposed pursuant
 14 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
 15 revenue collected annually from the "Tobacco Products Wholesale
 16 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
 17 deposited in to the Health Care Subsidy Fund established pursuant to
 18 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
 19 \$50,000,000 of revenue collected annually from the cigarette tax
 20 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
 21 [deposited in the School Construction and Renovation Fund as shall
 22 be established by law] appropriated annually to the New Jersey
 23 Economic Development Authority for payment of debt service
 24 incurred by the authority for school facilities projects.

25 (cf: P.L.1997, c.264, s.4)

26
 27 57. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
 28 as follows:

29 4. Tax bracket schedule. a. For the purpose of adding and
 30 collecting the tax imposed by this act, or an amount equal as nearly as
 31 possible or practicable to the average equivalent thereof, to be
 32 reimbursed to the vendor by the purchaser, the following formula shall
 33 be in force and effect:

Amount of Sale	Amount of Tax
\$0.01 to \$0.10	No Tax
0.11 to 0.22	\$0.01
0.23 to 0.38	0.02
0.39 to 0.56	0.03
0.57 to 0.72	0.04
0.73 to 0.88	0.05
0.89 to 1.10	0.06

42
 43 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 44 collected on each part of a dollar in excess of a full dollar, in

1 accordance with the above formula.

2 b. For charges paid by inserting coins into a coin operated
3 telecommunications device available to the public the tax shall be
4 computed to the nearest multiple of five cents of the tax otherwise due
5 pursuant to subsection a. of this section, except that, if the amount of
6 the tax is midway between multiples of five cents, the next higher
7 multiple shall apply.

8 c. For the purpose of adding and collecting the sales and use tax at
9 the rate imposed pursuant to section 59 of P.L. , c. (C.)
10 (now pending before the Legislature as this bill) on and after August
11 1 of a fiscal year in which a certification is made to the Director of the
12 Division of Taxation pursuant to subsection b. of that section 59 of
13 P.L. , c. (C.) (now pending before the Legislature as this
14 bill), or an amount equal as nearly as possible or practicable to the
15 average equivalent thereof, the director shall promulgate tax collection
16 formulas for the purpose of collecting the tax for the rate established
17 pursuant to that section 59 of P.L. , c. (C.) (now pending
18 before the Legislature as this bill).

19 (cf: P.L.1993, c.10, s.2)

20

21 58. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended to
22 read as follows:

23 31. Receipts from sales of tangible personal property and services
24 taxable under any municipal ordinance which was adopted pursuant to
25 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
26 1966 are exempt from the tax imposed under the Sales and Use Tax
27 Act, subject to the following conditions:

28 a. To the extent that the tax that is or would be imposed under
29 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
30 imposed by such ordinance, such sales shall not be exempt under this
31 section; and

32 b. Irrespective of the rate of tax imposed by such ordinance, such
33 sales shall be exempt only to the extent that the rate of taxation
34 imposed by the ordinance exceeds 6%, except that the combined rate
35 of taxation imposed under the ordinance and under this section shall
36 not exceed ~~12%~~ 11% on and after August 1 and through June 30 of
37 a fiscal year in which a certification is made to the Director of the
38 Division of Taxation pursuant to subsection b. of section 59 of P.L. ,
39 c. (C.) (now pending before the Legislature as this bill).

40 (cf: P.L.1992, c.11, s.5)

41

42 59. (New section) a. The annual appropriations act for each State
43 fiscal year commencing with fiscal year 2001 shall appropriate and
44 distribute during the fiscal year the amount determined by the
45 Department of Education to be the amount of State debt service aid
46 determined pursuant to sections 9 and 10 of P.L. , c. (C.)

1 (now pending before the Legislature as this bill) for the purposes of
2 those sections.

3 b. If the provisions of subsection a. of this section are not met on
4 the effective date of an annual appropriations act for the State fiscal
5 year, or if an amendment or supplement to an annual appropriations
6 act for the State fiscal year should violate the provisions of subsection
7 a. of this section, the Director of the Division of Budget and
8 Accounting in the Department of the Treasury shall, not later than five
9 days after the enactment of the annual appropriations act, or an
10 amendment or supplement thereto, that violates the provisions of
11 subsection a. of this section, certify to the Director of the Division of
12 Taxation that the requirements of subsection a. of this section have not
13 been met.

14 c. Upon certification to the Director of the Division of Taxation
15 pursuant to subsection b. of this section, then, notwithstanding the rate
16 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
17 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
18 law to the contrary, the rate of tax imposed or paid on receipts from
19 sales or use within this State on or after August 1 of that fiscal year
20 through June 30 of that fiscal year shall be 5%.

21 d. The Director of the Division of Taxation, within 5 days of
22 receipt of a certification made pursuant to subsection b. of this section,
23 shall take such action as is necessary to notify all vendors of the rate
24 of tax on or after August 1 of that fiscal year through June 30 of that
25 fiscal year.

26 e. Any sales and use tax erroneously collected or paid at a rate of
27 6% instead of at a rate of 5% on receipts from sales or use within this
28 State on or after August 1 of that fiscal year through June 30 of that
29 fiscal year shall be subject to refund in the manner provided in section
30 20 of P.L.1966, c.30 (C.54:32B-20).

31

32 60. (New section) The Director of the Division of Taxation shall
33 promulgate regulations on or before August 1 of a fiscal year in which
34 a certification is made to the Director of the Division of Taxation
35 pursuant to subsection b. of that section 59 of P.L. , c. (C.)
36 (now pending before the Legislature as this bill) to provide tax rate
37 transitional provisions for the imposition of the appropriate rate of tax
38 for: sales made and property delivered or services performed,
39 occupancies pursuant to prior contracts, leases or other arrangements,
40 admission charges made for admissions, certain sales made pursuant
41 to certain contracts either of a fixed price not subject to change or
42 modification, or entered into pursuant to the obligation of a formal
43 written bid which cannot be altered or withdrawn; which involve dates
44 over periods both before and after August 1 of such a fiscal year.

45

46 61. (New section) There is established in the Office of the Attorney

1 General the Unit of Fiscal Integrity in School Construction. The
2 Attorney General or his representative may investigate, examine, and
3 inspect the activities of the authority and districts related to the
4 financing and construction of school facilities and the implementation
5 of the provisions of P.L. , c. (C.) (now pending before the
6 Legislature as this bill). The Attorney General may require the
7 submission of duly verified reports from the authority and districts,
8 which include such information in such form as the Attorney General
9 may require. The Attorney General or his representative may also
10 consult with the authority on issues and procedures related to the
11 exercise of its duties and responsibilities under P.L. , c. (C.) (now
12 pending before the Legislature as this bill). The Legislature shall
13 annually appropriate such funds as may be necessary to finance the
14 operations of the unit.

15

16 62. This act shall take effect immediately.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 200**

STATE OF NEW JERSEY

DATED: MAY 11, 2000

The Senate Budget and Appropriations Committee reports favorably Senate Committee Substitute for Senate Bill No. 200.

This committee substitute establishes a school facilities construction and financing program. The program will be operated through the coordinated efforts of the Department of Education and the New Jersey Economic Development Authority.

The school construction program is intended not only to address the facilities needs in the Abbott districts as directed by the New Jersey Supreme Court, but also to provide a mechanism for the funding and construction of school facilities throughout the State. Through this coordinated effort, the Commissioner of Education will be charged with reviewing the need for the facility and ensuring that State funding is provided in accordance with that need, while the New Jersey Economic Development Authority will issue its bonds to finance the construction program and will provide construction management and project oversight services for school districts which are required under the bill to utilize the authority to construct their projects. The services of the authority would also be available to other school districts which want to take advantage of its construction expertise and realize the economies which the bulk construction activities of the authority may offer the district. It is the intention of the sponsor and the committee that the New Jersey Economic Development Authority shall utilize local workforce in all school facilities projects to the extent possible.

Under the substitute's provisions, any district which wants to undertake a school construction project would be required to apply to the commissioner for approval of that project. The commissioner would review the proposed project to determine if: a. it is consistent with the district's long range facilities plan (required under a separate section of the bill); and, b. it is consistent with the facilities efficiency standards and area allowances per student derived from those standards.

If the commissioner determines that the proposed project does comply with both of the above, the commissioner calculates the preliminary eligible costs of the project which are the costs on which

the district will be aided. The preliminary eligible costs for all school construction projects, whether constructed by the authority or the district, will include State support of "soft costs" including site acquisition, site development, issuance costs, legal fees, and fees for professional services. The commissioner is required to approve area allowances in excess of those derived from the facilities efficiency standards if the board of education demonstrates that required programs cannot be addressed within the standards and that all other proposed spaces are consistent with those standards. One exception to this procedure is in the case of county special services school districts and county vocational school districts. For those districts the preliminary eligible costs will equal the amount determined by the district's board of school estimate and approved by the board of chosen freeholders. This exception recognizes the fact that these districts often require unique classrooms to accommodate the populations they serve and the programs they offer. Also the bill requires the commissioner to approve area allowances in excess of those derived from the facilities efficiency standards if the additional allowances are necessary to accommodate centralized facilities to be shared among two or more school buildings in the district and the centralized facilities represent a more cost effective alternative.

If the commissioner determines that the project is not consistent with both the area allowances and facilities efficiency standards and does not approve any additions to those factors, then he will notify the district of that fact. The district then has the choice of either modifying its project so that it meets the facilities efficiency standards or paying for the excess cost of the project on its own.

Following the approval of the project and the determination of preliminary eligible costs, the substitute outlines the finance and construction options for the project depending on the type of school district.

The substitute also includes provisions to allow the State Treasurer to designate, during the three fiscal years following its effective date, up to six school facilities projects as demonstration projects. These demonstration projects would be built by a redevelopment entity as part of the larger economic, redevelopment, or community development efforts occurring within the municipality in which the school district is located. The procedures for the approval of demonstration projects would incorporate some of the elements described above for the approval of school facilities projects; however there would be some additions to those procedures as well.

Abbott Districts, Level II Districts, and Districts with a State Aid Percentage of 60% or Greater

Abbott districts will be required to use the authority for the construction of school facilities projects and will have 100% of their approved costs paid by the State through authority financing. Districts

in level II monitoring and districts which have a State support ratio equal to or greater than 60% will also be required to use the authority for the construction of school facilities projects. The State will fund an amount of the approved project costs equal to 115% of the district's State support ratio through the issuance of authority bonds.

For these groups of districts, once the commissioner determines the project's preliminary eligible costs as previously described, the commissioner submits to the authority a preliminary project report which describes the project, its preliminary eligible costs, and its priority ranking. Upon review of the report, and in consultation with the district, the authority will prepare plans and specifications which contain its estimate of the cost to complete the project. The authority then transmits to the commissioner its recommendation on whether the project can be completed within the preliminary eligible costs.

If the authority determines that the project can be completed within the preliminary eligible costs, then the preliminary eligible costs will be deemed to be the project's final eligible costs and the preliminary project report the final project report. If the authority determines that the project cannot be completed within the preliminary eligible costs, then prior to making its recommendation to the commissioner, and in consultation with the district, the authority determines if changes can be made to the project which will result in a reduction in cost while still meeting the school facilities efficiency standards. If that reduction is possible, then the authority notifies the commissioner of that fact and the commissioner calculates the final eligible costs of the project to include the recommended changes and issues a final project report to the authority. If the authority determines that it is not possible to make such changes to the project either because the additional costs are outside of the control of the district or the additional costs are required to meet the facilities efficiency standards, then the authority will recommend to the commissioner that the cost of the project be increased. The commissioner will calculate the final eligible project costs to include the additional costs recommended by the authority and will issue a final project report to the authority.

If the authority determines that the additional costs are the result of factors which are within the control of the district or are the result of design factors which are not required to meet the facilities efficiency standards, the authority will recommend to the commissioner that the preliminary eligible costs be accepted. The commissioner will then calculate the project's final eligible costs and the project report which he issues will detail any excess costs which are to be borne by the district. The substitute does stipulate, however, that despite the authority's recommendation, the commissioner may approve final eligible costs which are in excess of preliminary eligible costs if the commissioner believes that approval is necessary to meet the educational needs of the district.

For any project constructed by the authority, the authority will be responsible for any costs of construction which exceed the amount

originally projected and approved for financing if the excess is the result of an underestimate of labor and materials. The district will be responsible only for the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

Districts with a State Aid Percentage of Less Than 60%

A district which has a State support ratio of less than 60% has the option of constructing the project on its own or using the services of the New Jersey Economic Development Authority to construct and finance the project. If the district determines to handle the project on its own, then the district has the option of either receiving a one-time grant for the State share of the project or annual debt service aid on the final eligible costs of the project. The one-time State share grant will be in an amount equal to the product of the project's final eligible costs and 115% of the district's district aid percentage or 40%, whichever is greater. Debt service aid will also be calculated using the product of the district's district aid percentage and 1.15 as of the date of the commissioner's determination of eligible costs; again however, even districts which do not qualify for core curriculum standards aid will be aided at a minimum of 40% of approved costs. The calculation of State support at a fixed point in time differs from the current debt service aid formula in which the State support ratio is recalculated annually based on the level of core curriculum standards aid support in each budget year.

In the case of a district which is building a school facilities project on its own, the district may appeal to the commissioner for an increase in the preliminary eligible costs if the detailed plans and specifications completed by a design professional for the project indicate that the cost of constructing that portion of the project which is consistent with the facilities efficiency standards and does not exceed the area allowances per FTE student exceeds the preliminary eligible costs as determined by the commissioner by 10% or more. The district must file its appeal within 30 days of the preparation of the plans and specifications. The appeal must outline the reasons why the preliminary eligible costs calculated for the project are inadequate and estimate the amount of the adjustment which needs to be made to the preliminary eligible costs. The commissioner is to forward the appeal information to the authority for its review and recommendation. If the additional costs are the result of factors that are within the control of the district or are the result of design factors not required to meet the facilities efficiency standards, the authority will recommend to the commissioner that the preliminary eligible costs be accepted as the final eligible costs. If the authority determines that the additional costs are not within the control of the district or are the result of design factors required to meet the facilities efficiency standards, the authority is to recommend to the commissioner a final eligible cost based on its experience with districts of similar characteristics. The

commissioner must make his determination on the appeal within 30 days of its receipt. If the commissioner does not approve an adjustment to the project's preliminary eligible costs, the commissioner must issue his findings in writing on the reasons for the denial and on why the preliminary eligible costs as originally calculated are sufficient.

Maintenance Requirements

Upon completion by the authority of a school facilities project, the district is to enter into a contract with the authority to provide for the maintenance of the project by the district. If the project is constructed by the district, the district must submit a plan to the commissioner to similarly provide for the project's maintenance. Any agreement or plan must contain a requirement for the establishment of a maintenance reserve fund. The funding levels required for that fund will be established by the commissioner.

In the case of a district which has chosen to receive debt service aid, the debt service aid for districts will be subject to reduction if the district fails to meet the maintenance requirements outlined in the bill. To receive debt service aid for an improvement or addition to an existing facility, a district will be required, beginning ten years following the bill's enactment, to demonstrate a net investment in maintenance over the ten years preceding the issuance of the financing for the improvement or addition of 2% of what the facility's replacement cost was ten years prior. Also, in order to continue to be eligible for full debt service aid for bonds issued for projects approved following the bill's effective date, a district will be required to demonstrate, beginning in the fourth year after occupancy of the facility, an annual investment in maintenance of at least two-tenths of 1% of the facility's replacement cost. The bill establishes a sliding scale reduction in aid for lesser investments.

In order to ensure that the debt service aid provided under the bill is fully funded each year, the bill specifies that if the annual appropriations act does not appropriate the amount determined to be sufficient, the sales tax rate will be reduced from 6% to 5%. This provision is a strong disincentive to underfund debt service aid because the reduction in State sales tax revenue would be greater than the cost of the debt service aid.

Demonstration Projects

The substitute allows the State Treasurer to designate, during the three fiscal years following its effective date, up to six school facilities projects as demonstration projects. These demonstration projects would be built by a redevelopment entity as part of the larger economic, redevelopment, or community development efforts occurring within the municipality in which the school district is

located. Under the substitute each district would be required to submit its long-range facilities plan to the planning board in the municipality in which the district is located for the board's review of the extent to which the long-range facilities plan is informed by, and consistent with, at least the land use plan element and housing element contained in the municipality's master plan. The planning board must then adopt a resolution setting forth the board's findings.

A district and a municipality may then apply to the authority for the designation of a school facilities project contained in the long-range facilities plan as a demonstration project. The application would set forth the plan for carrying out the redevelopment project as a whole, including the school facilities project; the name of the redevelopment entity to undertake the project; a description of how the project fits into the redevelopment plan adopted by the municipal governing body; and a description of the community design features to be included in the school facilities project. The authority will evaluate the request to determine whether the school facilities project is suitable for designation as a demonstration project and forward its recommendation to the State Treasurer and the Urban Coordinating Council. The council will review the recommendations of the authority and will advise the authority, the redevelopment entity, and the district of any potential available sources of funding for the demonstration project. As indicated above, the State Treasurer will make the determination on the selection of the demonstration projects. The State share of the final eligible costs of the school facilities project will be provided by the authority pursuant to an agreement among the authority, the redevelopment entity, and the district.

Refinancing of Existing Debt

The substitute authorizes the authority to make loans to local units to finance all or a portion of the cost of a school facilities project. Loans could also be made to refund obligations of a local unit which were previously issued to provide funds to pay for the cost of a school facilities project. These loans will be made pursuant to terms and conditions determined by the authority and will be secured by local unit obligations.

Retroactivity

The substitute includes provisions to grandfather in certain school facilities projects which were approved prior to the substitute's effective date. Under the retroactivity provisions, any district which obtained approval from the commissioner since September 1, 1998 and prior to the substitute's effective date of the educational specifications for a school facilities project or obtained approval from the Department of Community Affairs or the appropriately licensed municipal code official since September 1, 1998 of the final

construction plans and specifications, and has issued debt, may elect to have the final eligible costs of the project determined and to receive debt service aid on those costs calculated using the product of the district's district aid percentage and 1.15, or 40%, whichever is greater; or to receive debt service aid on the project's total cost calculated at the district aid percentage.

Any district which received approval from the commissioner for a school facilities project at any time prior to the substitute's effective date, and has not issued debt other than short term notes, may have the project's eligible costs calculated under the bill and have the authority construct the project; or may elect to receive debt service aid on eligible costs using the product of the district aid percentage and 1.15 or 40%, whichever is greater; or to receive debt service aid on the project's total cost calculated at the district aid percentage, or to receive a one-time grant in an amount equal to the State support share.

Summary of Funding Mechanisms

The substitute establishes a new system of State support for public school facility construction and renovation. Once the eligible project costs have been determined by procedures established in the bill, State support will be offered through various mechanisms that are summarized in the following table.

FUNDING PROCEDURES AND OPTIONS UNDER SCS for S200 (1R)		
Districts	Constructed By	Funding
Abbott	EDA	State pays 100% of Eligible costs
Non-Abbott with District Aid Percentage of 60% or more, or level II monitoring	EDA	For eligible costs State pays District Aid Percentage times 1.15 Local funding for remainder
Non-Abbott with District Aid Percentage below 60%	EDA	For eligible costs State pays District Aid Percentage times 1.15, but not less than 40% Local funding for remainder
	District builds	District bonds for full cost; receives annual debt service aid for eligible costs equal to District Aid Percentage times 1.15 or 40%, whichever is greater
		State pays a grant equal to product of eligible costs and District Aid Percentage times 1.15, but not less than 40% Local funding for remainder

FISCAL IMPACT

The annual and long run costs for this bill are dependent on actual annual eligible costs of school facilities constructed statewide and the mixture of State support and local support for the particular construction projects. These annual costs cannot be determined prior to the approval of the specific projects. However, potential annual cost estimates based on the first ten years of school construction can be made under certain assumptions. Initial costs in the first year should be about \$75 million and increasing each year by this amount until a peak of \$700 to \$800 million is realized in fiscal year 2010. Annual total State debt service and debt service aid costs should then remain steady before beginning to decline in fiscal year 2021. These potential annual total State debt service costs assume total construction costs of \$6.0 billion in the Abbott districts spread in equal annual amounts over 10 years and \$5.6 billion in the non-Abbott districts using the grant mechanism, direct support through the building authority or debt

service aid. The estimate further assumes a 6.5 percent interest rate and 20 year bonds. During the peak years between fiscal years 2010 and 2020, about 70 percent of the annual State cost will be attributable to financing school construction in the Abbott districts.

The actual costs of this program will vary from the estimate if the actual level of approved construction is more or less than the assumption, if construction costs vary from the amount in the bill, if the amount of school construction is more concentrated in districts that receive higher or lower levels of State support, if borrowing costs vary from the assumed rate of 6.5% and if funds are available for pay-as-you-go financing of School payments in FY 2001 and 2002.

The costs of this bill is partially offset by the replacement of the existing funding mechanism for school facilities. Under current State practice, annual debt service and facilities aid costs for school construction may be estimated to grow to over \$200 million annually by fiscal year 2010. Current State school facilities costs equal approximately \$156 million. Since certain debt service aid costs would be incurred by the State without the passage of this bill and would be replaced under this bill by a new facilities funding mechanism, the *net* cost to the State under this bill would be less than the *total* cost by the amount of future debt service and facilities aid under current law.

In addition, these potential annual costs of this bill are partially funded by a maximum dedication of \$100 million from the State's tobacco settlement fund and about \$117 million in funds from lottery proceeds (\$62 million), the State tobacco tax dedication (\$50 million) and the Fund for Free Public Schools (\$5 million).

This analysis addresses State costs associated with school facilities projects undertaken only during the first ten years after enactment. Additional State debt service and debt service aid costs will be incurred for any school construction projects begun after the first ten years.

LEGISLATIVE FISCAL ESTIMATE
[First Reprint]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: MAY 18, 2000

SUMMARY

Synopsis: The "Educational Facilities Construction and Financing Act"
Type of Impact: Expenditure increase from the General Fund, from tobacco settlement funds, and possibly from the Property Tax Relief Fund
Agencies Affected: Department of Education, Department of the Treasury, New Jersey Economic Development Authority

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	This bill will create substantial State costs over the next several decades, with the annual costs likely to peak in the range of \$700 to \$800 million during years 10-20. Projections of the cost are complicated by the large number of unknowns and the significant time horizon. Actual costs may vary significantly from projections.

- ! The bill creates a major entitlement program for the construction of education facilities in local school districts. It is estimated that approximately \$12 billion of construction may occur under this bill during the first ten years.
- ! The bill contains a series of complex funding alternatives under which the construction costs will be shared between the State and local boards of education.
- ! Costs in the early years will increase about \$75 million per year until a level of \$700-800 million is reached in years 10-20, after which costs may decline.
- ! Costs will be partially offset by the dedication of \$217 million per year from existing State revenue sources and by additional savings associated with the discontinuance of the current school debt service aid mechanism.
- ! Costs in out years would be reduced modestly by any pay-as-you-go financing in early years.

BILL DESCRIPTION

Senate Committee Substitute for Senate, Bill No. 200 (1R) of 2000 establishes a new system of State support for public school facility construction and renovation. Once the eligible project costs have been determined by procedures established in the bill, State support will be offered through various mechanisms that are summarized in the following table.

FUNDING PROCEDURES AND OPTIONS UNDER SCS for S200 (1R)		
Districts	Constructed By	Funding
Abbott	EDA	State pays 100% of Eligible costs
Non-Abbott with District Aid Percentage of 60% or more, or level II monitoring	EDA	For eligible costs State pays District Aid Percentage times 1.15 Local funding for remainder
Non-Abbott with District Aid Percentage below 60%	EDA	For eligible costs State pays District Aid Percentage times 1.15, but not less than 40% Local funding for remainder
	District builds	District bonds for full cost; receives annual debt service aid for eligible costs equal to District Aid Percentage times 1.15 or 40%, whichever is greater
		State pays a grant equal to product of eligible costs and District Aid Percentage times 1.15, but not less than 40% Local funding for remainder

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

A cost estimate for this bill is difficult to produce because the annual and long run costs are dependent on actual annual eligible costs of school facilities constructed statewide and the mixture of State support and local support for the particular construction projects. These annual costs cannot be determined prior to the approval of the specific projects.

However, potential annual cost estimates based on the first ten years of school construction

can be made under certain assumptions. Initial costs in the first year should be about \$75 million and increasing each year by this amount until a peak of \$700 to \$800 million is realized in fiscal year 2010. Annual total State debt service and debt service aid costs should then remain steady before beginning to decline in fiscal year 2021. These potential annual total State debt service costs assume total construction costs of \$6.0 billion in the Abbott districts spread in equal annual amounts over 10 years and \$5.6 billion in the non-Abbott districts using the grant mechanism, direct support through the building authority or debt service aid. The estimate further assumes a 6.5 percent interest rate and 20 year bonds. During the peak years between fiscal years 2010 and 2020, about 70 percent of the annual State cost will be attributable to financing school construction in the Abbott districts.

It is important to note that the actual costs of this program will vary from the estimate if the actual level of approved construction is more or less than the assumption, if construction costs vary from the amount in the bill, if the amount of school construction is more concentrated in districts that receive higher or lower levels of State support, if borrowing costs vary from the assumed rate of 6.5 percent and if funds are available for pay-as-you-go financing of school payments in FY 2001 and 2002.

The effects of this bill are partially offset by the replacement of the existing funding mechanism for school facilities. Under current State practice, annual debt service and facilities aid costs for school construction may be estimated to grow to over \$200 million annually by fiscal year 2010. Current State school facilities costs equal approximately \$156 million. Since certain debt service aid costs would be incurred by the State without the passage of this bill and would be replaced under this bill by a new facilities funding mechanism, the *net* cost to the State under this bill would be less than the *total* cost by the amount of future debt service and facilities aid under current funding mechanism.

The potential annual costs of the bill are partially funded by a maximum dedication of \$100 million from the State's tobacco settlement fund and about \$117 million in funds from lottery proceeds (\$62 million), the State tobacco tax dedication (\$50 million) and the Fund for Free Public Schools (\$5 million).

This analysis addresses State costs associated with school facilities projects undertaken only during the first ten years after enactment. Additional State debt service and debt service aid costs will be incurred for any school construction projects begun after the first ten years.

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200

with Senate Floor Amendments
(Proposed By Senator CODEY)

ADOPTED: MAY 18, 2000

This amendment clarifies that the issuance of debt for the purposes of determining eligibility under the retroactivity provision for the funding of school facilities projects includes lease purchase agreements in excess of five years entered into by school districts.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 11, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

As amended by the Senate on May 18, 2000.



1 AN ACT concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30 of this act shall be
9 known and may be cited as the “Educational Facilities Construction
10 and Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning and located as far
18 as possible in economically and socially viable communities.

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the
40 requirements of a thorough and efficient education, the State must also
41 protect the interests of taxpayers who will bear the burden of this
42 obligation. Design of school facilities should incorporate maximum

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:

¹ Senate floor amendments adopted May 18, 2000.

1 operating efficiencies and new technologies to advance the energy
2 efficiency of school facilities and the efficiency of other school
3 building systems, construction should be achieved in as efficient a
4 manner as possible, and a mechanism to assure proper maintenance of
5 new facilities should be established and implemented, in order to
6 reduce the overall cost of the program and to preserve this
7 infrastructure investment.

8 e. At the same time, the location of school facilities in the context
9 of the communities which they serve is important to both the
10 educational success of the schools and the development of those
11 communities. It is highly desirable, particularly in urban communities
12 where the State has indicated a particular concern respecting local
13 development efforts, that the planning and construction of schools be
14 integrated where possible into the economic and community
15 development efforts of local governments and community
16 redevelopment entities in order to promote more effective and efficient
17 use of land, resources and expertise and to better assure the future
18 viability of local neighborhoods and communities.

19

20 3. (New section) As used in sections 1 through 30 of this act,
21 unless the context clearly requires a different meaning:

22 "Abbott district" means an Abbott district as defined in section 3
23 of P.L.1996, c.138 (C.18A:7F-3);

24 "Area cost allowance" means \$131 per square foot for the school
25 year 1999-2000 and shall be inflated by an appropriate cost index for
26 the 2000-2001 school year. For subsequent school years, the area
27 cost allowance shall be as established in the biennial Report on the
28 Cost of Providing a Thorough and Efficient Education and inflated by
29 an appropriate cost index for the second year to which the report
30 applies. The area cost allowance used in determining preliminary
31 eligible costs of school facilities projects shall be that of the year of
32 application for approval of the project;

33 "Authority" means the New Jersey Economic Development
34 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1et seq.);

35 "Commissioner" means the Commissioner of Education;

36 "Core curriculum content standards" means the standards
37 established pursuant to the provisions of subsection a. of section 4 of
38 P.L.1996, c.138 (C.18A:7F-4);

39 "Cost index" means the average annual increase, expressed as a
40 decimal, in actual construction cost factors for the New York City and
41 Philadelphia areas during the second fiscal year preceding the budget
42 year as determined pursuant to regulations promulgated by the
43 authority pursuant to section 26 of this act;

44 "Debt service" means and includes payments of principal and
45 interest upon school bonds issued to finance the acquisition of school
46 sites and the purchase or construction of school facilities, additions to

1 school facilities, or the reconstruction, remodeling, alteration,
2 modernization, renovation or repair of school facilities, including
3 furnishings, equipment, architect fees and the costs of issuance of such
4 obligations and shall include payments of principal and interest upon
5 school bonds heretofore issued to fund or refund such obligations, and
6 upon municipal bonds and other obligations which the commissioner
7 approves as having been issued for such purposes. Debt service
8 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
9 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
10 (C.18A:58-33.2 et seq.) is excluded;

11 "Demonstration project" means a school facilities project selected
12 by the State Treasurer for construction by a redevelopment entity
13 pursuant to section 6 of this act;

14 "District" means a local or regional school district established
15 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
16 Statutes, a county special services school district established pursuant
17 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
18 county vocational school district established pursuant to article 3 of
19 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
20 operated school district established pursuant to P.L.1987, c.399
21 (C.18A:7A-34 et seq.);

22 "District aid percentage" means the number expressed as a
23 percentage derived from dividing the district's core curriculum
24 standards aid calculated pursuant to section 15 of P.L.1996, c.138
25 (C.18A:7F-15) as of the date of the commissioner's determination of
26 preliminary eligible costs by the district's T & E budget calculated
27 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
28 13) as of the date of the commissioner's determination of preliminary
29 eligible costs;

30 "Excess costs" means the additional costs, if any, which shall be
31 borne by the district, of a school facilities project which result from
32 design factors that are not required to meet the facilities efficiency
33 standards and not approved pursuant to paragraph (1) of subsection
34 g. of section 5 of this act or are not authorized as community design
35 features included in final eligible costs pursuant to subsection c. of
36 section 6 of this act;

37 "Facilities efficiency standards" means the standards developed by
38 the commissioner pursuant to subsection h. of section 4 of this act;

39 "Final eligible costs" means for school facilities projects to be
40 constructed by the authority, the final eligible costs of the school
41 facilities project as determined by the commissioner, in consultation
42 with the authority, pursuant to section 5 of this act; for demonstration
43 projects, the final eligible costs of the project as determined by the
44 commissioner and reviewed by the authority which may include the
45 cost of community design features determined by the commissioner to
46 be an integral part of the school facility and which were reviewed by

1 the authority and approved by the State Treasurer pursuant to section
2 6 of this act; and for districts whose district aid percentage is less than
3 60% and which elect not to have the authority construct a school
4 facilities project, final eligible costs as determined pursuant to
5 paragraph (1) of subsection h. of section 5 of this act;

6 "FTE" means a full-time equivalent student which shall be
7 calculated as follows: in districts that qualify for early childhood
8 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
9 each student in grades kindergarten through 12 shall be counted at
10 100% of the actual count of students, and each preschool student
11 approved by the commissioner to be served in the district shall be
12 counted at 50% or 100% of the actual count of preschool students for
13 an approved half-day or full-day program, respectively; in districts that
14 do not qualify for early childhood program aid pursuant to section 16
15 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
16 12 shall be counted at 100% of the actual count of students, in the
17 case of districts which operate a half-day kindergarten program each
18 kindergarten student shall be counted at 50% of the actual count of
19 kindergarten students, in the case of districts which operate a full-day
20 kindergarten program or which currently operate a half-day
21 kindergarten program but propose to build facilities to house a full-
22 day kindergarten program each kindergarten student shall be counted
23 at 100% of the actual count of kindergarten students, and preschool
24 students shall not be counted. In addition, each preschool
25 handicapped child who is entitled to receive a full-time program
26 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
27 count of these students in the district;

28 "Functional capacity" means the number of students that can be
29 housed in a building in order to have sufficient space for it to be
30 educationally adequate for the delivery of programs and services
31 necessary for student achievement of the core curriculum content
32 standards. Functional capacity is determined by dividing the existing
33 gross square footage of a school building by the minimum area
34 allowance per FTE student pursuant to subsection b. of section 8 of
35 this act for the grade level students contained therein. The difference
36 between the projected enrollment determined pursuant to subsection
37 a. of section 8 of this act and the functional capacity is the unhoused
38 students that are the basis upon which the additional costs of space to
39 provide educationally adequate facilities for the entire projected
40 enrollment are determined. The existing gross square footage for the
41 purposes of defining functional capacity is exclusive of existing spaces
42 that are not contained in the facilities efficiency standards but which
43 are used to deliver programs and services aligned to the core
44 curriculum content standards, used to provide support services directly
45 to students, or other existing spaces that the district can demonstrate
46 would be structurally or fiscally impractical to convert to other uses

1 contained in the facilities efficiency standards;

2 "Lease purchase payment" means and includes payment of
3 principal and interest for lease purchase agreements in excess of five
4 years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to
5 the effective date of P.L. , c. (C.) (now pending before the
6 Legislature as this bill) to finance the purchase or construction of
7 school facilities, additions to school facilities, or the reconstruction,
8 remodeling, alteration, modernization, renovation or repair of school
9 facilities, including furnishings, equipment, architect fees and issuance
10 costs. Approved lease purchase agreements in excess of five years
11 shall be accorded the same accounting treatment as school bonds;

12 "Level II district" means a district which is directed by the
13 commissioner to enter level II monitoring pursuant to the provisions
14 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

15 "Local share" means, in the case of a school facilities project to be
16 constructed by the authority, the total costs less the State share as
17 determined pursuant to section 5 of this act; in the case of a
18 demonstration project, the total costs less the State share as
19 determined pursuant to section 6 of this act; and in the case of a
20 school facilities project to be financed pursuant to section 15 of this
21 act, the total costs less the State share as determined pursuant to that
22 section;

23 "Local unit" means a county, municipality, board of education or
24 any other political subdivision or instrumentality authorized to
25 construct, operate and maintain a school facilities project and to
26 borrow money for those purposes pursuant to law;

27 "Local unit obligations" means bonds, notes, refunding bonds,
28 refunding notes, lease obligations and all other obligations of a local
29 unit which are issued or entered into for the purpose of paying for all
30 or a portion of the costs of a school facilities project, including
31 moneys payable to the authority;

32 "Long-range facilities plan" means the plan required to be
33 submitted to the commissioner by a district pursuant to section 4 of
34 this act;

35 "Maintenance" means expenditures which are approved for repairs
36 and replacements for the purpose of keeping a school facility open and
37 safe for use or in its original condition, including repairs and
38 replacements to a school facility's heating, lighting, ventilation,
39 security and other fixtures to keep the facility or fixtures in effective
40 working condition. Maintenance shall not include contracted custodial
41 or janitorial services, expenditures for the cleaning of a school facility
42 or its fixtures, the care and upkeep of grounds or parking lots, and the
43 cleaning of, or repairs and replacements to, movable furnishings or
44 equipment, or other expenditures which are not required to maintain
45 the original condition over the school facility's useful life. Approved
46 maintenance expenditures shall be as determined by the commissioner

1 pursuant to regulations to be adopted by the commissioner pursuant
2 to section 26 of this act;

3 "Preliminary eligible costs" means the initial eligible costs of a
4 school facilities project as calculated pursuant to the formulas set forth
5 in section 7 of this act;

6 "Redevelopment entity" means a redevelopment entity authorized
7 by a municipal governing body to implement plans and carry out
8 redevelopment projects in the municipality pursuant to the "Local
9 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
10 seq);

11 "Report on the Cost of Providing a Thorough and Efficient
12 Education" or "Report" means the report issued by the commissioner
13 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

14 "School bonds" means, in the case of a school facilities project
15 which is to be constructed by the authority, a redevelopment entity,
16 or a district under section 15 of this act, bonds, notes or other
17 obligations issued by a district to finance the local share; and, in the
18 case of a school facilities project which is not to be constructed by the
19 authority, a redevelopment entity, or a district under section 15 of this
20 act, bonds, notes or other obligations issued by a district to finance the
21 total costs;

22 "School enrollment" means the number of FTE students other than
23 evening school students, including post-graduate students and post-
24 secondary vocational students, who, on the last school day prior to
25 October 16 of the current school year, are recorded in the registers of
26 the school;

27 "School facility" means and includes any structure, building or
28 facility used wholly or in part for academic purposes by a district, but
29 shall exclude athletic stadiums, grandstands, and any structure,
30 building or facility used solely for school administration;

31 "School facilities project" means the acquisition, demolition,
32 construction, improvement, repair, alteration, modernization,
33 renovation, reconstruction or maintenance of all or any part of a
34 school facility or of any other personal property necessary for, or
35 ancillary to, any school facility, and shall include fixtures, furnishings
36 and equipment, and shall also include, but is not limited to, site
37 acquisition, site development, the services of design professionals,
38 such as engineers and architects, construction management, legal
39 services, financing costs and administrative costs and expenses
40 incurred in connection with the project;

41 "Special education services pupil" means a pupil receiving specific
42 services pursuant to chapter 46 of Title 18A of the New Jersey
43 Statutes;

44 "State aid" means State municipal aid and State school aid;

45 "State debt service aid" means for school bonds issued for school
46 facilities projects approved by the commissioner after the effective

1 date of P.L. , c. (C.) (now pending before the Legislature as this
2 bill) of districts which elect not to have the authority or a
3 redevelopment entity construct the project or which elect not to
4 finance the project under section 15 of this act, the amount of State
5 aid determined pursuant to section 9 of this act; and for school bonds
6 or certificates of participation issued for school facilities projects
7 approved by the commissioner prior to the effective date of P.L. ,
8 c. (C.) (now pending before the Legislature as this bill) the
9 amount of State aid determined pursuant to section 10 of this act;

10 "State municipal aid" means business personal property tax
11 replacement revenues, State urban aid and State revenue sharing, as
12 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
13 other similar forms of State aid payable to the local unit and to the
14 extent permitted by federal law, federal moneys appropriated or
15 apportioned to the municipality or county by the State;

16 "State school aid" means the funds made available to school
17 districts pursuant to sections 15 and 17 of P.L.1996, c.138
18 (C.18A:7F-15 and 17);

19 "State share" means the State's proportionate share of the final
20 eligible costs of a school facilities project to be constructed by the
21 authority as determined pursuant to section 5 of this act; in the case
22 of a demonstration project, the State's proportionate share of the final
23 eligible costs of the project as determined pursuant to sections 5 and
24 6 of this act; and in the case of a school facilities project to be financed
25 pursuant to section 15 of this act, the State share as determined
26 pursuant to that section;

27 "Total costs" means, in the case of a school facilities project which
28 is to be constructed by the authority or a redevelopment entity or
29 financed pursuant to section 15 of this act, the final eligible costs plus
30 excess costs if any; and in the case of a school facilities project which
31 is not to be constructed by the authority or a redevelopment entity or
32 financed pursuant to section 15 of this act, the total cost of the
33 project as determined by the district;

34
35 4. (New section) a. Beginning in the 1999-2000 school year and
36 in every school year thereafter ending with a "0" or a "5", each district
37 shall prepare and submit to the commissioner a long-range facilities
38 plan that details the district's school facilities needs and the district's
39 plan to address those needs for the ensuing five years. The long-range
40 facilities plan shall incorporate the facilities efficiency standards and
41 shall be filed with the commissioner no later than October 1, 2000 and
42 no later than October 1 of the other filing years for approval in
43 accordance with those standards. For those Abbott districts that have
44 submitted long-range facilities plans to the commissioner prior to the
45 effective date of P.L. , c. (C.) (now pending before the
46 Legislature as this bill), this subsection shall not be read to require an

1 additional filing by October 1, 2000.

2 b. Notwithstanding any other law or regulation to the contrary,
3 an application for a school facilities project pursuant to section 5 of
4 this act shall not be approved unless the district has filed a long-range
5 facilities plan that is consistent with the application and the plan has
6 been approved by the commissioner; except that prior to October 1,
7 2000, the commissioner may approve an application if the project is
8 necessary to protect the health or safety of occupants of the school
9 facility, or is related to required early childhood education programs,
10 or is related to a school facility in which the functional capacity is less
11 than 90% of the facilities efficiency standards based on current school
12 enrollment, or the district received bids on the school facilities project
13 prior to the effective date of P.L. , c. (C.) (now pending before
14 the Legislature as this bill) and the district demonstrates that further
15 delay will negatively affect the cost of the project.

16 c. An amendment to a long-range facilities plan may be submitted
17 at any time to the commissioner for review and approval.

18 d. Each long-range facilities plan shall include a cohort survival
19 methodology or other methodology approved by the commissioner,
20 accompanied by a certification by a qualified demographer retained by
21 the district that serves as the basis for identifying the capacity and
22 program needs detailed in the long-range facilities plan.

23 e. The long-range facilities plan shall include an educational
24 adequacy inventory of all existing school facilities in the district, the
25 identification of all deficiencies in the district's current inventory of
26 school facilities, which includes the identification of those deficiencies
27 that involve emergent health and safety concerns, and the district's
28 proposed plan for future construction and renovation. The long-range
29 facilities plan submissions shall conform to the guidelines, criteria and
30 format prescribed by the commissioner.

31 f. Each district shall determine the number of "unhoused students"
32 for the ensuing five-year period calculated pursuant to the provisions
33 of section 8 of this act.

34 g. Each district shall submit the long-range facilities plan to the
35 planning board of the municipality or municipalities in which the
36 district is situate for the planning board's review and findings pursuant
37 to section 22 of P.L.1975, c.291 (C.40:55D-31).

38 h. The commissioner shall develop, for the March 2002 Report on
39 the Cost of Providing a Thorough and Efficient Education and for
40 subsequent reports, facilities efficiency standards for elementary,
41 middle, and high schools consistent with the core curriculum school
42 delivery assumptions in the report and sufficient for the achievement
43 of the core curriculum content standards, and for the provision of
44 required programs in Abbott districts and early childhood education
45 programs in the districts in which these programs are required by the
46 State. The area allowances per FTE student in each class of the

1 district shall be derived from these facilities efficiency standards.

2 The facilities efficiency standards developed by the commissioner
3 shall not be construction design standards but rather shall represent the
4 instructional spaces, specialized instructional areas, and administrative
5 spaces that are determined by the commissioner to be educationally
6 adequate to support the achievement of the core curriculum content
7 standards and for the provision of required programs in Abbott
8 districts and early childhood education programs in the districts in
9 which these programs are required. A district may design, at its
10 discretion, the educational and other spaces to be included within the
11 school facilities project. The design of the project may eliminate
12 spaces in the facilities efficiency standards, include spaces not in the
13 facilities efficiency standards, or size spaces differently than in the
14 facilities efficiency standards upon a demonstration of the adequacy of
15 the school facilities project to deliver the core curriculum content
16 standards pursuant to paragraph (2) of subsection g. of section 5 of
17 this act.

18 Within a reasonable period of time after the effective date of
19 P.L. , c. (C.) (now pending before the Legislature as this bill),
20 the commissioner shall publish the facilities efficiency standards
21 developed for the 2000-2001, 2001-2002, and 2002-2003 school years
22 in the New Jersey Register. Within a reasonable period of time after
23 30 days after publication in the New Jersey Register, the commissioner
24 shall file the facilities efficiency standards with the Office of
25 Administrative Law and those standards shall become effective
26 immediately upon filing with the Office of Administrative Law.
27 During the 30-day period the commissioner shall provide an
28 opportunity for public comment on the proposed facilities efficiency
29 standards.

30 i. Within 90 days of the commissioner's receipt of a long-range
31 facilities plan for review, the commissioner shall determine whether the
32 plan is fully and accurately completed and whether all information
33 necessary for a decision on the plan has been filed by the district. If
34 the commissioner determines that the plan is complete, the
35 commissioner shall promptly notify the district in writing and shall
36 have 60 days from the date of that notification to determine whether
37 to approve the plan or not. If the commissioner determines that the
38 plan is not complete, the commissioner shall notify the district in
39 writing. The district shall provide to the commissioner whatever
40 information the commissioner determines is necessary to make the plan
41 accurate and complete. The district shall submit that information to
42 the commissioner, and the commissioner shall have 60 days from the
43 date of receipt of accurate and complete information to determine
44 whether to approve the plan or not.

45 j. Notwithstanding any provision of subsection i. of this section,
46 if at any time the number of long-range facilities plans filed by school

1 districts with the commissioner and pending review exceeds 20% of
2 the number of school districts in New Jersey, the commissioner may
3 extend by 60 days the deadline for reviewing each plan pending at that
4 time.

5 k. By July 1, 2001, the commissioner shall provide the Legislature
6 with recommendations to address the circumstances of districts which
7 are contiguous with two or more Abbott districts. The
8 recommendations shall address the issues of the financing of school
9 facilities projects and the funding of the educational and other
10 programs required within these districts as a result of their unique
11 demographic situation.

12

13 5. (New section) a. The authority shall construct and finance the
14 school facilities projects of Abbott districts, level II districts, and
15 districts with a district aid percentage equal to or greater than 60%.

16 b. Any district whose district aid percentage is less than 60% may
17 elect to have the authority undertake the construction of a school
18 facilities project in the district and the State share shall be determined
19 pursuant to this section. In the event that the district elects not to
20 have the authority undertake the construction of the project, State
21 support for the project shall be determined pursuant to section 9 or
22 section 15 of this act, as applicable.

23 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
24 contrary, the procedures for obtaining approval of a school facilities
25 project shall be as set forth in this act; provided that any district
26 whose district aid percentage is less than 60%, which elects not to
27 have the authority or a redevelopment entity undertake the
28 construction of the project, shall also be required to comply with the
29 provisions of N.J.S.18A:18A-16.

30 d. Any district seeking to initiate a school facilities project shall
31 apply to the commissioner for approval of the project. The application
32 shall, at a minimum, contain the following information: a description
33 of the school facilities project; a schematic drawing of the project or,
34 at the option of the district, preliminary plans and specifications; a
35 delineation and description of each of the functional components of the
36 project; the number of unhoused students to be housed in the project;
37 the area allowances per FTE student as calculated pursuant to section
38 8 of this act; and the estimated cost to complete the project as
39 determined by the district.

40 e. The commissioner shall review each proposed school facilities
41 project to determine whether it is consistent with the district's long-
42 range facilities plan and whether it complies with the facilities
43 efficiency standards and the area allowances per FTE student derived
44 from those standards. The commissioner shall make a decision on a
45 district's application within 90 days from the date he determines that
46 the application is fully and accurately completed and that all

1 information necessary for a decision has been filed by the district, or
2 from the date of the last revision made by the district. If the
3 commissioner is not able to make a decision within 90 days, he shall
4 notify the district in writing explaining the reason for the delay and
5 indicating the date on which a decision on the project will be made,
6 provided that the date shall not be later than 60 days from the
7 expiration of the original 90 days set forth in this subsection. If the
8 decision is not made by the subsequent date indicated by the
9 commissioner, then the project shall be deemed approved and the
10 preliminary eligible costs shall equal the proposed cost of the project.

11 f. If the commissioner determines that the school facilities project
12 complies with the facilities efficiency standards and the district's long-
13 range facilities plan and does not exceed the area allowance per FTE
14 student derived from those standards, the commissioner shall calculate
15 the preliminary eligible costs of the project pursuant to the formulas
16 set forth in section 7 of this act; except that in the case of a county
17 special services school district or a county vocational school district,
18 the commissioner shall calculate the preliminary eligible costs to equal
19 the amount determined by the board of school estimate and approved
20 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
21 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

22 g. If the commissioner determines that the school facilities project
23 is inconsistent with the facilities efficiency standards or exceeds the
24 area allowances per FTE student derived from those standards, the
25 commissioner shall notify the district.

26 (1) The commissioner shall approve area allowances in excess of
27 the area allowances per FTE student derived from the facilities
28 efficiency standards if the board of education or State district
29 superintendent, as appropriate, demonstrates that school facilities
30 needs related to required programs cannot be addressed within the
31 facilities efficiency standards and that all other proposed spaces are
32 consistent with those standards. The commissioner shall approve area
33 allowances in excess of the area allowances per FTE student derived
34 from the facilities efficiency standards if the additional area allowances
35 are necessary to accommodate centralized facilities to be shared
36 among two or more school buildings within the district and the
37 centralized facilities represent a more cost effective alternative.

38 (2) The commissioner may waive a facilities efficiency standard if
39 the board of education or State district superintendent, as appropriate,
40 demonstrates to the commissioner's satisfaction that the waiver will
41 not adversely affect the educational adequacy of the school facility,
42 including the ability to deliver the programs and services necessary to
43 enable all students to achieve the core curriculum content standards.

44 (3) To house the district's central administration, a district may
45 request an adjustment to the approved areas for unhoused students of
46 2.17 square feet for each FTE student in the projected total district

1 school enrollment if the proposed administrative offices will be housed
2 in a school facility and the district demonstrates either that the existing
3 central administrative offices are obsolete or that it is more practical
4 to convert those offices to instructional space. To the extent that
5 existing administrative space will continue to be used for
6 administrative purposes, the space shall be included in the formulas set
7 forth in section 7 of this act.

8 If the commissioner approves excess facilities efficiency standards
9 or additional area allowances pursuant to paragraphs (1), (2), or (3)
10 of this subsection, the commissioner shall calculate the preliminary
11 eligible costs based upon the additional area allowances or excess
12 facilities efficiency standards pursuant to the formulas set forth in
13 section 7 of this act. In the event that the commissioner does not
14 approve the excess facilities efficiency standards or additional area
15 allowances, the district may either: modify its submission so that the
16 school facilities project meets the facilities efficiency standards; or pay
17 for the excess costs.

18 (4) The commissioner shall approve spaces in excess of, or
19 inconsistent with, the facilities efficiency standards, hereinafter
20 referred to as nonconforming spaces, upon a determination by the
21 district that the spaces are necessary to comply with State or federal
22 law concerning individuals with disabilities. A district may apply for
23 additional State aid for nonconforming spaces that will permit pupils
24 with disabilities to be educated to the greatest extent possible in the
25 same buildings or classes with their nondisabled peers. The
26 nonconforming spaces may: (a) allow for the return of pupils with
27 disabilities from private facilities; (b) permit the retention of pupils
28 with disabilities who would otherwise be placed in private facilities; (c)
29 provide space for regional programs in a host school building that
30 houses both disabled and nondisabled pupils; and (d) provide space for
31 the coordination of regional programs by a county special services
32 school district, educational services commission, jointure commission,
33 or other agency authorized by law to provide regional educational
34 services in a school building that houses both disabled and nondisabled
35 pupils. A district's State support ratio shall be adjusted to equal the
36 lesser of the sum of its district aid percentage as defined in section 3
37 of this act plus 0.25, or 100% for any nonconforming spaces approved
38 by the commissioner pursuant to this paragraph.

39 h. Upon approval of a school facilities project and determination
40 of the preliminary eligible costs:

41 (1) In the case of a district whose district aid percentage is less
42 than 60% and which has elected not to have the authority undertake
43 the construction of the school facilities project, the commissioner shall
44 notify the district whether the school facilities project is approved and,
45 if so approved, the preliminary eligible costs and the excess costs, if
46 any. Following the determination of preliminary eligible costs and the

1 notification of project approval, the district may appeal to the
2 commissioner for an increase in those costs if the detailed plans and
3 specifications completed by a design professional for the school
4 facilities project indicate that the cost of constructing that portion of
5 the project which is consistent with the facilities efficiency standards
6 and does not exceed the area allowances per FTE student exceeds the
7 preliminary eligible costs as determined by the commissioner for the
8 project by 10% or more. The district shall file its appeal within 30
9 days of the preparation of the plans and specifications. If the district
10 chooses not to file an appeal, then the final eligible costs shall equal
11 the preliminary eligible costs.

12 The appeal shall outline the reasons why the preliminary eligible
13 costs calculated for the project are inadequate and estimate the amount
14 of the adjustment which needs to be made to the preliminary eligible
15 costs. The commissioner shall forward the appeal information to the
16 authority for its review and recommendation. If the additional costs
17 are the result of factors that are within the control of the district or are
18 the result of design factors that are not required to meet the facilities
19 efficiency standards, the authority shall recommend to the
20 commissioner that the preliminary eligible costs be accepted as the
21 final eligible costs. If the authority determines the additional costs are
22 not within the control of the district or are the result of design factors
23 required to meet the facilities efficiency standards, the authority shall
24 recommend to the commissioner a final eligible cost based on its
25 experience for districts with similar characteristics. The commissioner
26 shall make a determination on the appeal within 30 days of its receipt.
27 If the commissioner does not approve an adjustment to the school
28 facilities project's preliminary eligible costs, the commissioner shall
29 issue his findings in writing on the reasons for the denial and on why
30 the preliminary eligible costs as originally calculated are sufficient.

31 (2) In all other cases, the commissioner shall promptly prepare and
32 submit to the authority a preliminary project report which shall
33 consist, at a minimum, of the following information: a complete
34 description of the school facilities project; the actual location of the
35 project; the total square footage of the project together with a
36 breakdown of total square footage by functional component; the
37 preliminary eligible costs of the project; the project's priority ranking
38 determined pursuant to subsection m. of this section; any other
39 factors to be considered by the authority in undertaking the project;
40 and the name and address of the person from the district to contact
41 in regard to the project.

42 i. Upon receipt by the authority of the preliminary project report,
43 the authority, upon consultation with the district, shall prepare detailed
44 plans, schedules and specifications which contain the authority's
45 estimated cost and schedule to complete the school facilities project.
46 The authority shall transmit to the commissioner the authority's

1 recommendations in regard to the project which shall, at a minimum,
2 contain the detailed plans and specifications; whether the school
3 facilities project can be completed within the preliminary eligible costs;
4 and any other factors which the authority determines should be
5 considered by the commissioner.

6 (1) In the event that the authority determines that the school
7 facilities project can be completed within the preliminary eligible costs:
8 the final eligible costs shall be deemed to equal the preliminary eligible
9 costs; the commissioner shall be deemed to have given final approval
10 to the project; and the preliminary project report shall be deemed to be
11 the final project report delivered to the authority pursuant to
12 subsection j. of this section.

13 (2) In the event that the authority determines that the school
14 facilities project cannot be completed within the preliminary eligible
15 costs, prior to the submission of the authority's recommendations to
16 the commissioner, the authority shall, in consultation with the district
17 and the commissioner, determine whether changes can be made in the
18 project which will result in a reduction in costs while at the same time
19 meeting the facilities efficiency standards approved by the
20 commissioner.

21 (a) If the authority determines that changes in the school facilities
22 project are possible so that the project can be accomplished within the
23 scope of the preliminary eligible costs while still meeting the facilities
24 efficiency standards, the authority shall so advise the commissioner,
25 whereupon the commissioner shall: calculate the final eligible costs to
26 equal the preliminary eligible costs; give final approval to the project
27 with the changes noted; and issue a final project report to the
28 authority pursuant to subsection j. of this section.

29 (b) If the authority determines that it is not possible to make
30 changes in the school facilities project so that it can be completed
31 within the preliminary eligible costs either because the additional costs
32 are the result of factors outside the control of the district or the
33 additional costs are required to meet the facilities efficiency standards,
34 the authority shall recommend to the commissioner that the
35 preliminary eligible costs be increased accordingly, whereupon the
36 commissioner shall: calculate the final eligible costs to equal the sum
37 of the preliminary eligible costs plus the increase recommended by the
38 authority; give final approval to the project; and issue a final project
39 report to the authority pursuant to subsection j. of this section.

40 (c) If the additional costs are the result of factors that are within
41 the control of the district or are the result of design factors that are
42 not required to meet the facilities efficiency standards or approved
43 pursuant to paragraph (1) of subsection g. of this section, the authority
44 shall recommend to the commissioner that the preliminary eligible
45 costs be accepted, whereupon the commissioner shall: calculate the
46 final eligible costs to equal the preliminary eligible costs and specify

1 the excess costs which are to be borne by the district; give final
2 approval to the school facilities project; and issue a final project report
3 to the authority pursuant to subsection j. of this section; provided that
4 the commissioner may approve final eligible costs which are in excess
5 of the preliminary eligible costs if, in his judgment, the action is
6 necessary to meet the educational needs of the district.

7 (d) For a school facilities project constructed by the authority, the
8 authority shall be responsible for any costs of construction, but only
9 from the proceeds of bonds issued by the authority pursuant to this
10 act, which exceed the amount originally projected by the authority and
11 approved for financing by the authority, provided that the excess is the
12 result of an underestimate of labor or materials costs by the authority.
13 After receipt by the authority of the final project report, the district
14 shall be responsible only for the costs associated with changes, if any,
15 made at the request of the district to the scope of the school facilities
16 project.

17 j. The authority shall not commence the acquisition or
18 construction of a school facilities project unless the commissioner
19 transmits to the authority a final project report and the district
20 complies with the approval requirements for the local share, if any,
21 pursuant to section 11 of this act. The final project report shall
22 contain all of the information contained in the preliminary project
23 report and, in addition, shall contain: the final eligible costs; the excess
24 costs, if any; the total costs which equals the final eligible costs plus
25 excess costs, if any; the State share; and the local share.

26 k. For the Abbott districts, the State share shall be 100% of the
27 final eligible costs. For all other districts, the State share shall be an
28 amount equal to 115% of the district aid percentage; except that the
29 State share shall not be less than 40% of the final eligible costs;

30 l. The local share for school facilities projects constructed by the
31 authority or a redevelopment entity shall equal the final eligible costs
32 plus any excess costs less the State share.

33 m. The commissioner shall establish, in consultation with the
34 Abbott districts, a priority ranking of all school facilities projects in the
35 Abbott districts based upon his determination of critical need, and shall
36 establish priority categories for all school facilities projects in non-
37 Abbott districts. The commissioner shall rank projects from Tier I to
38 Tier IV in terms of critical need according to the follow prioritization:

39 Tier I: health and safety, including electrical system upgrades;
40 required early childhood education programs; unhoused students/class
41 size reduction as required to meet the standards of the
42 "Comprehensive Educational Improvement and Financing Act of
43 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

44 Tier II: educational adequacy - specialized instructional spaces,
45 media centers, cafeteriums, and other non-general classroom spaces
46 contained in the facilities efficiency standards; special education spaces

1 to achieve the least restrictive environment;

2 Tier III: technology projects; regionalization or consolidation
3 projects;

4 Tier IV: other local objectives.

5 n. The provisions of the “Public School Contracts Law,”
6 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
7 project constructed by a district but shall not be applicable to projects
8 constructed by the authority or a redevelopment entity pursuant to the
9 provisions of this act.

10 o. In the event that a district whose district aid percentage is less
11 than 60% elects not to have the authority undertake construction of a
12 school facilities project, any proceeds of school bonds issued by the
13 district for the purpose of funding the project which remain unspent
14 upon completion of the project shall be used by the district to reduce
15 the outstanding principal amount of the school bonds.

16 p. Upon completion by the authority of a school facilities project,
17 if the cost of construction and completion of the project is less than
18 the total costs, the district shall be entitled to receive a portion of the
19 local share based on a pro rata share of the difference based on the
20 ratio of the State share to the local share.

21 q. The authority shall determine the cause of any costs of
22 construction which exceed the amount originally projected by the
23 authority and approved for financing by the authority.

24 r. In the event that a district has engaged architectural services
25 that have been prequalified by the authority to prepare the documents
26 required for initial proposal of a school facilities project, the district
27 shall, if permitted by the terms of the district's contract for
28 architectural services, assign the contract for architectural services to
29 the authority, provided that the fees for the architectural services shall
30 not exceed the fees normally paid by the authority for such services.

31 s. The commissioner may authorize the authority to provide funds
32 to Abbott districts prior to the approval of a school facilities project
33 to enable an Abbott district to finance site acquisition and preliminary
34 design work.

35

36 6. (New section) The provisions of section 5 of P.L. , c. (C.)
37 (now pending before the Legislature as this bill) shall pertain to school
38 facilities projects designated to be demonstration projects except as
39 otherwise provided in this section.

40 a. For the initial three full fiscal years following the effective date
41 of this act, the State Treasurer may designate up to six school facilities
42 projects which the State Treasurer determines to be in the best
43 interests of the State and of the districts to be demonstration projects
44 pursuant to the provisions of this section.

45 b. A district and municipality may apply to the authority for the
46 designation of a school facilities project contained in a long-range

1 facilities plan submitted to the commissioner pursuant to section 4 of
2 P.L. , c. (C.) (now pending before the Legislature as this bill)
3 to be a demonstration project to provide for the coordination of local
4 economic development, redevelopment or community development
5 with a school facilities project. The application shall be accompanied
6 by substantively, parallel resolutions requesting the designation
7 adopted by the board of education of the district and the governing
8 body of the municipality. The application shall set forth: (1) a plan
9 for carrying out the redevelopment project as a whole, including the
10 construction of the school facilities project; (2) the name of the
11 redevelopment entity to undertake the project under the "Local
12 Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et
13 seq.); (3) a description of how the project fits into a redevelopment
14 plan adopted or to be adopted by the municipal governing body
15 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a
16 description of the community design features to be included in the
17 school facilities project.

18 c. The authority shall evaluate the request to determine whether
19 the school facilities project is suitable for designation as a
20 demonstration project and whether the proposed redevelopment entity
21 is suitable for designation as the entity to construct the demonstration
22 project based upon consideration of the following factors:

23 (1) whether the demonstration project furthers definite local
24 objectives as to appropriate land uses, density of population, and
25 improved traffic and public transportation, public utilities, recreational
26 and community facilities and other public improvements;

27 (2) whether the demonstration project provides significant social
28 and economic benefits to the municipality, its neighborhoods and
29 residents;

30 (3) whether the development of the school facilities project is
31 consistent with the local development plan;

32 (4) the extent to which the school facilities project contains
33 community design features which can be used by the community;

34 (5) whether the redevelopment entity has the current capacity to
35 construct the demonstration project;

36 (6) whether the redevelopment entity has the appropriate prior
37 experience in developing similar types of projects; and

38 (7) whether there exist donations from private entities for the
39 purpose of the demonstration project.

40 d. The authority's review of the proposed school facilities project
41 for designation as a demonstration project under this section shall
42 commence upon approval by the commissioner of the school facilities
43 project pursuant to section 5 of P.L. , c. (C.) (now pending
44 before the Legislature as this bill). Upon approval by the
45 commissioner of the school facilities project, and recommendation by
46 the authority that the school facilities project be a demonstration

1 project, the recommendation of the authority shall be forwarded to the
2 State Treasurer who shall determine whether the school facilities
3 project should be designated as a demonstration project. At the same
4 time as the authority forwards its recommendation to the State
5 Treasurer, the authority shall forward its recommendation to the
6 Urban Coordinating Council for review pursuant to subsection i. of
7 this section.

8 e. In addition to the requirements set forth in section 5 of this
9 act, a demonstration project may request inclusion in the final eligible
10 costs of the school facilities project, of all or any portion of the cost
11 of any community design features including any area, rooms,
12 equipment, recreational area or playground included in the school
13 facilities project which are to be used in common by students of the
14 district and by residents of the community, but there shall not be
15 included in the final eligible costs any portion of the cost of any
16 features which are not an integral part of the school building and
17 grounds and are not related to the advancement of the educational
18 success of district students. The commissioner shall approve the
19 inclusion of the community design features as part of the school
20 facilities project if he finds that the inclusion of the community design
21 features as part of the school facilities project would be conducive to
22 the usefulness and success of the project for both the students of the
23 district and the residents of the community. The commissioner may
24 condition his approval upon the adoption by the district of policies
25 suitable for assuring continuing community or educational access to
26 the community design features.

27 f. The cost of the community design features approved by the
28 commissioner shall be reviewed by the authority. The district shall
29 submit the documentation required by the authority for the authority
30 to make its determination. The authority shall, in its recommendation
31 to the commissioner pursuant to section 5 of this act, include its
32 recommendation with respect to the cost of the community design
33 features. The commissioner shall make the final determination with
34 respect to the inclusion of the cost of community design features in the
35 final eligible costs.

36 g. The authority shall provide funding for the State's share of the
37 final eligible costs of a school facilities project to be constructed as
38 part of a demonstration project pursuant to an agreement among the
39 authority, the redevelopment entity and the district which shall, in
40 addition to any other terms and conditions, set forth the terms for
41 disbursement of the State share and provide for the monitoring of
42 construction by the authority.

43 h. Upon completion of a demonstration project by a
44 redevelopment entity, the district shall submit to the commissioner a
45 plan to provide for the maintenance of the project and shall enter into
46 a contract which provides for that maintenance.

1 i. The Urban Coordinating Council shall review the
2 recommendations of the authority with respect to the demonstration
3 projects and shall advise the authority, redevelopment entity and the
4 district regarding the potential availability of funding for the
5 demonstration project, including, but not limited to, sources of funds
6 for acquisition, clearance, site remediation, and assemblage of land and
7 the development, redevelopment, construction or rehabilitation of any
8 structure or improvement included in the project.

9
10 7. (New section) a. Preliminary eligible costs for construction of
11 new school facilities and additions to school facilities, characterized by
12 an increase in the square footage of the school facility, shall be
13 approved only if necessary for reasons of unhoused students.
14 Unhoused students are the number of students to be housed in a
15 school building, but which cannot be housed in an existing building
16 without additional space or a new building in order to maintain
17 educational adequacy; or which are temporarily being housed in space
18 that was originally designed or intended for instruction in specialized
19 areas including, but not limited to, science, art, music, other hands-on
20 experiences and comprehensive health and physical education.
21 Unhoused students are calculated by subtracting the projected
22 enrollment for a school building from its functional capacity.

23 Preliminary eligible costs for construction of new school facilities
24 and additions to school facilities pursuant to this subsection shall be
25 calculated as follows:

26 Preliminary eligible costs = AU x C plus other allowable costs

27 where

28 AU is the approved area for unhoused students; and

29 C is the area cost allowance.

30 b. Preliminary eligible costs shall be approved for a rehabilitation
31 project which means the reconstruction, remodeling, alteration,
32 modernization, renovation or repair of school facilities but only for the
33 purpose of keeping the school building functional for its original
34 purpose or for new purposes that can be accomplished without
35 increasing the gross square footage of the original facility.

36 Preliminary eligible costs for rehabilitation projects pursuant to this
37 subsection shall be calculated as follows:

38 Preliminary eligible costs = estimated actual costs.

39 All school facilities shall be deemed suitable for rehabilitation
40 unless a pre-construction evaluation undertaken by the district
41 demonstrates to the satisfaction of the commissioner that the structure
42 might pose a risk to the safety of the occupants even after
43 rehabilitation, or that rehabilitation is not cost-effective. Whenever a
44 district determines to undertake new construction rather than a
45 rehabilitation project, the district shall undertake a preconstruction
46 evaluation to determine whether, because of health and safety or

1 efficiency, it would be more feasible to replace rather than renovate
2 the school facility. When the district demonstrates to the satisfaction
3 of the commissioner that replacement is more feasible, the district shall
4 be authorized to have the school facility replaced rather than renovated
5 and the preliminary eligible costs shall be determined pursuant to
6 subsection a. of this section. The estimated costs of a rehabilitation
7 project shall contain only those costs necessary for compliance with
8 the Uniform Construction Code, health and safety, and educational
9 adequacy as determined pursuant to the facilities efficiency standards
10 and paragraph (1) of subsection g. of section 5 of this act.

11 c. When construction done in lieu of rehabilitation projects
12 qualifies as new construction, the approved area for unhoused students
13 shall be determined by the commissioner, with consideration of the
14 existing school facilities in the district.

15 d. Preliminary eligible costs for construction done in lieu of
16 rehabilitation projects which does not meet the requirements of
17 subsection b. of this section shall be determined in accordance with the
18 methodology for aiding rehabilitation projects, with the preliminary
19 eligible costs determined pursuant to subsection b. of this section.

20 e. Preliminary eligible costs for purchase of an existing facility to
21 be used as a school facility shall be determined in accordance with the
22 methodology for new construction, with preliminary eligible costs
23 determined pursuant to subsection a. of this section.

24 f. Notwithstanding the provisions of subsections a. and b. of this
25 section, preliminary eligible costs for any addition or reconstruction,
26 remodeling, alteration, modernization, renovation or repair made to a
27 purchased facility within five years of purchase shall be determined as
28 follows:

29 Preliminary eligible costs = (ACP-PC) x (C/CP) plus other
30 allowable costs

31 where

32 ACP is the preliminary eligible costs for the facilities purchase
33 pursuant to subsection e. of this section;

34 PC is the purchase cost for the facility;

35 C is the area cost allowance at the time of application for the
36 renovation; and

37 CP is the area cost allowance at the time of purchase of the
38 facility.

39 Preliminary eligible costs so calculated shall not be less than
40 zero.

41 g. Other allowable costs shall include the costs of site
42 development, acquisition of land or other real property interests
43 necessary to effectuate the school facilities project, fees for the
44 services of design professionals, including architects, engineers,
45 construction managers and other design professionals, legal fees, and
46 the costs associated with financing the school facilities project. Other

1 allowable costs for school facilities projects to be undertaken by the
2 authority shall be determined by the authority. Other allowable costs
3 for school facilities projects to be undertaken by a district or, in the
4 case of a demonstration project, by a redevelopment entity shall be
5 equal to the actual costs unless the commissioner, in consultation with
6 the authority, determines these costs to be unreasonable in light of the
7 experience of similarly situated districts.

8
9 8. (New section) a. The number of unhoused students shall be
10 calculated as the number of FTE students who are projected to be
11 enrolled in preschool handicapped, preschool, kindergarten, grades 1
12 through 12, and special education services pupil educational programs
13 provided in a district within five years, which are in excess of the
14 functional capacity of the district's current school facilities or the
15 functional capacity of the school facilities which will be available
16 within five years other than the school facilities for which the
17 preliminary eligible costs are determined, based upon the district's
18 long-range facilities plan. The determination of unhoused capacity
19 shall separately consider projected enrollments and functional
20 capacities at the early childhood and elementary (preschool through
21 grade 5), middle (grades 6 through 8), and high school (grades 9
22 through 12) levels. For the purpose of calculating the district's
23 unhoused students, special education services students shall be
24 considered part of the grade level to which the students' chronological
25 age corresponds. In the event that the commissioner approves a
26 school facilities project which involves the construction of a new
27 school facility to replace an existing school facility, which shall
28 accommodate both the unhoused students and the students in the
29 existing school facility, the calculation of the number of unhoused
30 students shall include the number of students currently attending the
31 existing facility which is to be replaced.

32 b. Approved area for unhoused students (AU) shall be determined
33 according to the following formula:

$$34 \quad AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$$

35 where

36 UEC, UE, UM, UH are the numbers of unhoused students in the
37 early childhood, elementary, middle, and high school enrollment
38 categories, respectively; and

39 SEC, SE, SM, SH are the area allowances per FTE student in
40 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
41 and grades 9 through 12, respectively. Area allowances shall be
42 determined based on the grade level of a student regardless of the
43 grade configurations used in the school buildings of the district.

44 The minimum area allowance per FTE student shall be as follows:

1	Preschool through grade 5	125 sq. ft.
2	Grades 6 through 8	136 sq. ft.
3	Grades 9 through 12	151 sq. ft.

4

5 The commissioner, in consultation with the State Treasurer and the
 6 Commissioner of the Department of Community Affairs, shall adopt
 7 regulations that establish a process for the consideration of special
 8 circumstances, in addition to those provided in section 5 of this act, in
 9 which the area allowances per FTE student established pursuant to this
 10 subsection may be adjusted. Any decision made by the commissioner
 11 pursuant to those regulations shall be made in consultation with the
 12 State Treasurer and the Commissioner of the Department of
 13 Community Affairs.

14

15 9. (New section) a. State debt service aid for capital investment
 16 in school facilities for a district whose district aid percentage is less
 17 than 60% and which elects not to have the ¹[building]¹ authority
 18 construct a school facilities project or to finance the project under
 19 section 15 of this act, shall be distributed upon a determination of
 20 preliminary eligible costs by the commissioner, according to the
 21 following formula:

22 Aid is the sum of A for each issuance of school bonds issued for a
 23 school facilities project approved by the commissioner after the
 24 effective date of P.L. , c. (C.) (now pending before the
 25 Legislature as this bill)

26 where

27 $A = B \times AC/P \times (DAP \times 1.15) \times M$, with $AC/P = 1$

28 whenever AC/P would otherwise yield a number greater than one,

29 and where:

30 B is the district's debt service for the individual issuance for the
 31 fiscal year;

32 AC is the preliminary eligible costs determined pursuant to section
 33 7 of this act;

34 P is the principal of the individual issuance plus any other funding
 35 sources approved for the school facilities project;

36 DAP is the district's district aid percentage as defined pursuant to
 37 section 3 of this act; and

38 M is a factor representing the degree to which a district has
 39 fulfilled maintenance requirements for a school facilities project
 40 determined pursuant to subsection b. of this section.

41 For county special services school districts, DAP shall be that of
 42 the county vocational school district in the same county.
 43 Notwithstanding any provision of this subsection to the contrary, State
 44 debt service aid shall not be less than 40% of the preliminary eligible
 45 cost.

46 b. The maintenance factor (M) shall be 1.0 except when one of the

1 following conditions applies, in which case the maintenance factor
2 shall be as specified:

3 (1) Effective ten years from the date of the enactment of P.L. ,
4 c. (C) (now pending before the Legislature as this bill), the
5 maintenance factor for aid for reconstruction, remodeling, alteration,
6 modernization, renovation or repair, or for an addition to a school
7 facility, shall be zero for all school facilities projects for which the
8 district fails to demonstrate over the ten years preceding issuance a net
9 investment in maintenance of the related school facility of at least 2%
10 of the replacement cost of the school facility, determined pursuant to
11 subsection b. of section 7 of this act using the area cost allowance of
12 the year ten years preceding the year in which the school bonds are
13 issued.

14 (2) For new construction, additions, and school facilities aided
15 under subsection b. of section 7 of this act supported by financing
16 issued for projects approved by the commissioner after the effective
17 date of P.L. , c. (C) (now pending before the Legislature as
18 this bill), beginning in the fourth year after occupancy of the school
19 facility, the maintenance factor shall be reduced according to the
20 following schedule for all school facilities projects for which the
21 district fails to demonstrate in the prior fiscal year an investment in
22 maintenance of the related school facility of at least two-tenths of 1 %
23 of the replacement cost of the school facility, determined pursuant to
24 subsection b. of section 7 of this act.

25

26 Maintenance Percentage	Maintenance Factor (M)
27 .199% - .151%	75%
28 .150% - .100%	50%
29 Less than .100%	Zero

30
31 (3) Within one year of the enactment of P.L. , c. (C) (now
32 pending before the Legislature as this bill), the commissioner shall
33 promulgate rules requiring districts to develop a long-range
34 maintenance plan and specifying the expenditures that qualify as an
35 appropriate investment in maintenance for the purposes of this
36 subsection.

37 c. Any district which obtained approval from the commissioner
38 since September 1, 1998 and prior to the effective date of P.L. ,
39 c. (C) (now pending before the Legislature as this bill) of the
40 educational specifications for a school facilities project or obtained
41 approval from the Department of Community Affairs or the
42 appropriately licensed municipal code official since September 1, 1998
43 of the final construction plans and specifications, and the district has
44 issued debt, may elect to have the final eligible costs of the project
45 determined pursuant to section 5 of this act and to receive debt service
46 aid under this section or under section 10 of this act.

1 Any district which received approval from the commissioner for a
2 school facilities project at any time prior to the effective date of
3 P.L. , c. (C.) (now pending before the Legislature as this bill),
4 and has not issued debt, other than short term notes, may submit an
5 application pursuant to section 5 of this act to have the final eligible
6 costs of the project determined pursuant to that section and to have
7 the authority construct the project; or, at its discretion, the district
8 may choose to receive debt service aid under this section or under
9 section 10 of this act or to receive a grant under section 15 of this act.

10 ¹For the purposes of this subsection, the "issuance of debt" shall
11 include lease purchase agreements in excess of five years.¹

12
13 10. (New section) For each issuance of school bonds or
14 certificates of participation issued for a school facilities project
15 approved by the commissioner prior to the effective date of P.L. ,
16 c. (C.) (now pending before the Legislature as this bill):

17 Aid is the sum of A

18 where

19 $A = B \times \text{CCSAID/TEBUD}$

20 and where

21 B is the district's total debt service or lease purchase payment for
22 the individual issuance for the fiscal year, provided that for the
23 purpose of determining debt service or lease purchase payment under
24 this section the cost of site acquisition may be included;

25 CCSAID is the district's core curriculum standards aid amount
26 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
27 and

28 TEBUD is the district's T&E budget determined pursuant to
29 section 13 of P.L.1996, c.138(C.18A:7F-13).

30 For county special services school districts, CCSAID/TEBUD shall
31 be that of the county vocational school district in the same county.

32
33 11. (New section) A school facilities project shall not be
34 constructed unless the local share of the project, if any, is approved
35 in accordance with the provisions for the approval of capital projects
36 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
37 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

38
39 12. (New section) A district, other than a State-operated school
40 district, that sought approval pursuant to section 11 of this act of a
41 school facilities project without excess costs but failed to receive that
42 approval, and within the three years prior to that, sought and failed to
43 receive approval of that school facilities project with or without excess
44 costs, may submit the project to the commissioner and request that the
45 commissioner approve the project and authorize the issuance of school
46 bonds for the local share of the project. Upon receipt of the request,

1 the commissioner shall review the school facilities project and
2 determine whether the project is necessary for the provision of a
3 thorough and efficient system of education in the district. If the
4 commissioner concludes that the project is necessary, the
5 commissioner may approve the project without excess costs and
6 authorize the issuance of school bonds to fund the local share. In
7 addition to the amount of taxes determined by the legal voters of the
8 district at the annual school election, the secretary of the board of
9 education shall certify the amount required for the repayment of the
10 interest and principal of the bonds required to fund the local share
11 amount approved by the commissioner in the same manner required
12 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
13 and the amount so certified shall be included in the taxes assessed,
14 levied and collected in the municipality or municipalities comprising
15 the school district for those purposes.

16 Any school facilities project authorized pursuant to this section
17 shall be constructed by the authority. Nothing in this section shall
18 preclude a State-operated school district from using the process
19 established pursuant to section 2 of P.L.1991, c.139 (C.18A:7A-46.2)
20 to obtain the approval of the commissioner to undertake a school
21 facilities project.

22

23 13. (New section) a. The authority shall be responsible for the
24 financing, planning, design, construction management, acquisition,
25 construction, and completion of school facilities projects. Upon
26 submission to the authority of a final project report, the authority shall
27 undertake the acquisition, construction, and all other appropriate
28 actions necessary to complete the project. When the final eligible
29 costs of a school facilities project are less than or equal to \$500,000,
30 the authority may, in its discretion, authorize a district to undertake
31 the acquisition, construction and all other appropriate actions
32 necessary to complete the project and enter into a grant agreement
33 with the district for the payment of the State share.

34 b. The authority shall undertake the financing of school facilities
35 projects pursuant to the provisions of this act. The authority may, in
36 its discretion and upon consultation with the district, finance only the
37 State share of the school facilities project or the State share and the
38 local share of the project. In the event that the authority finances only
39 the State share of a project, the authority shall not commence
40 acquisition or construction of the project until the authority receives
41 the local share from the district.

42 c. In order to implement the arrangements established for school
43 facilities projects which are to be constructed by the authority and
44 financed pursuant to this section, a district shall enter into an
45 agreement with the authority and the commissioner containing the
46 terms and conditions determined by the parties to be necessary to

1 effectuate the project.

2 d. Upon completion by the authority of a school facilities project,
3 the district shall enter into an agreement with the authority to provide
4 for the maintenance of the project by the district. In the event that the
5 school facilities project is constructed by a district, upon the
6 completion of the project, the district shall submit to the commissioner
7 a plan to provide for the maintenance of the project by the district.
8 Any agreement or plan shall contain, in addition to any other terms and
9 provisions, a requirement for the establishment of a maintenance
10 reserve fund, the funding levels of which shall be as set forth in
11 regulations adopted by the commissioner pursuant to section 26 of this
12 act.

13

14 14. (New section) Notwithstanding any other provisions of law
15 to the contrary:

16 a. The authority shall have the power, pursuant to the provisions
17 of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and
18 refunding bonds, incur indebtedness and borrow money secured, in
19 whole or in part, by monies received pursuant to sections 17, 18 and
20 19 of this act for the purposes of: financing all or a portion of the
21 costs of school facilities projects and any costs related to the issuance
22 thereof, including, but not limited to, the administrative, insurance,
23 operating and other expenses of the authority to undertake the
24 financing, design, construction and maintenance of school facilities
25 projects; lending moneys to local units to pay the costs of all or a
26 portion of school facilities projects and any costs related to the
27 issuance thereof; funding the grants to be made pursuant to section 15
28 of this act; and financing the acquisition of school facilities projects to
29 permit the refinancing of debt by the district pursuant to section 16 of
30 this act.

31 The authority may establish reserve funds to further secure bonds
32 and refunding bonds issued pursuant to this section and may issue
33 bonds to pay for the administrative, insurance and operating costs of
34 the authority in carrying out the provisions of this act. In addition to
35 its bonds and refunding bonds, the authority shall have the power to
36 issue subordinated indebtedness, which shall be subordinate in lien to
37 the lien of any or all of its bonds or refunding bonds as the authority
38 may determine.

39 b. The authority shall issue the bonds or refunding bonds in such
40 manner as it shall determine in accordance with the provisions of this
41 act and P.L.1974, c.80 (C.34:1B-1 et seq.); provided that
42 notwithstanding any other law to the contrary, no resolution adopted
43 by the authority authorizing the issuance of bonds or refunding bonds
44 pursuant to this section shall be adopted or otherwise made effective
45 without the approval in writing of the State Treasurer; and refunding
46 bonds issued to refund bonds issued pursuant to this section shall be

1 issued on such terms and conditions as may be determined by the
2 authority and the State Treasurer. The authority may, in any
3 resolution authorizing the issuance of bonds or refunding bonds issued
4 pursuant to this section, pledge the contract with the State Treasurer
5 provided for pursuant to section 18 of this act, or any part thereof, or
6 may pledge all or any part of the repayments of loans made to local
7 units pursuant to section 19 of this act for the payment or redemption
8 of the bonds or refunding bonds, and covenant as to the use and
9 disposition of money available to the authority for payment of the
10 bonds and refunding bonds. All costs associated with the issuance of
11 bonds and refunding bonds by the authority for the purposes set forth
12 in this act may be paid by the authority from amounts it receives from
13 the proceeds of the bonds or refunding bonds, and from amounts it
14 receives pursuant to sections 17, 18, and 19 of this act. The costs
15 may include, but shall not be limited to, any costs relating to the
16 issuance of the bonds or refunding bonds, administrative costs of the
17 authority attributable to the making and administering of loans and
18 grants to fund school facilities projects, and costs attributable to the
19 agreements entered into pursuant to subsection d. of this section.

20 c. Each issue of bonds or refunding bonds of the authority shall be
21 special obligations of the authority payable out of particular revenues,
22 receipts or funds, subject only to any agreements with the holders of
23 bonds or refunding bonds, and may be secured by other sources of
24 revenue, including, but not limited to, one or more of the following:

25 (1) Pledge of the revenues and other receipts to be derived from
26 the payment of local unit obligations and any other payment made to
27 the authority pursuant to agreements with any local unit, or a pledge
28 or assignment of any local unit obligations, and the rights and interest
29 of the authority therein;

30 (2) Pledge of rentals, receipts and other revenues to be derived
31 from leases or other contractual arrangements with any person or
32 entity, public or private, including one or more local units, or a pledge
33 or assignment of those leases or other contractual arrangements and
34 the rights and interests of the authority therein;

35 (3) Pledge of all moneys, funds, accounts, securities and other
36 funds, including the proceeds of the bonds;

37 (4) Pledge of the receipts to be derived from payments of State
38 aid to the authority pursuant to section 21 of this act;

39 (5) Pledge of the contract or contracts with the State Treasurer
40 pursuant to section 18 of this act;

41 (6) Pledge of any sums remitted to the local unit by donation from
42 any person or entity, public or private, subject to the approval of the
43 State Treasurer;

44 (7) A mortgage on all or any part of the property, real or personal,
45 comprising a school facilities project then owned or thereafter to be
46 acquired, or a pledge or assignment of mortgages made to the

1 authority by any person or entity, public or private, including one or
2 more local units and rights and interests of the authority therein; and

3 (8) The receipt of any grants, reimbursements or other payments
4 from the federal government.

5 d. The resolution authorizing the issuance of bonds or refunding
6 bonds pursuant to this section may also provide for the authority to
7 enter into any revolving credit agreement, agreement establishing a
8 line of credit or letter of credit, reimbursement agreement, interest rate
9 exchange agreement, currency exchange agreement, interest rate floor
10 or cap, options, puts or calls to hedge payment, currency, rate, spread
11 or similar exposure or similar agreements, float agreements, forward
12 agreements, insurance contracts, surety bonds, commitments to
13 purchase or sell bonds, purchase or sale agreements, or commitments
14 or other contracts or agreements and other security agreements
15 approved by the authority in connection with the issuance of the bonds
16 or refunding bonds pursuant to this section. In addition, the authority
17 may, in anticipation of the issuance of the bonds or the receipt of
18 appropriations, grants, reimbursements or other funds, including,
19 without limitation, grants from the federal government for school
20 facilities projects, issue notes, the principal of or interest on which, or
21 both, shall be payable out of the proceeds of notes, bonds or other
22 obligations of the authority or appropriations, grants, reimbursements
23 or other funds or revenues of the authority.

24 e. The authority is authorized to engage, subject to the approval
25 of the State Treasurer and in such manner as the State Treasurer shall
26 determine, the services of financial advisors and experts, placement
27 agents, underwriters, appraisers, and other advisors, consultants and
28 agents as may be necessary to effectuate the financing of school
29 facilities projects.

30 f. Bonds and refunding bonds issued by the authority pursuant to
31 this section shall be special and limited obligations of the authority
32 payable from, and secured by, funds and moneys determined by the
33 authority in accordance with this section. Notwithstanding any other
34 provision of law or agreement to the contrary, any bonds and
35 refunding bonds issued by the authority pursuant to this section shall
36 not be secured by the same property as bonds and refunding bonds
37 issued by the authority to finance projects other than school facilities
38 projects. Neither the members of the authority nor any other person
39 executing the bonds or refunding bonds shall be personally liable with
40 respect to payment of interest and principal on these bonds or
41 refunding bonds. Bonds or refunding bonds issued pursuant to this
42 section shall not be a debt or liability of the State or any agency or
43 instrumentality thereof, except as otherwise provided by this
44 subsection, either legal, moral or otherwise, and nothing contained in
45 this act shall be construed to authorize the authority to incur any
46 indebtedness on behalf of or in any way to obligate the State or any

1 political subdivision thereof, and all bonds and refunding bonds issued
2 by the authority shall contain a statement to that effect on their face.

3 g. The State hereby pledges and covenants with the holders of any
4 bonds or refunding bonds issued pursuant to this act that it will not
5 limit or alter the rights or powers vested in the authority by this act,
6 nor limit or alter the rights or powers of the State Treasurer in any
7 manner which would jeopardize the interest of the holders or any
8 trustee of the holders, or inhibit or prevent performance or fulfillment
9 by the authority or the State Treasurer with respect to the terms of any
10 agreement made with the holders of the bonds or refunding bonds or
11 agreements made pursuant to subsection d. of this section; except that
12 the failure of the Legislature to appropriate moneys for any purpose
13 of this act shall not be deemed a violation of this section.

14 h. The authority may charge to and collect from local units,
15 districts, the State and any other person, any fees and charges in
16 connection with the authority's actions undertaken with respect to
17 school facilities projects, including, but not limited to, fees and charges
18 for the authority's administrative, organization, insurance, operating
19 and other expenses incident to the financing, planning, design,
20 construction management, acquisition, construction, completion and
21 placing into service and maintenance of school facilities projects.
22 Notwithstanding any provision of this act to the contrary, no Level II
23 district or a district whose district aid percentage is greater than or
24 equal to 60% but less than 100% shall be responsible for the payment
25 of any fees and charges related to the authority's operating expenses.
26

27 15. (New section) In the case of a district whose district aid
28 percentage is less than 60% and which elects not to have the authority
29 undertake the construction of the school facilities project, for any
30 project approved by the commissioner after the effective date of this
31 act, the district may elect to receive a one-time grant for the State
32 share of the project rather than annual debt service aid under section
33 9 of this act. The State share payable to the district shall equal the
34 product of the project's final eligible costs and 115% of the district aid
35 percentage or 40%, whichever is greater. The authority shall provide
36 grant funding for the State's share of the final eligible costs of a school
37 facilities project pursuant to an agreement between the district and the
38 authority which shall, in addition to other terms and conditions, set
39 forth the terms of disbursement of the State share. The funding of the
40 State share shall not commence until the district secures financing for
41 the local share.
42

43 16. (New section) In addition to the other powers and duties
44 which have been granted to the authority, whenever any local unit
45 finances the construction or acquisition of a school facilities project
46 which would otherwise qualify under this act except that the debt was

1 issued prior to the effective date of this act, the authority may
2 refinance the debt issued by the local unit through the issuance of
3 bonds secured by repayments of loans made to the local units and may
4 purchase the work or improvement and lease the same to the district,
5 subject to the approval of the State Treasurer; except that the amount
6 of the purchase price for a school facilities project shall not exceed the
7 original cost. Each loan to a local unit pursuant to this section shall
8 be evidenced by local unit obligations and shall be authorized and
9 issued as provided by law. Notwithstanding the provisions of any law
10 to the contrary, the local unit obligations may be sold at private sale
11 to the authority at any price, whether or not less than par value, and
12 shall be subject to redemption prior to maturity at any times and at any
13 prices as the authority and the local unit may agree. All powers, rights,
14 obligations and duties granted to or imposed upon the authority,
15 districts, State departments and agencies or others by this act in
16 respect to school facilities projects shall apply to the same extent with
17 respect to any refinance of debt pursuant to this section; except that
18 any action otherwise required to be taken at a particular time in the
19 implementation of a school facilities project may, when the
20 circumstances require in connection with a refinance of debt pursuant
21 to this section, be taken with the same effect as if taken at that
22 particular time. Upon repayment of the bonds or provision for
23 repayment of bonds issued by the authority to refinance the debt of the
24 local unit, the school facilities project shall be transferred to the
25 district.

26

27 17. (New section) In each fiscal year the State Treasurer shall pay
28 from the General Fund to the authority, in accordance with a contract
29 between the State Treasurer and the authority as authorized pursuant
30 to section 18 of this act, an amount equal to the debt service amount
31 due to be paid in the State fiscal year on the bonds or refunding bonds
32 of the authority issued or incurred pursuant to section 14 of this act
33 and any additional costs authorized pursuant to that section; provided
34 that all such payments from the General Fund shall be subject to and
35 dependent upon appropriations being made from time to time by the
36 Legislature for those purposes, and provided further that all payments
37 shall be used only to pay for the costs of school facilities projects and
38 the costs of financing those projects.

39

40 18. (New section) The State Treasurer and the authority are
41 authorized to enter into one or more contracts to implement the
42 payment arrangement provided for in section 17 of this act. The
43 contract shall provide for payment by the State Treasurer of the
44 amounts required pursuant to section 17 of this act and shall set forth
45 the procedure for the transfer of monies for the purpose of that
46 payment. The contract shall contain terms and conditions as

1 determined by the parties and shall, where appropriate, contain terms
2 and conditions necessary and desirable to secure any bonds or
3 refunding bonds of the authority issued or incurred pursuant to this
4 act; provided that notwithstanding any other provision of law or
5 regulation of the authority to the contrary, the authority shall be paid
6 only such funds as shall be determined by the contract, and the
7 incurrence of any obligation of the State under the contract, including
8 any payments to be made thereunder from the General Fund, shall be
9 subject to and dependent upon appropriations being made from time
10 to time by the Legislature for the purposes of this act.

11

12 19. (New section) a. The authority may make and contract to
13 make loans to local units in accordance with and subject to the
14 provisions of this act to finance all or any portion of the cost of a
15 school facilities project which the local unit may lawfully undertake or
16 acquire and for which the local unit is authorized by law to borrow
17 money; or to refund obligations of the local unit which were issued to
18 provide funds to pay for the cost of a school facilities project. The
19 loans may be made subject to the terms and conditions the authority
20 determines to be consistent with the purposes of this act. Each loan
21 by the authority and the terms and conditions thereof shall be subject
22 to approval by the State Treasurer.

23 b. Each loan to a local unit shall be evidenced by local unit
24 obligations and shall be authorized and issued as provided by law.
25 Notwithstanding the provisions of any other law to the contrary, the
26 local unit obligations may be sold at private sale to the authority at any
27 price, whether or not less than par value, and shall be subject to
28 redemption prior to maturity at any times and at any prices as the
29 authority and the local unit may agree. Each loan to a local unit and
30 the local unit obligations issued to evidence the loan shall bear interest
31 at a rate or rates per annum, including zero interest, and shall be
32 repaid in whole or in part, as the authority and the local unit may
33 agree, with the approval of the State Treasurer.

34

35 20. (New section) A local unit may purchase, lease, rent, sublease
36 or otherwise acquire any school facilities project or any space within
37 a project and pay the amounts as may be agreed upon between the
38 local unit and the authority as the purchase price, rent or other charge
39 therefor; provided that the terms and conditions of the agreement
40 between the authority and the local unit relating to the purchase, lease,
41 rental or sublease shall be subject to the approval of the State
42 Treasurer.

43

44 21. (New section) a. In the event that a local unit has failed or is
45 unable to pay to the authority in full when due any local unit
46 obligations issued by the local unit to the authority, including, but not

1 limited to, any lease or sublease obligations, or any other monies owed
2 by the district to the authority, to assure the continued operation and
3 solvency of the authority, the State Treasurer shall pay directly to the
4 authority an amount sufficient to satisfy the deficiency from State aid
5 payable to the local unit; provided that if the local unit is a school
6 district, the State aid shall not include any State aid which may
7 otherwise be restricted pursuant to the provisions of P.L.1996, c.138
8 (C.18A:7F-1 et seq.). As used in this section, local unit obligations
9 include the principal or interest on local unit obligations or payment
10 pursuant to a lease or sublease of a school facilities project to a local
11 unit, including the subrogation of the authority to the right of the
12 holders of those obligations, any fees or charges payable to the
13 authority, and any amounts payable by a local unit under a service
14 contract or other contractual arrangement the payments under which
15 are pledged to secure any local unit obligations issued to the authority
16 by another local unit.

17 b. If the authority requires, and if there has been a failure or
18 inability of a local unit to pay its local unit obligations to the authority
19 for a period of 30 days, the chairman or the executive director of the
20 authority shall certify to the State Treasurer, with written notice to the
21 fiscal officer of the local unit, the amount remaining unpaid, and the
22 State Treasurer shall pay that amount to the authority; or if the right
23 to receive those payments has been pledged or assigned to a trustee
24 for the benefit of the holders of bonds or refunding bonds of the
25 authority, to that trustee, out of the State aid payable to the local unit,
26 until the amount so certified has been paid. Notwithstanding any
27 provision of this act to the contrary, the State Treasurer's obligation
28 to pay the authority pursuant to this section shall not extend beyond
29 the amount of State aid payable to the local unit.

30 c. The amount paid to the authority pursuant to this section shall
31 be deducted from the appropriation or apportionment of State aid
32 payable to the local unit and shall not obligate the State to make, nor
33 entitle the local unit to receive, any additional appropriation or
34 apportionment. The obligation of the State Treasurer to make
35 payments to the authority or trustee and the right of the authority or
36 trustee to receive those payments shall be subject and subordinate to
37 the rights of holders of qualified bonds issued prior to the effective
38 date of this act pursuant to P.L.1976, c.38 (C.40A:3-1 et seq.) and
39 P.L.1976, c.39 (C.18A:24-85 et seq.).

40

41 22. (New section) a. The authority shall have the power to accept
42 and use any funds appropriated and paid by the State to the authority
43 for the purposes for which the appropriations are made. The authority
44 shall have the power to apply for and receive and accept
45 appropriations or grants of property, money, services or
46 reimbursements for money previously spent and other assistance

1 offered or made available to it by or from any person, government
2 agency, public authority or any public or private entity whatever for
3 any lawful corporate purpose of the authority, including, without
4 limitation, grants, appropriations or reimbursements from the federal
5 government, and to apply and negotiate for the same upon such terms
6 and conditions as may be required by any person, government agency,
7 authority or entity as the authority may determine to be necessary,
8 convenient or desirable.

9 b. The authority shall establish a financial incentive program for the
10 purpose of promoting donations to school facilities projects. Any
11 entity which makes a donation approved by the State Treasurer to the
12 preliminary eligible costs of a school facilities project shall receive an
13 incentive payment pursuant to the provisions of this subsection. The
14 amount of the incentive payment shall equal 50% of the fair market
15 value of the donation but shall not in any one year exceed one-half of
16 the amount of taxes paid or otherwise due from the donor pursuant to
17 the provisions of the "New Jersey Gross Income Tax Act," P.L.1976,
18 c.47 (C.54A:1-1 et seq.), or the "Corporation Business Tax Act,"
19 P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable, for the tax year in
20 which the donation is made. The fair market value of a non-cash
21 donation shall be determined by the State Treasurer. The carry-
22 forward for incentive payments shall not be inconsistent with that
23 allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a donation
24 by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in the case
25 of a donation by a corporation.

26 All incentive payments made pursuant to this section shall be funded
27 by and shall be subject to annual appropriations to the authority for
28 this purpose, and shall in no way rely upon funds raised by the
29 issuance of bonds for school facilities projects.

30
31 23. (New section) Not less than the prevailing wage rate
32 determined by the Commissioner of Labor pursuant to the provisions
33 of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers
34 employed in the performance of construction contracts in connection
35 with any school facilities project that is undertaken by the authority,
36 a redevelopment entity, or a district.

37
38 24. (New section) The commissioner, in consultation with the State
39 Treasurer, shall annually submit to the Governor, the Joint Budget
40 Oversight Committee, the President of the Senate and the Speaker of
41 the General Assembly a report on the school facilities construction
42 program established pursuant to the provisions of this act. The report
43 shall be submitted no later than August 1 of each year and shall
44 include, but not be limited to, the following information for the prior
45 fiscal year: the number of school facilities projects approved by the
46 commissioner pursuant to section 5 of this act; the number of projects

1 constructed by the authority and the amount of time that it has taken
2 the authority to complete those projects; the amount of bonds issued
3 by the authority for the construction and renovation of school
4 facilities; the number of projects constructed by districts; the number
5 of demonstration projects approved; the number of approved projects
6 which exceeded the facilities efficiency standards, the components of
7 those projects which exceeded the standards, and the amount of
8 construction by individual districts and Statewide estimated to have
9 exceeded the standards; and recommendations for changes in the
10 school facilities construction program established pursuant to this act.
11

12 25. (New section) Notwithstanding the provisions of P.L.1999,
13 c.138 to the contrary concerning the conditions on the appropriation
14 and reappropriation of the balance in the School Construction and
15 Renovation Fund, the unexpended balance in the School Construction
16 and Renovation Fund on the effective date of this act is appropriated
17 to the authority to be used to pay for school facilities projects and the
18 administrative, insurance, and other operating cost of the authority
19 incurred in connection with those projects.
20

21 26. (New section) a. The commissioner shall adopt, pursuant to the
22 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
23 seq.), rules and regulations necessary to implement the provisions of
24 sections 1 through 12 of this act; except that notwithstanding any
25 provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
26 commissioner may adopt, immediately upon filing with the Office of
27 Administrative Law, such rules and regulations as the commissioner
28 deems necessary to implement the provisions of sections 1 through 12
29 of this act which shall be effective for a period not to exceed 12
30 months. Determinations made by the commissioner pursuant to this
31 act and the rules and regulations adopted by the commissioner to
32 implement this act shall be considered to be final agency action and
33 appeal of that action shall be directly to the Appellate Division of the
34 Superior Court. The regulations shall thereafter be amended, adopted
35 or re-adopted by the State Board of Education in accordance with the
36 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

37 b. The authority shall adopt, pursuant to the “Administrative
38 Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et seq.), and in
39 consultation with the State Treasurer, rules and regulations necessary
40 to implement the provisions of sections 13 through 22 of this act;
41 except that notwithstanding any provision of P.L.1968, c.410
42 (C.52:14B-1 et seq.) to the contrary, the authority may adopt,
43 immediately upon filing with the Office of Administrative Law, such
44 rules and regulations as the authority deems necessary to implement
45 the provisions of sections 13 through 22 of this act which shall be
46 effective for a period not to exceed 12 months and shall thereafter be

1 amended, adopted or re-adopted by the authority, in accordance with
2 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

3 c. Any regulations adopted to implement this act shall include
4 provisions to ensure that all programs necessary to comply with
5 *Abbott v. Burke*, 153 N.J. 480 (1998) (*Abbott V*), are approved.

6
7 27. (New section) All property of the authority shall be exempt from
8 levy and sale by virtue of an execution and no execution of other
9 judicial process shall issue against the same nor shall any judgment
10 against the authority be a charge or lien upon its property; provided
11 that nothing herein contained shall apply to or limit the rights of the
12 holder of any bonds, notes or other obligations to pursue any remedy
13 for the enforcement of any pledge or lien given by the authority on or
14 with respect to any project, school facilities project, or any revenues
15 or other moneys.

16
17 28. (New section) If any clause, sentence, paragraph, section or
18 part of this act shall be adjudged by any court of competent
19 jurisdiction to be invalid, the judgment shall not affect, impair or
20 invalidate the remainder thereof, but shall be confined in its operation
21 to the clause, sentence, paragraph, section or part thereof directly
22 involved in the controversy in which the judgment shall have been
23 rendered.

24
25 29. (New section) This act shall be construed liberally to effectuate
26 the legislative intent and the purposes of this act as complete and
27 independent authority for the performance of each act and thing herein
28 authorized and all powers herein granted shall be broadly interpreted
29 to effectuate the intent and purposes and not as a limitation of
30 powers.

31
32 30. (New section) There shall be appropriated annually for the
33 purposes of this act up to \$100,000,000 from monies made available
34 to the State from tobacco companies under the nationwide settlement
35 of the respective actions by the various states against those companies,
36 entered into by this State in the Master Settlement Agreement in State
37 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
38 Court, Chancery Division, Middlesex County, No.C.254-96.

39
40 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
41 read as follows:

42 11. Each school district and county vocational school district shall
43 make an annual report of its progress in conforming to the standards
44 for the evaluation of school performance adopted pursuant to section
45 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
46 shall include but not be limited to:

47 a. Demographic data related to each school;

- 1 b. Results of designated assessment programs, including Statewide
- 2 assessment programs established pursuant to law and regulation;
- 3 c. Information on each school's fiscal operation, including the
- 4 budget of each school;
- 5 d. (Deleted by amendment, P.L.1996, c.138).
- 6 e. Plans and programs for professional improvement;
- 7 f. Plans to carry out innovative educational programs designed to
- 8 improve the quality of education;
- 9 g. Recommendations for school improvements during the ensuing
- 10 year; and
- 11 h. Such additional information as may be prescribed by the
- 12 commissioner.

13 [Additionally, the State Board of Education may require each
14 district to submit a facilities survey, including current use practices and
15 projected capital project needs.]

16 The district reports shall be submitted to the commissioner annually
17 on a date to be prescribed by the commissioner, who shall make them
18 the basis for an annual report to the Governor and the Legislature,
19 describing the condition of education in New Jersey, the efforts of
20 New Jersey schools in meeting the standards of a thorough and
21 efficient education, the steps underway to correct deficiencies in
22 school performance, and the progress of New Jersey schools in
23 comparison to other state education systems in the United States.

24 (cf: P.L.1996, c.138, s.36)

25

26 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
27 read as follows:

28 1. a. In any State-operated school district created pursuant to the
29 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
30 established a Capital Project Control Board, hereinafter the board,
31 which shall be responsible for the review of any capital project
32 proposed by the State district superintendent provided that the State
33 district superintendent proposes that the capital project be financed in
34 whole or in part by school bonds or notes, or through a lease purchase
35 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
36 shall also be responsible for the certification to the State district
37 superintendent of schools and the Commissioner of Education of the
38 necessity for the capital project and the certification of the
39 appropriation to be made by the governing body of the municipality.

40 b. The board shall consist of five voting members. One member
41 shall be appointed by the Commissioner of Education and two
42 members shall be appointed by the chief executive officer with the
43 consent of a majority of the full membership of the local governing
44 body of the municipality or municipalities in which the school district
45 is located. If the school district is comprised of two municipalities,
46 each municipality shall be entitled to one member, appointed by the

1 executive officer with the consent of the governing body. If the school
2 district is comprised of more than two municipalities, each of the two
3 municipalities with the largest population according to the most recent
4 federal decennial census shall be entitled to one member, appointed by
5 the executive officer with the consent of the governing body.
6 However, if a local governing body fails to agree upon the selection of
7 either board member appointed by an executive officer, then the
8 Commissioner of Education shall make the appointment. One member
9 shall be appointed by the Director of the Division of Local
10 Government Services in the Department of Community Affairs who
11 shall have experience in the area of local finance and capital projects.
12 The fifth member shall be the State district superintendent of schools
13 who shall serve ex-officio and shall act as chairperson of the board.
14 The board members, except for the State district superintendent, shall
15 each serve for a term of one year commencing on July 1 of each year
16 and expiring on June 30 of the following year. Any vacancy in the
17 membership of the board shall be filled for the unexpired term in the
18 manner provided by the original appointment. Members of the board
19 may be employees of the State or any subdivision thereof. All
20 members of the board shall serve without compensation.

21 c. The board shall meet from time to time upon the request of the
22 State district superintendent. All meetings of the board shall be
23 conducted pursuant to the provisions of the "Open Public Meetings
24 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
25 superintendent, or his designee, shall be charged with the responsibility
26 of preparing a transcript of the proceedings and all votes shall be
27 recorded in writing.

28 (cf: P.L.1991, c.139, s.1)

29

30 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
31 read as follows:

32 2. The board shall hear the recommendation of the State district
33 superintendent concerning any proposed capital project, which is to be
34 financed in whole or in part by school bonds or notes, or through a
35 lease purchase agreement pursuant to subsection f. of
36 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
37 the proposed capital project to determine whether the project will
38 assist the State-operated school district in providing a thorough and
39 efficient system of education in that district. In making this
40 determination it may take into consideration factors such as the
41 conditions in the school district, any applicable educational goals, the
42 objectives and standards established by the State, the need for the
43 capital project, the reasonableness of the amount to be expended for
44 the capital project, the estimated time for the undertaking and
45 completion of the capital project, and any other factors which the
46 board may deem necessary including the relationship of the capital

1 project to the long-term capital budget or plan of the school district
2 and the fiscal implications thereof.

3 Following its review and within 60 days of the date on which the
4 State district superintendent submits the recommendation to the board,
5 the board shall adopt a resolution as to whether the State-operated
6 school district should undertake the capital project and providing its
7 reasons therefor. The board shall adopt a resolution indicating the
8 necessity for the capital project and shall also fix and determine by
9 resolution the amount necessary to be raised locally for the capital
10 project. If the board fails to act within 60 days of the submission date,
11 the State district superintendent shall submit the recommendation to
12 the commissioner who shall approve or disapprove the capital project.
13 If the board makes a decision which is contrary to the recommendation
14 of the superintendent, the superintendent may, within 30 days from the
15 date of the board's action, submit the matter to the commissioner for
16 final decision. If the commissioner determines that a capital project
17 should be undertaken, the commissioner shall so notify the board and
18 shall indicate the amount necessary to be raised locally for the capital
19 project. Upon notification, the board shall adopt a resolution
20 indicating the necessity for the capital project and shall also fix and
21 determine by resolution the amount necessary for the capital project
22 as indicated by the commissioner. Certified copies of any resolution
23 requesting the authorization and issuance of bonds and notes or the
24 authorization of a lease purchase agreement shall be delivered to the
25 State district superintendent, the Commissioner of Education, the
26 Director of the Division of Local Government Services in the
27 Department of Community Affairs and the governing body of the
28 municipality or municipalities in which the school district is located.
29 The board shall not approve or recommend any capital project which
30 is inconsistent with the provisions of N.J.S.18A:21-1.
31 (cf: P.L.1991, c.139, s.2)

32
33 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
34 read as follows:

35 3. Notwithstanding the provisions of any law to the contrary, the
36 cost of any capital project authorized pursuant to this act which is to
37 be funded by bonds or notes and certified by the board to the State
38 district superintendent, the Commissioner of Education, the Director
39 of the Division of Local Government Services in the Department of
40 Community Affairs and the governing body of the municipality or
41 municipalities in which the school district is located shall be financed
42 by the issuance of school bonds or notes pursuant to the provisions of
43 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
44 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
45 other obligations shall be authorized, issued, sold and delivered in the

1 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).
2 (cf: P.L.1991, c.139, s.3)

3
4 35. N.J.S.18A:20-4.2 is amended to read as follows:

5 18A:20-4.2 The board of education of any school district may, for
6 school purposes:

7 (a) Purchase, take and condemn lands within the district and lands
8 not exceeding 50 acres in extent without the district but situate in a
9 municipality or municipalities adjoining the district, but no more than
10 25 acres may be so acquired in any one such municipality, without the
11 district, except with the consent, by ordinance, of such municipality;

12 (b) Grade, drain and landscape lands owned or to be acquired by it
13 and improve the same in like manner;

14 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
15 repair or furnish buildings;

16 (d) Borrow money therefor, with or without mortgage; in the case
17 of a type II district without a board of school estimate, when
18 authorized so to do at any annual or special school election; and in the
19 case of a type II district having a board of school estimate, when the
20 amount necessary to be provided therefor shall have been fixed,
21 determined and certified by the board of school estimate; and in the
22 case of a type I district, when an ordinance authorizing expenditures
23 for such purpose is finally adopted by the governing body of a
24 municipality comprised within the district; provided, however, that no
25 such election shall be held nor shall any such resolution of a school
26 estimate board or ordinance of a municipal governing body be
27 introduced to authorize any lease of any building for a term exceeding
28 one year, until the proposed terms of such lease have been reviewed
29 and approved by the Commissioner of Education and the Local
30 Finance Board in the Department of Community Affairs;

31 (e) Construct, purchase, lease or otherwise acquire a building with
32 the federal government, the State, a political subdivision thereof or any
33 other individual or entity properly authorized to do business in the
34 State; provided that: (1) the noneducational uses of the building are
35 compatible with the establishment and operation of a school, as
36 determined by the Commissioner of Education; (2) the portion of the
37 building to be used as a school meets regulations of the Department of
38 Education; (3) the board of education has complied with the
39 provisions of law and regulations relating to the selection and approval
40 of sites; and (4) in the case of a lease, that any lease in excess of five
41 years shall be approved by the Commissioner of Education and the
42 Local Finance Board in the Department of Community Affairs;

43 (f) Acquire [by lease purchase agreement a site and school
44 building; provided that the site and building meet guidelines and
45 regulations of the Department of Education and that any lease
46 purchase agreement in excess of five years shall be approved by the

1 Commissioner of Education as in the best interest of the school district
2 after determining that the relationship of the proposed lease purchase
3 project to the district's goals and objectives established pursuant to
4 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
5 provided that for any lease purchase agreement in excess of five years
6 the Local Finance Board in the Department of Community Affairs shall
7 determine within 30 days that the cost and the financial terms and
8 conditions of the agreement are reasonable], with the approval of
9 either the commissioner, or voters or board of school estimate, as
10 applicable, improvements or additions to school buildings through
11 lease purchase agreements not in excess of five years. The agreement
12 shall be recorded as an expenditure of the General Fund of the district.
13 The commissioner shall approve the agreement only upon a
14 demonstration by the district that the lease purchase payments and any
15 operating expenses related to the agreement can be included within the
16 district's net budget spending growth limitation and will not result in
17 the need for approval by the voters or board of school estimate, as
18 appropriate, of additional spending proposals to maintain existing
19 instructional programs and extracurricular activities. If the
20 commissioner cannot approve the agreement, the board of education
21 may frame a separate question to authorize the lease purchase
22 agreement and obtain voter or board of school estimate approval to
23 enter into the agreement. A district may, without separate prior
24 approval of the commissioner, also acquire equipment through a lease
25 purchase agreement not in excess of five years, provided that the
26 amount of the first installment and each subsequent installment for the
27 lease purchase payments is included in the budget that is advertised
28 and submitted for approval to the voters of the district or the board of
29 school estimate, as appropriate. As used herein, a "lease purchase
30 agreement" refers to any agreement which gives the board of
31 education as lessee the option of purchasing the leased [premises]
32 equipment or improvements or additions to existing school buildings
33 during or upon termination of the lease, with credit toward the
34 purchase price of all or part of rental payments which have been made
35 by the board of education in accordance with the lease. As part of
36 such a transaction [approved by the Commissioner of Education], the
37 board of education may transfer or lease land or rights in land,
38 including any building thereon, after publicly advertising for proposals
39 for the transfer for nominal or fair market value, to the party selected
40 by the board of education, by negotiation or otherwise, after
41 determining that the proposal is in the best interest of the taxpayers of
42 the district, to construct or to improve and to lease or to own or to
43 have ownership interests in the site and the school building to be
44 leased pursuant to such lease purchase agreement, notwithstanding the
45 provisions of any other law to the contrary. The land and any building
46 thereon which is described in a lease purchase agreement entered into

1 pursuant to this amendatory act, shall be deemed to be and treated as
2 property of the school district, used for school purposes pursuant to
3 R.S.54:4-3.3, and shall not be considered or treated as property leased
4 to another whose property is not exempt, and shall not be assessed as
5 real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any
6 lease purchase agreement authorized by this section shall contain a
7 provision making payments thereunder subject to the annual
8 appropriation of funds sufficient to meet the required payments or
9 shall contain an annual cancellation clause and shall require all
10 construction contracts let by public school districts or let by
11 developers or owners of property used for school purposes to be
12 competitively bid, pursuant to [P.L.1977, c.114 (N.J.S.18A:18A-1 et
13 seq.)] N.J.S.18A:18A-1 et seq.;

14 (g) Establish with an individual or entity authorized to do business
15 in the State a tenancy in common, condominium, horizontal property
16 regime or other joint ownership arrangement on a site contributed by
17 the school district; provided the following conditions are met:

18 (1) The individual or entity agrees to construct on the site, or
19 provide for the construction thereon, a building or buildings for use of
20 the board of education separately or jointly with the individual or
21 entity, which shall be subject to the joint ownership arrangement;

22 (2) The provision of the building shall be at no cost or at a reduced
23 cost to the board of education;

24 (3) The school district shall not make any payment for use of the
25 building other than its pro rata share of costs of maintenance and
26 improvements;

27 (4) The noneducational uses of the building are compatible with the
28 establishment and operation of a school, as determined by the
29 Commissioner of Education;

30 (5) The portion of the building to be used as a school, and the site,
31 meet regulations of the Department of Education; and

32 (6) Any such agreement shall be approved by the Commissioner
33 of Education and the Local Finance Board in the Department of
34 Community Affairs;

35 (h) Acquire through sale and lease-back textbooks and
36 non-consumable instructional materials provided that the sale price and
37 principal amount of the lease-back do not exceed the fair market value
38 of the textbooks and instructional materials and that the interest rate
39 applied in the lease-back is consistent with prevailing market rates or
40 is less.

41 (cf: P.L.1998, c.55, s.1)

42

43 36. N.J.S.18A:22-18 is amended to read as follows:

44 18A:22-18. When a board of education of a type I district shall
45 determine by resolution that it is necessary to sell school bonds to
46 raise money for any capital project authorized by law, it shall prepare

1 and deliver to each member of the board of school estimate a
2 statement of the amount of money estimated to be necessary for such
3 purpose. The statement shall include the amount needed to be raised
4 by school bonds, the final eligible costs of the project as approved by
5 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
6 pending before the Legislature as this bill) and in the case of a
7 demonstration project pursuant to section 6 of P.L. , c. (C.)
8 (now pending before the Legislature as this bill), and, if applicable,
9 the amount of any costs of the project which are in addition to the final
10 eligible costs.

11 (cf: P.L.1993, c.83, s.6)

12

13 37. N.J.S.18A:22-19 is amended to read as follows:

14 18A:22-19. The board of school estimate shall fix and determine the
15 local share amount necessary for said purpose and shall certify such
16 amount separately to the board of education and to the governing body
17 of the municipality.

18 (cf: N.J.S.18A:22-19)

19

20 38. N.J.S.18A:22-27 is amended to read as follows:

21 18A:22-27. Whenever the board of education in a type II school
22 district having a board of school estimate shall, by resolution adopted
23 by recorded roll call affirmative vote of two thirds of its full
24 membership, determine that it is necessary to sell school bonds to raise
25 money for any capital project, it shall, by such resolution, estimate the
26 amount necessary to be raised for such project or projects, itemizing
27 such estimate so as to make it readily understandable, and the
28 secretary of the board of education shall certify a copy of such
29 resolution to each member of the board of school estimate of the
30 district. The resolution shall include the amount needed to be raised
31 by school bonds, the final eligible costs of the project as approved by
32 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
33 pending before the Legislature as this bill) and in the case of a
34 demonstration project pursuant to section 6 of P.L. , c. (C.)
35 (now pending before the Legislature as this bill), and, if applicable,
36 the amount of any costs of the project which are in addition to the final
37 eligible costs.

38 (cf: P.L.1993, c.83, s.8)

39

40 39. N.J.S.18A:22-28 is amended to read as follows:

41 18A:22-28. The board of education of such district shall also, upon
42 delivery of such certificate to the members of the board of school
43 estimate, fix a date, place and time for the holding of a public hearing
44 by the board of school estimate with respect to the amount of money
45 to be raised locally for such project or projects, which date shall be not
46 less than 15 nor more than 30 days after the date of such delivery, and

1 shall cause notice of such public hearing and such resolution, including
2 a statement that said resolution will be on file and open to
3 examination to the public between reasonable hours to be fixed and at
4 a place to be named therein from the date of such notice until the date
5 of said public hearing, to be published at least once and not less than
6 seven days before such public hearing in at least one newspaper,
7 published in each municipality comprised within the school district,
8 and if no newspaper is published in any such municipality, then, as to
9 such municipality, in at least one newspaper circulating in the
10 municipality, and said board of education shall cause said resolution
11 to be on file and open to the examination of the public accordingly and
12 to be produced at said public hearing for the information of those
13 attending the same.

14 (cf: N.J.S.18A:22-28)

15

16 40. N.J.S.18A:22-29 is amended to read as follows:

17 18A:22-29. On the date and at the time and place so fixed for such
18 public hearing, the board of school estimate shall grant the taxpayers
19 and other interested persons an opportunity to present objections and
20 to be heard with respect to said resolution and the amount of money
21 necessary to be raised locally for such project or projects and with
22 respect to the various items and projects for which the same is to be
23 raised.

24 (cf: N.J.S.18A:22-29)

25

26 41. N.J.S.18A:22-30 is amended to read as follows:

27 18A:22-30. At or after such hearing the board of school estimate
28 shall fix and determine the amount of money necessary to be raised
29 locally for said project or projects, and the secretary of said board
30 shall certify said amount to the board of education of the district and
31 to the board or body of each municipality comprised therein which has
32 power to make appropriations of money to be raised by taxes in such
33 municipality. The board of education of the district and the governing
34 body of each such municipality comprising the district shall apportion
35 the amount so to be appropriated, assessed, levied and raised in each
36 of such municipalities, as nearly as may be, on the same basis and by
37 the application of the same standards as are provided by law for
38 apportionment of appropriations by county tax boards.

39 (cf: N.J.S.18A:22-30)

40

41 42. N.J.S.18A:22-39 is amended to read as follows:

42 18A:22-39. Whenever the undertaking of any capital project or
43 projects to be paid for from the proceeds of an issue or issue of bonds
44 is submitted to the voters of a type II district at an annual or special
45 school election for their approval or disapproval, the board shall frame
46 and adopt by a recorded roll call majority vote of its full membership

1 the question or questions to be submitted so that each project is
2 submitted in a separate question, or all or any number of them are
3 submitted in one question, which shall state the project or projects so
4 submitted and the amounts to be raised for each of the projects so
5 separately submitted or for each or for all of the projects so jointly
6 submitted, as the case may be, but any proposal for the purchase of
7 land shall be sufficient to authorize the taking and condemning of such
8 land. If the project is to be constructed by the New Jersey Economic
9 Development Authority or a redevelopment entity or by the district
10 with a grant pursuant to section 15 of P.L. , c. (C.) (now pending
11 before the Legislature as this bill), the referendum shall, when framed
12 as a single question, request approval for the local share and shall
13 disclose the final eligible costs of the project as approved by the
14 commissioner pursuant to section 5 of P.L. , c. (C.) (now
15 pending before the Legislature as this bill) and in the case of a
16 demonstration project pursuant to section 6 of P.L. , c. (C.) (now
17 pending before the Legislature as this bill), and, if applicable, the
18 amount of any costs of the project which are in addition to the final
19 eligible costs. If the school facilities project is not to be constructed
20 by the New Jersey Economic Development Authority or a
21 redevelopment entity or by the district with a grant pursuant to section
22 15 of P.L. . c. (C.) (now pending before the Legislature as this
23 bill), the referendum shall, when framed as a single question, request
24 approval for the total costs of the project, shall disclose State debt
25 service aid for the project and, if applicable, the amount of any costs
26 of the project which are in addition to the final eligible costs of the
27 project. When a project is framed in more than one question, a
28 summary shall be included in the explanatory statement which
29 accompanies the questions that includes the total costs of the project,
30 total State debt service aid, and, if applicable, the amount of the costs
31 of the project which are in addition to the final eligible costs of the
32 project, and any individual question containing costs in addition to the
33 final eligible costs shall include the amount of those additional costs.

34 The statement of additional costs in any ballot question and in any
35 explanatory statement that accompanies a ballot question shall describe
36 the additional costs as follows: "This project includes \$(insert
37 amount) for school facility construction elements in addition to the
38 facilities efficiency standards developed by the Commissioner of
39 Education."

40 (cf: P.L.1993, c.83, s.12)

41

42 43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read as
43 follows:

44 2. The Legislature hereby finds and determines that:

45 a. Department of Labor [and Industry] statistics of recent years
46 indicate a continuing decline in manufacturing employment within the

1 State, which is a contributing factor to the drastic unemployment
2 existing within the State, which far exceeds the national average, thus
3 adversely affecting the economy of the State and the prosperity,
4 safety, health and general welfare of its inhabitants and their standard
5 of living; that there is an urgent need to protect and enhance the
6 quality of the natural environment and to reduce, abate and prevent
7 environmental pollution derived from the operation of industry,
8 utilities and commerce within the State; and that the availability of
9 financial assistance and suitable facilities are important inducements to
10 new and varied employment promoting enterprises to locate in the
11 State, to existing enterprises to remain and expand in the State, and
12 to industry, utilities and commerce to reduce, abate and prevent
13 environmental pollution.

14 b. The provision of buildings, structures and other facilities to
15 increase opportunity for employment in manufacturing, industrial,
16 commercial, recreational, retail and service enterprises in the State is
17 in the public interest and it is a public purpose for the State to induce
18 and to accelerate opportunity for employment in such enterprises.

19 c. In order to aid in supplying these needs and to assist in the
20 immediate reduction of unemployment and to provide sufficient
21 employment for the citizens of the State in the future, it is necessary
22 and in the public interest to aid and encourage the immediate
23 commencement of new construction projects of all types, to induce
24 and facilitate the acquisition and installation at an accelerated rate of
25 such devices, equipment and facilities as may be required to reduce,
26 abate and prevent environmental pollution by industry, utilities and
27 commerce.

28 d. The availability of financial assistance by the State will reduce
29 present unemployment and improve future employment opportunities
30 by encouraging and inducing the undertaking of such construction
31 projects, the location, retaining or expanding of employment
32 promoting enterprises within the State, and the accelerated acquisition
33 and installation of energy saving improvements and pollution control
34 devices, equipment and facilities.

35 e. In many municipalities in our State substantial and persistent
36 unemployment exists; and many existing residential, industrial,
37 commercial and manufacturing facilities within such municipalities are
38 either obsolete, inefficient, dilapidated or are located without regard
39 to the master plans of such municipalities; and the obsolescence and
40 abandonment of existing facilities will increase with further
41 technological advances, the provision of modern, efficient facilities in
42 other states and the difficulty which many municipalities have in
43 attracting new facilities; and that many existing and planned
44 employment promoting facilities are far from or not easily accessible
45 to the places of residence of substantial numbers of unemployed and
46 underemployed persons.

1 f. By virtue of their architectural and cultural heritage, their
2 positions as principal centers of communication and transportation
3 and their concentration of productive and energy efficient facilities,
4 many municipalities are capable of ameliorating the conditions of
5 deterioration which impede sound community growth and
6 development; and that building a proper balance of housing, industrial
7 and commercial facilities and increasing the attractiveness of such
8 municipalities to persons of all income levels is essential to restoring
9 such municipalities as desirable places to live, work, shop and enjoy
10 life's amenities; that the accomplishment of these objectives is beyond
11 remedy solely by the regulatory process in the exercise of the police
12 power and cannot be dealt with effectively by the ordinary operations
13 of private enterprise without the powers provided herein, and that the
14 exercise of the powers herein provided is critical to continuing the
15 process of revitalizing such municipalities and will serve an urgent
16 public use and purpose.

17 The Legislature further determines that in order to aid in remedying
18 the aforesaid conditions and to further and implement the purposes of
19 this act, that there shall be created a body politic and corporate having
20 the powers, duties and functions provided in this act; and that the
21 authority and powers conferred under this act, and the expenditure of
22 moneys pursuant thereto constitute a serving of a valid public purpose;
23 and that the enactment of the provisions hereinafter set forth is in the
24 public interest and for the public benefit and good, and is hereby so
25 declared to be as a matter of express legislative determination.

26 The Legislature further finds and determines that:

27 g. It is essential that this and future generations of young people be
28 given the fullest opportunity to learn and develop their intellectual
29 capacities; that institutions of public elementary and secondary
30 education within the State be provided with the appropriate additional
31 means required to assist these young citizens in achieving the required
32 levels of learning and the complete development of their intellectual
33 abilities; and that the resources of the State be employed to meet the
34 tremendous demand for public elementary and secondary educational
35 opportunities.

36 h. Public elementary and secondary educational facilities are an
37 integral part of the effort in this State to provide educational
38 opportunities; it is the purpose of P.L. , c. (C.)(now pending
39 before the Legislature as this bill) to provide a measure of assistance
40 and an alternative method of financing to enable school districts to
41 provide the facilities which are so critically needed; the inventory of
42 public elementary and secondary school buildings and the equipment
43 and capital resources currently available are aging, both
44 chronologically and technologically; and the current funding at the
45 federal, State, and local levels and the current mechanisms for
46 construction of these capital projects are inadequate to meet the

1 demonstrated need for school facilities, and these inadequacies
2 necessitate additional sources of funding and the coordination of
3 construction activities at the State level to meet those needs.

4 i. While the credit status of New Jersey's school districts is sound,
5 it can be economically more reasonable to finance the costs of
6 developing the educational infrastructure of the State's public
7 elementary and secondary schools by providing for the funding of
8 capital projects through the issuance of bonds, notes or other
9 obligations by the New Jersey Economic Development Authority, to
10 be retired through annual payments made by the State subject to
11 appropriation by the State Legislature, and to provide for the use of
12 the proceeds of those bonds, notes or other obligations to pay for
13 educational infrastructure projects; and such a structure would
14 substantially reduce the costs of financing and provide for a more
15 efficient use of the funds available for the development of the
16 educational infrastructure.

17 j. The New Jersey Economic Development Authority has
18 substantial and significant experience in undertaking major capital
19 construction projects, has a system of internal controls and procedures
20 to ensure the integrity of construction activities, and is therefore the
21 appropriate entity to undertake the planning, design, construction, and
22 operation of educational infrastructure projects; and by authorizing the
23 New Jersey Economic Development Authority to undertake these
24 activities, there will be achieved economies of scale, better
25 coordination of resources, more effective financial management and
26 control and increased monitoring and quality control of school district
27 construction.

28 (cf: P.L.1983, c.282, s.1)

29

30 44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as
31 follows:

32 3. As used in this act, unless a different meaning clearly appears
33 from the context:

34 a. "Authority" means the New Jersey Economic Development
35 Authority, created by section 4 of this act.

36 b. "Bonds" means bonds or other obligations issued by the
37 authority pursuant to this act [or], "Economic Recovery Bonds or
38 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
39 bonds, notes, other obligations and refunding bonds issued by the
40 authority pursuant to P.L. , c. (C.)(now pending before the
41 Legislature as this bill).

42 c. "Cost" means the cost of the acquisition, construction,
43 reconstruction, repair, alteration, improvement and extension of any
44 building, structure, facility including water transmission facilities, or
45 other improvement; the cost of machinery and equipment; the cost of
46 acquisition, construction, reconstruction, repair, alteration,

1 improvement and extension of energy saving improvements or
2 pollution control devices, equipment or facilities; the cost of lands,
3 rights-in-lands, easements, privileges, agreements, franchises, utility
4 extensions, disposal facilities, access roads and site development
5 deemed by the authority to be necessary or useful and convenient for
6 any project or school facilities project or in connection therewith;
7 discount on bonds; cost of issuance of bonds; engineering and
8 inspection costs; costs of financial, legal, professional and other
9 estimates and advice; organization, administrative, insurance,
10 operating and other expenses of the authority or any person prior to
11 and during any acquisition or construction, and all such expenses as
12 may be necessary or incident to the financing, acquisition, construction
13 or completion of any project or school facilities project or part thereof,
14 and also such provision for reserves for payment or security of
15 principal of or interest on bonds during or after such acquisition or
16 construction as the authority may determine.

17 d. "County" means any county of any class.

18 e. "Development property" means any real or personal property,
19 interest therein, improvements thereon, appurtenances thereto and air
20 or other rights in connection therewith, including land, buildings,
21 plants, structures, systems, works, machinery and equipment acquired
22 or to be acquired by purchase, gift or otherwise by the authority within
23 an urban growth zone.

24 f. "Person" means any person, including individuals, firms,
25 partnerships, associations, societies, trusts, public or private
26 corporations, or other legal entities, including public or governmental
27 bodies, as well as natural persons. "Person" shall include the plural as
28 well as the singular.

29 g. "Pollution control project" means any device, equipment,
30 improvement, structure or facility, or any land and any building,
31 structure, facility or other improvement thereon, or any combination
32 thereof, whether or not in existence or under construction, or the
33 refinancing thereof in order to facilitate improvements or additions
34 thereto or upgrading thereof, and all real and personal property
35 deemed necessary thereto, having to do with or the end purpose of
36 which is the control, abatement or prevention of land, sewer, water,
37 air, noise or general environmental pollution, including, but not limited
38 to, any air pollution control facility, noise abatement facility, water
39 management facility, thermal pollution control facility, radiation
40 contamination control facility, wastewater collection system,
41 wastewater treatment works, sewage treatment works system, sewage
42 treatment system or solid waste disposal facility or site; provided that
43 the authority shall have received from the Commissioner of the State
44 Department of Environmental Protection or his duly authorized
45 representative a certificate stating the opinion that, based upon
46 information, facts and circumstances available to the State Department

1 of Environmental Protection and any other pertinent data, (1) said
2 pollution control facilities do not conflict with, overlap or duplicate
3 any other planned or existing pollution control facilities undertaken or
4 planned by another public agency or authority within any political
5 subdivision, and (2) that such facilities, as designed, will be a pollution
6 control project as defined in this act and are in furtherance of the
7 purpose of abating or controlling pollution.

8 h. "Project" means: (1) (a) acquisition, construction,
9 reconstruction, repair, alteration, improvement and extension of any
10 building, structure, facility, including water transmission facilities or
11 other improvement, whether or not in existence or under construction,
12 (b) purchase and installation of equipment and machinery, (c)
13 acquisition and improvement of real estate and the extension or
14 provision of utilities, access roads and other appurtenant facilities; and
15 (2) (a) the acquisition, financing, or refinancing of inventory, raw
16 materials, supplies, work in process, or stock in trade, or (b) the
17 financing, refinancing or consolidation of secured or unsecured debt,
18 borrowings, or obligations, or (c) the provision of financing for any
19 other expense incurred in the ordinary course of business; all of which
20 are to be used or occupied by any person in any enterprise promoting
21 employment, either for the manufacturing, processing or assembly of
22 materials or products, or for research or office purposes, including,
23 but not limited to, medical and other professional facilities, or for
24 industrial, recreational, hotel or motel facilities, public utility and
25 warehousing, or for commercial and service purposes, including, but
26 not limited to, retail outlets, retail shopping centers, restaurant and
27 retail food outlets, and any and all other employment promoting
28 enterprises, including, but not limited to, motion picture and television
29 studios and facilities and commercial fishing facilities, commercial
30 facilities for recreational fishermen, fishing vessels, aquaculture
31 facilities and marketing facilities for fish and fish products and (d)
32 acquisition of an equity interest in, including capital stock of, any
33 corporation; or any combination of the above, which the authority
34 determines will: (i) tend to maintain or provide gainful employment
35 opportunities within and for the people of the State, or (ii) aid, assist
36 and encourage the economic development or redevelopment of any
37 political subdivision of the State, or (iii) maintain or increase the tax
38 base of the State or of any political subdivision of the State, or (iv)
39 maintain or diversify and expand employment promoting enterprises
40 within the State; and (3) the cost of acquisition, construction,
41 reconstruction, repair, alteration, improvement and extension of an
42 energy saving improvement or pollution control project which the
43 authority determines will tend to reduce the consumption in a building
44 devoted to industrial or commercial purposes, or in an office building,
45 of nonrenewable sources of energy or to reduce, abate or prevent
46 environmental pollution within the State; and (4) the acquisition,

1 construction, reconstruction, repair, alteration, improvement,
2 extension, development, financing or refinancing of infrastructure and
3 transportation facilities or improvements related to economic
4 development and of cultural, recreational and tourism facilities or
5 improvements related to economic development and of capital facilities
6 for primary and secondary schools and of mixed use projects
7 consisting of housing and commercial development; and (5) the
8 establishment, acquisition, construction, rehabilitation, improvement,
9 and ownership of port facilities as defined in section 3 of P.L.1997,
10 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
11 any person for costs in connection with any project, or the refinancing
12 of any project or portion thereof, if determined by the authority as
13 necessary and in the public interest to maintain employment and the
14 tax base of any political subdivision and will facilitate improvements
15 thereto or the completion thereof, and (ii) development property and
16 any construction, reconstruction, improvement, alteration, equipment
17 or maintenance or repair, or planning and designing in connection
18 therewith. For the purpose of carrying out mixed use projects
19 consisting of both housing and commercial development, the authority
20 may enter into agreements with the New Jersey Housing and Mortgage
21 Finance Agency for loan guarantees for any such project in accordance
22 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
23 that purpose shall allocate to the New Jersey Housing and Mortgage
24 Finance Agency, under such agreements, funding available pursuant to
25 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
26 shall not include a school facilities project.

27 i. "Revenues" means receipts, fees, rentals or other payments to be
28 received on account of lease, mortgage, conditional sale, or sale, and
29 payments and any other income derived from the lease, sale or other
30 disposition of a project, moneys in such reserve and insurance funds
31 or accounts or other funds and accounts, and income from the
32 investment thereof, established in connection with the issuance of
33 bonds or notes for a project or projects, and fees, charges or other
34 moneys to be received by the authority in respect of projects or school
35 facilities projects and contracts with persons.

36 j. "Resolution" means any resolution adopted or trust agreement
37 executed by the authority, pursuant to which bonds of the authority
38 are authorized to be issued.

39 k. "Energy saving improvement" means the construction, purchase
40 and installation in a building devoted to industrial or commercial
41 purposes of any of the following, designed to reduce the amount of
42 energy from nonrenewable sources needed for heating and cooling that
43 building: insulation, replacement burners, replacement high efficiency
44 heating and air conditioning units, including modular boilers and
45 furnaces, water heaters, central air conditioners with or without heat
46 recovery to make hot water for industrial or commercial purposes or

1 in office buildings, and any solar heating or cooling system
2 improvement, including any system which captures solar radiation to
3 heat a fluid which passes over or through the collector element of that
4 system and then transfers that fluid to a point within the system where
5 the heat is withdrawn from the fluid for direct usage or storage. These
6 systems shall include, but not necessarily be limited to, systems
7 incorporating flat plate, evacuated tube or focusing solar collectors.

8 The foregoing list shall not be construed to be exhaustive, and shall
9 not serve to exclude other improvements consistent with the legislative
10 intent of this amendatory act.

11 l. "Urban growth zone" means any area within a municipality
12 receiving State aid pursuant to the provisions of P.L.1978, c.14
13 (C.52:27D-178 et seq.) or a municipality certified by the
14 Commissioner of Community Affairs to qualify under such law in
15 every respect except population, which area has been so designated
16 pursuant to an ordinance of the governing body of such municipality.

17 m. "District" means a local or regional school district established
18 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
19 Statutes, a county special services school district established pursuant
20 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
21 county vocational school district established pursuant to article 3 of
22 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
23 operated school district established pursuant to P.L.1987, c.399
24 (C.18A:7A-34 et seq.).

25 n. "Local unit" means a county, municipality, board of education or
26 any other political entity authorized to construct, operate and maintain
27 a school facilities project and to borrow money for those purposes
28 pursuant to Title 18A of the New Jersey Statutes.

29 o. "Refunding bonds" means bonds, notes or other obligations
30 issued to refinance bonds previously issued by the authority pursuant
31 to P.L.1974, c.80 (C34:1B-1 et seq.) and P.L. , c. (C.)(now
32 pending before the Legislature as this bill).

33 p. "School facilities project" means the acquisition, demolition,
34 construction, improvement, repair, alteration, modernization,
35 renovation, reconstruction or maintenance of all or any part of a
36 school facility or of any other personal property necessary for, or
37 ancillary to, any school facility, and shall include fixtures, furnishings
38 and equipment, and shall also include, but is not limited to, site
39 acquisition, site development, the services of design professionals,
40 such as engineers and architects, construction management, legal
41 services, financing costs and administrative costs and expenses
42 incurred in connection with the project.

43 q. "School facility" means and includes any structure, building or
44 facility used wholly or in part for academic purposes by a district, but
45 shall exclude athletic stadiums, grandstands, and any structure.

1 building or facility used solely for school administration.

2 (cf: P.L.1997, c.150, s.22)

3

4 45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read
5 as follows:

6 4. a. There is hereby established in, but not of, the Department of
7 ~~[Commerce and Economic Development]~~ the Treasury a public body
8 corporate and politic, with corporate succession, to be known as the
9 "New Jersey Economic Development Authority." The authority is
10 hereby constituted as an instrumentality of the State exercising public
11 and essential governmental functions, and the exercise by the authority
12 of the powers conferred by this act shall be deemed and held to be an
13 essential governmental function of the State.

14 b. The authority shall consist of the Commissioner of Banking, the
15 ~~[Commissioner of Commerce and Economic Development]~~ Chief
16 Executive Officer and Secretary of the New Jersey Commerce and
17 Economic Growth Commission, the Commissioner of Labor, the
18 Commissioner of Education, and the State Treasurer, who shall be
19 members ex officio, and ~~[six]~~ eight public members appointed by the
20 Governor ~~[with the advice and consent of the Senate, of which one]~~
21 as follows: two public ~~[member]~~ members (who shall not be ~~[a~~
22 legislator] legislators) shall be appointed by the Governor upon
23 recommendation of the Senate President ~~[and one]~~; two public
24 ~~[member]~~ members (who shall not be ~~[a legislator]~~ legislators) shall
25 be appointed by the Governor upon recommendation of the Speaker
26 of the General Assembly; and four public members shall be appointed
27 by the Governor, with the advice and consent of the Senate, all for
28 terms of three years. ~~[The first two public member positions on the~~
29 ~~authority that are or become vacant on or after the effective date of~~
30 ~~P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of~~
31 ~~the Governor upon the recommendation of the Senate President and~~
32 ~~the Speaker of the General Assembly, respectively.]~~ Each member
33 shall hold office for the term of his appointment and until his successor
34 shall have been appointed and qualified. A member shall be eligible for
35 reappointment. Any vacancy in the membership occurring other than
36 by expiration of term shall be filled in the same manner as the original
37 appointment but for the unexpired term only. In the event the
38 authority shall by resolution determine to accept the declaration of an
39 urban growth zone by any municipality, the mayor or other chief
40 executive officer of such municipality shall ex officio be a member of
41 the authority for the purpose of participating and voting on all matters
42 pertaining to such urban growth zone.

43 The Governor shall appoint ~~[with the advice and consent of the~~
44 ~~Senate,]~~ three alternate members of the authority~~[, of which]~~ as
45 follows: one alternate member (who shall not be a legislator) shall be

1 appointed by the Governor upon the recommendation of the Senate
2 President[, and]; one alternate member (who shall not be a legislator)
3 shall be appointed by the Governor upon the recommendation of the
4 Speaker of the General Assembly ; and one alternate member shall be
5 appointed by the Governor with the advice and consent of the Senate,
6 all for terms of three years. [The first two alternate member positions
7 on the authority that are or become vacant on or after the effective
8 date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by
9 appointment of the Governor upon the recommendation of the Senate
10 President and the Speaker of the General Assembly, respectively.]
11 The chairperson may authorize an alternate member, in order of
12 appointment, to exercise all of the powers, duties and responsibilities
13 of such member, including, but not limited to, the right to vote on
14 matters before the authority.

15 Each alternate member shall hold office for the term of his
16 appointment and until his successor shall have been appointed and
17 qualified. An alternate member shall be eligible for reappointment.
18 Any vacancy in the alternate membership occurring other than by the
19 expiration of a term shall be filled in the same manner as the original
20 appointment but for the unexpired term only. Any reference to a
21 member of the authority in this act shall be deemed to include alternate
22 members unless the context indicates otherwise.

23 The terms of office of the members and alternate members of the
24 authority appointed by the Governor who are serving on the effective
25 date of P.L. , c. (C.) (now pending before the Legislature as this
26 bill) shall expire upon the appointment by the Governor of eight public
27 members and three alternate members. The initial appointments of the
28 eight public members shall be as follows: the two members appointed
29 upon the recommendation of the President of the Senate and the two
30 members appointed upon the recommendation of the Speaker of the
31 General Assembly shall serve terms of three years; two members shall
32 serve terms of two years; and two members shall serve terms of one
33 year. The initial appointments of the alternate members shall be as
34 follows: the alternate member appointed upon the recommendation of
35 the President of the Senate shall serve a term of three years; the
36 alternate member appointed upon the recommendation of the Speaker
37 of the General Assembly shall serve a term of two years; and one
38 alternate member shall serve a term of one year.

39 c. Each member appointed by the Governor may be removed from
40 office by the Governor, for cause, after a public hearing, and may be
41 suspended by the Governor pending the completion of such hearing.
42 Each member before entering upon his duties shall take and subscribe
43 an oath to perform the duties of his office faithfully, impartially and
44 justly to the best of his ability. A record of such oaths shall be filed in
45 the office of the Secretary of State.

46 d. [The Commissioner of Commerce and Economic Development

1 may, at his discretion, serve as the chairperson of the authority or may
2 appoint one of the six public members of the authority as chairperson.
3 Any such designation or appointment shall be made in writing and shall
4 be delivered to the authority and to the Governor and shall continue
5 in effect until revoked or amended by a writing delivered to the
6 authority and the Governor.] A chairperson shall be appointed by the
7 Governor, with the advice and consent of the Senate, from the public
8 members. The members of the authority shall elect from their
9 remaining number a vice chairperson and a treasurer thereof. The
10 authority shall employ an executive director who shall be its secretary
11 and chief executive officer. The powers of the authority shall be
12 vested in the members thereof in office from time to time and [six]
13 seven members of the authority shall constitute a quorum at any
14 meeting thereof. Action may be taken and motions and resolutions
15 adopted by the authority at any meeting thereof by the affirmative vote
16 of at least [six] seven members of the authority. No vacancy in the
17 membership of the authority shall impair the right of a quorum of the
18 members to exercise all the powers and perform all the duties of the
19 authority.

20 e. Each member of the authority shall execute a bond to be
21 conditioned upon the faithful performance of the duties of such
22 member in such form and amount as may be prescribed by the Director
23 of the Division of Budget and Accounting in the Department of the
24 Treasury. Such bonds shall be filed in the office of the Secretary of
25 State. At all times thereafter the members and treasurer of the
26 authority shall maintain such bonds in full force and effect. All costs
27 of such bonds shall be borne by the authority.

28 f. The members of the authority shall serve without
29 compensation, but the authority shall reimburse its members for actual
30 expenses necessarily incurred in the discharge of their duties.
31 Notwithstanding the provisions of any other law, no officer or
32 employee of the State shall be deemed to have forfeited or shall forfeit
33 his office or employment or any benefits or emoluments thereof by
34 reason of his acceptance of the office of ex officio member of the
35 authority or his services therein.

36 g. Each ex officio member of the authority may designate an
37 officer or employee of his department to represent him at meetings of
38 the authority, and each such designee may lawfully vote and otherwise
39 act on behalf of the member for whom he constitutes the designee.
40 Any such designation shall be in writing delivered to the authority and
41 shall continue in effect until revoked or amended by writing delivered
42 to the authority.

43 h. The authority may be dissolved by act of the Legislature on
44 condition that the authority has no debts or obligations outstanding or
45 that provision has been made for the payment or retirement of such
46 debts or obligations. Upon any such dissolution of the authority, all

1 property, funds and assets thereof shall be vested in the State.

2 i. A true copy of the minutes of every meeting of the authority
3 shall be forthwith delivered by and under the certification of the
4 secretary thereof to the Governor. No action taken at such meeting
5 by the authority shall have force or effect until 10 days, Saturdays,
6 Sundays, and public holidays excepted, after the copy of the minutes
7 shall have been so delivered, unless during such 10-day period the
8 Governor shall approve the same in which case such action shall
9 become effective upon such approval. If, in that 10-day period, the
10 Governor returns such copy of the minutes with veto of any action
11 taken by the authority or any member thereof at such meeting, such
12 action shall be null and void and of no effect. The powers conferred
13 in this subsection i. upon the Governor shall be exercised with due
14 regard for the rights of the holders of bonds and notes of the authority
15 at any time outstanding, and nothing in, or done pursuant to, this
16 subsection i. shall in any way limit, restrict or alter the obligation or
17 powers of the authority or any representative or officer of the
18 authority to carry out and perform in every detail each and every
19 covenant, agreement or contract at any time made or entered into by
20 or on behalf of the authority with respect to its bonds or notes or for
21 the benefit, protection or security of the holders thereof.

22 j. On or before March 31 in each year, the authority shall make
23 an annual report of its activities for the preceding calendar year to the
24 Governor and the Legislature. Each such report shall set forth a
25 complete operating and financial statement covering the authority's
26 operations during the year. The authority shall cause an audit of its
27 books and accounts to be made at least once in each year by certified
28 public accountants and cause a copy thereof to be filed with the
29 Secretary of State and the Director of the Division of Budget and
30 Accounting in the Department of the Treasury.

31 k. The Director of the Division of Budget and Accounting in the
32 Department of the Treasury and his legally authorized representatives
33 are hereby authorized and empowered from time to time to examine
34 the accounts, books and records of the authority including its receipts,
35 disbursements, contracts, sinking funds, investments and any other
36 matters relating thereto and to its financial standing.

37 l. No member, officer, employee or agent of the authority shall
38 be interested, either directly or indirectly, in any project or school
39 facilities project, or in any contract, sale, purchase, lease or transfer of
40 real or personal property to which the authority is a party.

41 (cf: P.L.1995, c.227)

42

43 46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as
44 follows:

45 5. The authority shall have the following powers:

46 a. To adopt bylaws for the regulation of its affairs and the conduct

- 1 of its business;
- 2 b. To adopt and have a seal and to alter the same at pleasure;
- 3 c. To sue and be sued;
- 4 d. To acquire in the name of the authority by purchase or
5 otherwise, on such terms and conditions and such manner as it may
6 deem proper, or by the exercise of the power of eminent domain in the
7 manner provided by the Eminent Domain Act of 1971, P.L.1971,
8 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
9 property which it may determine is reasonably necessary for any
10 project or school facilities project; provided, however, that the
11 authority in connection with any project shall not take by exercise of
12 the power of eminent domain any real property except upon consent
13 thereto given by resolution of the governing body of the municipality
14 in which such real property is located; and provided further that the
15 authority shall be limited in its exercise of the power of eminent
16 domain in connection with any project to municipalities receiving State
17 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
18 to municipalities which had a population, according to the latest
19 federal decennial census, in excess of 10,000;
- 20 e. To enter into contracts with a person upon such terms and
21 conditions as the authority shall determine to be reasonable, including,
22 but not limited to, reimbursement for the planning, designing,
23 financing, construction, reconstruction, improvement, equipping,
24 furnishing, operation and maintenance of the project or the school
25 facilities project and to pay or compromise any claims arising
26 therefrom;
- 27 f. To establish and maintain reserve and insurance funds with
28 respect to the financing of the project or the school facilities project;
- 29 g. To sell, convey or lease to any person all or any portion of a
30 project or school facilities project, for such consideration and upon
31 such terms as the authority may determine to be reasonable;
- 32 h. To mortgage, pledge or assign or otherwise encumber all or any
33 portion of a project , school facilities project or revenues, whenever
34 it shall find such action to be in furtherance of the purposes of this act
35 and P.L. , c. (C.)(now pending before the Legislature as this
36 bill);
- 37 i. To grant options to purchase or renew a lease for any of its
38 projects or school facilities projects on such terms as the authority may
39 determine to be reasonable;
- 40 j. To contract for and to accept any gifts or grants or loans of funds
41 or property or financial or other aid in any form from the United States
42 of America or any agency or instrumentality thereof, or from the State
43 or any agency, instrumentality or political subdivision thereof, or from
44 any other source and to comply, subject to the provisions of the act
45 and P.L. , c. (C.)(now pending before the Legislature as this
46 bill), with the terms and conditions thereof;

- 1 k. In connection with any application for assistance under this act
2 or P.L. , c. (C.)(now pending before the Legislature as this bill)
3 or commitments therefor, to require and collect such fees and charges
4 as the authority shall determine to be reasonable;
- 5 l. To adopt, amend and repeal regulations to carry out the
6 provisions of this act and P.L. , c. (C.)(now pending before the
7 Legislature as this bill);
- 8 m. To acquire, purchase, manage and operate, hold and dispose of
9 real and personal property or interests therein, take assignments of
10 rentals and leases and make and enter into all contracts, leases,
11 agreements and arrangements necessary or incidental to the
12 performance of its duties;
- 13 n. To purchase, acquire and take assignments of notes, mortgages
14 and other forms of security and evidences of indebtedness;
- 15 o. To purchase, acquire, attach, seize, accept or take title to any
16 project or school facilities project by conveyance or by foreclosure,
17 and sell, lease, manage or operate any project or school facilities
18 project for a use specified in this act and P.L. , c. (C.)(now
19 pending before the Legislature as this bill);
- 20 p. To borrow money and to issue bonds of the authority and to
21 provide for the rights of the holders thereof, as provided in this act and
22 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 23 q. To extend credit or make loans to any person for the planning,
24 designing, acquiring, constructing, reconstructing, improving,
25 equipping and furnishing of a project or school facilities project, which
26 credits or loans may be secured by loan and security agreements,
27 mortgages, leases and any other instruments, upon such terms and
28 conditions as the authority shall deem reasonable, including provision
29 for the establishment and maintenance of reserve and insurance funds,
30 and to require the inclusion in any mortgage, lease, contract, loan and
31 security agreement or other instrument, such provisions for the
32 construction, use, operation and maintenance and financing of a
33 project or school facilities project as the authority may deem necessary
34 or desirable;
- 35 r. To guarantee up to 90% of the amount of a loan to a person, if
36 the proceeds of the loan are to be applied to the purchase and
37 installation, in a building devoted to industrial or commercial
38 purposes, or in an office building, of an energy improvement system;
- 39 s. To employ consulting engineers, architects, attorneys, real estate
40 counselors, appraisers, and such other consultants and employees as
41 may be required in the judgment of the authority to carry out the
42 purposes of the act and P.L. , c. (C.)(now pending before the
43 Legislature as this bill), and to fix and pay their compensation from
44 funds available to the authority therefor, all without regard to the
45 provisions of Title 11A of the New Jersey Statutes;
- 46 t. To do and perform any acts and things authorized by this act and

- 1 P.L. , c. (C.)(now pending before the Legislature as this bill)
2 under, through or by means of its own officers, agents and employees,
3 or by contract with any person;
- 4 u. To procure insurance against any losses in connection with its
5 property, operations or assets in such amounts and from such insurers
6 as it deems desirable;
- 7 v. To do any and all things necessary or convenient to carry out its
8 purposes and exercise the powers given and granted in the act and
9 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 10 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
11 maintain or repair or provide for the construction, reconstruction,
12 improvement, alteration, equipping or maintenance or repair of any
13 development property and lot, award and enter into construction
14 contracts, purchase orders and other contracts with respect thereto,
15 upon such terms and conditions as the authority shall determine to be
16 reasonable, including, but not limited to, reimbursement for the
17 planning, designing, financing, construction, reconstruction,
18 improvement, equipping, furnishing, operation and maintenance of any
19 such development property and the settlement of any claims arising
20 therefrom and the establishment and maintenance of reserve funds with
21 respect to the financing of such development property;
- 22 x. When authorized by the governing body of a municipality
23 exercising jurisdiction over an urban growth zone, to construct, cause
24 to be constructed or to provide financial assistance to projects in an
25 urban growth zone which shall be exempt from the terms and
26 requirements of the land use ordinances and regulations, including, but
27 not limited to, the master plan and zoning ordinances, of such
28 municipality; and
- 29 y. To enter into business employment incentive agreements as
30 provided in the "Business Employment Incentive Program Act,"
31 P.L.1996, c.26 (C.34:1B-124 et al.)[.];
- 32 z. To undertake school facilities projects and to enter into
33 agreements or contracts, execute instruments, and do and perform all
34 acts or things necessary, convenient or desirable for the purposes of
35 the authority to carry out any power expressly provided pursuant to
36 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
37 pending before the Legislature as this bill), including, but not limited
38 to, entering into contracts with the State Treasurer, the Commissioner
39 of Education, districts and any other entity which may be required in
40 order to carry out the provisions of P.L. , c. (C.)(now pending
41 before the Legislature as this bill);
- 42 aa. To enter into leases, rentals or other disposition of a real
43 property interest in and of any school facilities project to or from any
44 local unit pursuant to P.L. , c. (C.)(now pending before the
45 Legislature as this bill);
- 46 bb. To make and contract to make loans or leases and to make

1 grants to local units to finance the cost of school facilities projects and
2 to acquire and contract to acquire bonds, notes or other obligations
3 issued or to be issued by local units to evidence the loans or leases, all
4 in accordance with the provisions of P.L. , c. (C.)(now pending
5 before the Legislature as this bill);

6 cc. Subject to any agreement with holders of its bonds issued to
7 finance a project or school facilities project, obtain as security or to
8 provide liquidity for payment of all or any part of the principal of and
9 interest and premium on the bonds of the authority or for the purchase
10 upon tender or otherwise of the bonds, lines of credit, letters of credit,
11 reimbursement agreements, interest rate exchange agreements,
12 currency exchange agreements, interest rate floors or caps, options,
13 puts or calls to hedge payment, currency, rate, spread or similar
14 exposure or similar agreements, float agreements, forward agreements,
15 insurance contract, surety bond, commitment to purchase or sell
16 bonds, purchase or sale agreement, or commitments or other contracts
17 or agreements, and other security agreements or instruments in any
18 amounts and upon any terms as the authority may determine and pay
19 any fees and expenses required in connection therewith;

20 dd. To charge to and collect from local units, the State and any
21 other person, any fees and charges in connection with the authority's
22 actions undertaken with respect to school facilities projects, including,
23 but not limited to, fees and charges for the authority's administrative,
24 organization, insurance, operating and other expenses incident to the
25 financing, construction and placing into service and maintenance of
26 school facilities projects.

27 (cf: P.L.1996, c.26, s.16)

28

29 47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to read
30 as follows:

31 1. The New Jersey Economic Development Authority shall adopt
32 rules and regulations requiring that not less than the prevailing wage
33 rate be paid to workers employed in the performance of construction
34 contracts undertaken in connection with [Authority financial
35 assistance] any of its projects or school facilities projects. The
36 prevailing wage rate shall be the rate determined by the Commissioner
37 of Labor [and Industry] pursuant to the provisions of P.L.1963,
38 c.150 (C.34:11-56.25 et seq.).

39 (cf: P.L.1979, c.303, s.1)

40

41 48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to read
42 as follows:

43 4. a. The New Jersey Economic Development Authority shall adopt
44 rules and regulations to establish an affirmative action program for the
45 hiring of minority workers employed in the performance of
46 construction contracts undertaken in connection with any of its

1 projects [receiving Authority assistance] and school facilities
2 projects, and to expand the business opportunities of socially and
3 economically disadvantaged contractors and vendors seeking to
4 provide materials and services for those contracts, consistent with the
5 provisions of the "Law Against Discrimination," P.L.1945, c.169
6 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
7 proper enforcement and administration of such rules and regulations.
8 b. Within 180 days of the effective date of P.L. , c. (C.)(now
9 pending before the Legislature as this bill), but before adoption of its
10 rules and regulations concerning its affirmative action program, the
11 authority shall submit the proposed rules and regulations to the
12 presiding officers and the standing committees on State government
13 of both houses of the Legislature for their review.

14 (cf: P.L.1979, c.303, s.4)

15

16 49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read
17 as follows:

18 15. The exercise of the powers granted by this act and P.L. , c.
19 (C.)(now pending before the Legislature as this bill) shall constitute
20 the performance of an essential governmental function and the
21 authority shall not be required to pay any taxes or assessments upon
22 or in respect of a project or school facilities project, or any property
23 or moneys of the authority, and the authority, its projects and school
24 facilities projects, property and moneys and any bonds and notes
25 issued under the provisions of this act and P.L. , c. (C.)(now
26 pending before the Legislature as this bill), their transfer and the
27 income therefrom, including any profit made on the sale thereof, shall
28 at all times be free from taxation of every kind by the State except for
29 transfer, inheritance and estate taxes and by any political subdivision
30 of the State; provided, that any person occupying a project whether
31 as lessee, vendee or otherwise shall, as long as title thereto shall
32 remain in the authority, pay to the political subdivision in which such
33 project is located a payment in lieu of taxes which shall equal the
34 taxes on real and personal property, including water and sewer service
35 charges or assessments, which such person would have been required
36 to pay had it been the owner of such property during the period for
37 which such payment is made and neither the authority nor its projects,
38 properties, money or bonds and notes shall be obligated, liable or
39 subject to lien of any kind for the enforcement, collection or payment
40 thereof. If and to the extent the proceedings under which the bonds
41 authorized to be issued under the provisions of this act so provide, the
42 authority may agree to cooperate with such person occupying a
43 project, in connection with any administrative or judicial proceedings
44 for determining the validity or amount of such payments and may
45 agree to appoint or designate and reserve the right in and for such
46 person to take all action which the authority may lawfully take in

1 respect of such payments and all matters relating thereto, provided
2 such person shall bear and pay all costs and expenses of the authority
3 thereby incurred at the request of such person or by reason of any
4 such action taken by such person in behalf of the authority. If such
5 person occupying a project has paid the amounts in lieu of taxes
6 required by this section to be paid such person shall not be required
7 to pay any such taxes as to which a payment in lieu thereof has been
8 made to the State or to any political subdivision, any other statute to
9 the contrary notwithstanding.

10 (cf: P.L.1974, c.80, s.15)

11

12 50. (New section) In the exercise of powers granted by P.L. ,
13 c. (C.)(now pending before the Legislature as this bill) in
14 connection with any school facilities project, any and all claims,
15 damages, losses, liabilities or costs that the authority may incur shall
16 be payable only from the amounts made available to the authority
17 pursuant to that act. In connection with any agreement or contract
18 entered into by the authority relating to any school facilities project,
19 there shall be no recovery against the authority for punitive or
20 consequential damages arising out of contract nor shall there be any
21 recovery against the authority for claims based upon implied
22 warranties or upon contracts implied in law.

23

24 51. (New section) a. No municipality shall modify or change the
25 drawings, plans or specifications for the construction, reconstruction,
26 rehabilitation, alteration or improvement of any school facilities
27 project of the authority, or the construction, plumbing, heating,
28 lighting or other mechanical branch of work necessary to complete the
29 work in question, nor to require that any person, firm or corporation
30 employed on any such work shall perform the work in any other or
31 different manner than that provided by the drawings, plans and
32 specifications, nor to require that any person, firm or corporation
33 obtain any other or additional authority, approval, permit or certificate
34 from the municipality in relation to the work being done, and the doing
35 of the work by any person, firm or corporation in accordance with the
36 terms of the drawings, plans, specifications or contracts shall not
37 subject the person, firm or corporation to any liability or penalty, civil
38 or criminal, other than as may be stated in the contracts or incidental
39 to the proper enforcement thereof; nor shall any municipality require
40 the authority or any person, firm, partnership or corporation which
41 leases or purchases the school facilities project for lease or purchase
42 to a State agency, to obtain any other or additional authority,
43 approval, permit, certificate or certificate of occupancy from the
44 municipality as a condition of owning, using, maintaining, operating or
45 occupying any school facilities project acquired, constructed,
46 reconstructed, rehabilitated, altered or improved by the authority or by

1 any subsidiary thereof. The foregoing provisions shall not preclude
2 any municipality from exercising the right of inspection for the purpose
3 of requiring compliance by any school facilities project with local
4 requirements for operation and maintenance affecting the health, safety
5 and welfare of the occupants thereof, provided that the compliance
6 does not require changes, modifications or additions to the original
7 construction of the school facilities project.

8 b. Each municipality in which any school facilities project of the
9 authority is located shall provide for the school facilities project,
10 whether then owned by the authority, any subsidiary, any State agency
11 or any person, firm, partnership or corporation, police, fire, sanitation,
12 health protection and other municipal services of the same character
13 and to the same extent as those provided for other residents of the
14 municipality.

15 c. In carrying out any school facilities project, the authority may
16 enter into contractual agreements with local government agencies with
17 respect to the furnishing of any community, municipal or public
18 facilities or services necessary or desirable for the school facilities
19 project, and any local government agency may enter into these
20 contractual agreements with the authority and do all things necessary
21 to carry out its obligations.

22

23 52. (New section) a. The authority, in the exercise of its authority
24 to make and enter into contracts and agreements for school facilities
25 projects necessary or incidental to the performance of its duties and
26 the execution of its powers, shall adopt standing rules and procedures
27 providing that no contract on behalf of the authority in connection
28 with a school facilities project shall be entered into for the doing of
29 any work, or for the hiring of equipment or vehicles, where the sum to
30 be expended exceeds the sum of \$7,500 unless the authority shall first
31 publicly advertise for bids therefor, and shall award the contract to the
32 lowest responsible bidder. Advertising shall not be required where
33 the contract to be entered into is one for the furnishing or performing
34 of services of a professional nature or for the supplying of any product
35 or the rendering of any service by a public utility subject to the
36 jurisdiction of the Board of Public Utilities and tariffs and schedules
37 of the charges made, charged, or exacted by the public utility for any
38 products to be supplied or services to be rendered are filed with the
39 board. This section shall not prevent the authority from having any
40 work done by its own employees, nor shall it apply to repairs, or to
41 the furnishing of materials, supplies or labor, or the hiring of
42 equipment or vehicles, when the safety or protection of its or other
43 public property or the public convenience requires, or the exigency of
44 the accomplishment of the school facilities projects will not allow
45 advertisement. In that case, the board of directors of the authority
46 shall, by resolution, declare the exigency or emergency to exist, and

1 set forth in the resolution the nature thereof and the approximate
2 amount to be so expended.

3 b. (1) In undertaking any school facilities project where the cost of
4 construction, reconstruction, rehabilitation or improvement will exceed
5 \$25,000 the authority shall be subject to the rules and regulations of
6 the Division of Property Management and Construction concerning
7 procedural requirements for the making, negotiating or awarding of
8 purchases, contracts or agreements and the prequalification and
9 classification of bidders; and the authority, with the assistance of the
10 division, may prepare, or cause to be prepared, separate plans and
11 specifications for:

12 (a) The plumbing and gas fitting and all work and materials kindred
13 thereto,

14 (b) The steam and hot water heating and ventilating apparatus,
15 steam power plants and all work and materials kindred thereto,

16 (c) The electrical work,

17 (d) Structural steel and ornamental iron work and materials, and

18 (e) General construction, which shall include all other work and
19 materials required to complete the building.

20 (2) The authority shall receive (a) separate bids for each of the
21 branches of work specified in paragraph (1) of this subsection; or (b)
22 bids for all the work and materials required to complete the school
23 facilities projects to be included in a single overall contract, in which
24 case there shall be set forth in the bid the name or names of all
25 subcontractors to whom the bidder will subcontract for the furnishing
26 of any of the work and materials specified in branches (a) through (d)
27 in paragraph (1) of this subsection; or (c) both.

28 (3) Contracts shall be awarded to the lowest responsible bidder in
29 each branch of work in the case of separate bids and to the single
30 lowest responsible bidder in the case of single bids. In the event that
31 a contract is advertised in accordance with subparagraph (c) of
32 paragraph (2) of this subsection, the contract shall be awarded in the
33 following manner: If the sum total of the amounts bid by the lowest
34 responsible bidder for each branch is less than the amount bid by the
35 lowest responsible bidder for all of the work and materials, the
36 authority shall award separate contracts for each of branches to the
37 lowest responsible bidder therefor, but if the sum total of the amount
38 bid by the lowest responsible bidder for each branch is not less than
39 the amount bid by the lowest responsible bidder for all the work and
40 materials, the authority shall award a single over-all contract to the
41 lowest responsible bidder for all of the work and materials.

42 Whenever a contract is awarded under subparagraph (b) or (c) of
43 paragraph (2) of this subsection, all payments required to be made by
44 the authority under the contract for work and materials supplied by a
45 subcontractor may, upon the certification of the contractor of the
46 amount due to the subcontractor, be paid directly to the

1 subcontractor. Payments to a subcontractor for work and materials
2 supplied in connection with the contract shall be made within 10
3 calendar days of the receipt of payment for that work or the delivery
4 of those materials by the subcontractor in accordance with the
5 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
6 regulations promulgated thereunder.

7 (4) All construction, reconstruction, rehabilitation or improvement
8 of school facilities projects undertaken by the authority pursuant to
9 the provisions of P.L. , c. (C.) (now pending before the
10 Legislature as this bill) shall be subject during such undertaking to the
11 supervision of the Division of Property Management and Construction
12 to the same extent as any project undertaken by the State.

13

14 53. (New section) a. If the authority shall find it necessary in
15 connection with the undertaking of any school facilities project to
16 change the location of any portion of any public highway or road, it
17 may contract with any government agency, or public or private
18 corporation which may have jurisdiction over the public highway or
19 road to cause the public highway or road to be constructed at such
20 locations as the authority shall deem most favorable. The cost of the
21 reconstruction and any damage incurred in changing the location of the
22 highway shall be ascertained and paid by the authority as part of the
23 cost of the school facilities project. Any public highway affected by
24 the construction of any school facilities project may be vacated or
25 relocated by the authority in the manner now provided by law for the
26 vacation or relocation of public roads, and any damages awarded on
27 account thereof shall be paid by the authority as a part of the cost of
28 the school facilities project. In all undertakings authorized by this
29 subsection, the authority shall consult and obtain the approval of the
30 Commissioner of Transportation.

31 b. The authority and its authorized agents and employees may enter
32 upon any lands, waters and premises for the purpose of making
33 surveys, soundings, drillings and examinations as it may deem
34 necessary or convenient for the purposes of this act, all in accordance
35 with due process of law, and this entry shall not be deemed a trespass
36 nor shall an entry for this purpose be deemed an entry under any
37 condemnation proceedings which may be then pending. The authority
38 shall make reimbursement for any actual damages resulting to the
39 lands, waters and premises as a result of these activities.

40 c. The authority shall have the power to make reasonable
41 regulations for the installation, construction, maintenance, repair,
42 renewal, relocation and removal of tracks, pipes, mains, conduits,
43 cables, wires, towers, poles and other equipment and appliances,
44 herein called "public utility facilities," or any public utility as defined
45 in R.S.48:2-13, in, on, along, over or under any school facilities
46 project. Whenever the authority shall determine that it is necessary

1 that any public utility facilities which now are, or hereafter may be,
2 located in, on, along, over or under any school facilities project shall
3 be relocated in the school facilities project, or should be removed from
4 the school facilities project, the public utility owning or operating the
5 facilities shall relocate or remove them in accordance with the order
6 of the authority. The cost and expenses of the relocation or removal,
7 including the cost of installing the facilities in a new location or new
8 locations, and the cost of any lands, or any rights or interests in lands,
9 and any other rights, acquired to accomplish the relocation or removal,
10 shall be ascertained and paid by the authority as a part of the cost of
11 the school facilities project. In case of any relocation or removal of
12 facilities, the public utility owning or operating them, its successors or
13 assigns, may maintain and operate the facilities, with the necessary
14 appurtenances, in the new location or new locations, for as long a
15 period, and upon the same terms and conditions, as it had the right to
16 maintain and operate the facilities in their former location or locations.
17 In all undertakings authorized by this subsection the authority shall
18 consult and obtain the approval of the Board of Public Utilities.

19

20 54. (New section) Notwithstanding the provisions of any law to
21 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
22 pending before the Legislature as this bill) shall be fully negotiable
23 within the meaning and for all purposes of Title 12A of the New Jersey
24 Statutes, and each holder or owner of such a bond or other obligation,
25 or of any coupon appurtenant thereto, by accepting the bond or
26 coupon shall be conclusively deemed to have agreed that the bond or
27 coupon is and shall be fully negotiable within the meaning and for all
28 purposes of Title 12A.

29

30 55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to
31 read as follows:

32 22. a. Whenever the planning board shall have adopted any portion
33 of the master plan, the governing body or other public agency having
34 jurisdiction over the subject matter, before taking action necessitating
35 the expenditure of any public funds, incidental to the location,
36 character or extent of such project, shall refer the action involving
37 such specific project to the planning board for review and
38 recommendation in conjunction with such master plan and shall not act
39 thereon, without such recommendation or until 45 days have elapsed
40 after such reference without receiving such recommendation. This
41 requirement shall apply to action by a housing, parking, highway,
42 special district, or other authority, redevelopment agency, school
43 board or other similar public agency, State, county or municipal.

44 b. The planning board shall review and issue findings concerning
45 any long-range facilities plan submitted to the board pursuant to the
46 "Educational Facilities Construction and Financing Act," P.L. ,

1 c. (C.) (now pending before the Legislature as this bill), for the
2 purpose of review of the extent to which the long-range facilities plan
3 is informed by, and consistent with, at least the land use plan element
4 and the housing element contained within the municipal master plan
5 adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and
6 such other elements of the municipal master plan as the planning board
7 deems necessary to determine whether the prospective sites for school
8 facilities contained in the long range facilities plan promote more
9 effective and efficient coordination of school construction with the
10 development efforts of the municipality. The planning board shall
11 devote at least one full meeting of the board to presentation and
12 review of the long-range facilities plan prior to adoption of a
13 resolution setting forth the board's findings.

14 (cf: P.L.1975, c.291, s.22)

15

16 56. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to
17 read as follows:

18 4. Notwithstanding the provisions of any other law to the contrary,
19 commencing July 1, 1998: after the deposit required pursuant to
20 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
21 of revenue collected annually from the cigarette tax imposed pursuant
22 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
23 revenue collected annually from the "Tobacco Products Wholesale
24 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
25 deposited in to the Health Care Subsidy Fund established pursuant to
26 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
27 \$50,000,000 of revenue collected annually from the cigarette tax
28 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
29 [deposited in the School Construction and Renovation Fund as shall
30 be established by law] appropriated annually to the New Jersey
31 Economic Development Authority for payment of debt service
32 incurred by the authority for school facilities projects.

33 (cf: P.L.1997, c.264, s.4)

34

35 57. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
36 as follows:

37 4. Tax bracket schedule. a. For the purpose of adding and
38 collecting the tax imposed by this act, or an amount equal as nearly as
39 possible or practicable to the average equivalent thereof, to be
40 reimbursed to the vendor by the purchaser, the following formula shall
41 be in force and effect:

1	Amount of Sale	Amount of Tax
2	\$0.01 to \$0.10	No Tax
3	0.11 to 0.22	\$0.01
4	0.23 to 0.38	0.02
5	0.39 to 0.56	0.03
6	0.57 to 0.72	0.04
7	0.73 to 0.88	0.05
8	0.89 to 1.10	0.06

9

10 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 11 collected on each part of a dollar in excess of a full dollar, in
 12 accordance with the above formula.

13 b. For charges paid by inserting coins into a coin operated
 14 telecommunications device available to the public the tax shall be
 15 computed to the nearest multiple of five cents of the tax otherwise due
 16 pursuant to subsection a. of this section, except that, if the amount of
 17 the tax is midway between multiples of five cents, the next higher
 18 multiple shall apply.

19 c. For the purpose of adding and collecting the sales and use tax at
 20 the rate imposed pursuant to section 59 of P.L. , c. (C.)
 21 (now pending before the Legislature as this bill) on and after August
 22 1 of a fiscal year in which a certification is made to the Director of the
 23 Division of Taxation pursuant to subsection b. of that section 59 of
 24 P.L. , c. (C.) (now pending before the Legislature as this
 25 bill), or an amount equal as nearly as possible or practicable to the
 26 average equivalent thereof, the director shall promulgate tax collection
 27 formulas for the purpose of collecting the tax for the rate established
 28 pursuant to that section 59 of P.L. , c. (C.) (now pending
 29 before the Legislature as this bill).

30 (cf: P.L.1993, c.10, s.2)

31

32 58. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended to
 33 read as follows:

34 31. Receipts from sales of tangible personal property and services
 35 taxable under any municipal ordinance which was adopted pursuant to
 36 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
 37 1966 are exempt from the tax imposed under the Sales and Use Tax
 38 Act, subject to the following conditions:

39 a. To the extent that the tax that is or would be imposed under
 40 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
 41 imposed by such ordinance, such sales shall not be exempt under this
 42 section; and

43 b. Irrespective of the rate of tax imposed by such ordinance, such
 44 sales shall be exempt only to the extent that the rate of taxation

1 imposed by the ordinance exceeds 6%, except that the combined rate
2 of taxation imposed under the ordinance and under this section shall
3 not exceed ~~[12%]~~ 11% on and after August 1 and through June 30 of
4 a fiscal year in which a certification is made to the Director of the
5 Division of Taxation pursuant to subsection b. of section 59 of P.L. ,
6 c. (C.) (now pending before the Legislature as this bill).
7 (cf: P.L.1992, c.11, s.5)

8
9 59. (New section) a. The annual appropriations act for each State
10 fiscal year commencing with fiscal year 2001 shall appropriate and
11 distribute during the fiscal year the amount determined by the
12 Department of Education to be the amount of State debt service aid
13 determined pursuant to sections 9 and 10 of P.L. , c. (C.)
14 (now pending before the Legislature as this bill) for the purposes of
15 those sections.

16 b. If the provisions of subsection a. of this section are not met on
17 the effective date of an annual appropriations act for the State fiscal
18 year, or if an amendment or supplement to an annual appropriations
19 act for the State fiscal year should violate the provisions of subsection
20 a. of this section, the Director of the Division of Budget and
21 Accounting in the Department of the Treasury shall, not later than five
22 days after the enactment of the annual appropriations act, or an
23 amendment or supplement thereto, that violates the provisions of
24 subsection a. of this section, certify to the Director of the Division of
25 Taxation that the requirements of subsection a. of this section have not
26 been met.

27 c. Upon certification to the Director of the Division of Taxation
28 pursuant to subsection b. of this section, then, notwithstanding the rate
29 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
30 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
31 law to the contrary, the rate of tax imposed or paid on receipts from
32 sales or use within this State on or after August 1 of that fiscal year
33 through June 30 of that fiscal year shall be 5%.

34 d. The Director of the Division of Taxation, within 5 days of
35 receipt of a certification made pursuant to subsection b. of this section,
36 shall take such action as is necessary to notify all vendors of the rate
37 of tax on or after August 1 of that fiscal year through June 30 of that
38 fiscal year.

39 e. Any sales and use tax erroneously collected or paid at a rate of
40 6% instead of at a rate of 5% on receipts from sales or use within this
41 State on or after August 1 of that fiscal year through June 30 of that
42 fiscal year shall be subject to refund in the manner provided in section
43 20 of P.L.1966, c.30 (C.54:32B-20).

44
45 60. (New section) The Director of the Division of Taxation shall
46 promulgate regulations on or before August 1 of a fiscal year in which
47 a certification is made to the Director of the Division of Taxation

1 pursuant to subsection b. of that section 59 of P.L. , c. (C.)
2 (now pending before the Legislature as this bill) to provide tax rate
3 transitional provisions for the imposition of the appropriate rate of tax
4 for: sales made and property delivered or services performed,
5 occupancies pursuant to prior contracts, leases or other arrangements,
6 admission charges made for admissions, certain sales made pursuant
7 to certain contracts either of a fixed price not subject to change or
8 modification, or entered into pursuant to the obligation of a formal
9 written bid which cannot be altered or withdrawn; which involve dates
10 over periods both before and after August 1 of such a fiscal year.

11

12 61. (New section) There is established in the Office of the Attorney
13 General the Unit of Fiscal Integrity in School Construction. The
14 Attorney General or his representative may investigate, examine, and
15 inspect the activities of the authority and districts related to the
16 financing and construction of school facilities and the implementation
17 of the provisions of P.L. , c. (C.) (now pending before the
18 Legislature as this bill). The Attorney General may require the
19 submission of duly verified reports from the authority and districts,
20 which include such information in such form as the Attorney General
21 may require. The Attorney General or his representative may also
22 consult with the authority on issues and procedures related to the
23 exercise of its duties and responsibilities under P.L. , c. (C.) (now
24 pending before the Legislature as this bill). The Legislature shall
25 annually appropriate such funds as may be necessary to finance the
26 operations of the unit.

27

28 62. This act shall take effect immediately.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 200**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 2000

The Assembly Appropriations Committee reports, without recommendation, Senate Bill No. 200 SCS (1R) with committee amendments.

Senate Bill No. 200 SCS (1R), as amended, establishes a school facilities construction and financing program. The program will be operated through the coordinated efforts of the Department of Education, the New Jersey Building Authority, and the New Jersey Educational Facilities Authority.

The school construction program is intended not only to address the facilities needs in the Abbott districts as directed by the New Jersey Supreme Court, but also to provide a mechanism for the funding and construction of school facilities throughout the State. Through this coordinated effort, the Commissioner of Education (the "commissioner") will be charged with reviewing the need for the facility and ensuring that State funding is provided in accordance with that need, while the New Jersey Educational Facilities Authority (the "facilities authority") will provide the funding mechanism for the construction of the facility through the issuance of its bonds. The facilities authority has extensive experience in financing the projects of institutions of higher education and under this bill would expand its mission to include the funding of K-12 facilities. The New Jersey Building Authority (the "building authority") will provide construction management and project oversight services for certain school districts which are required under the bill to utilize the building authority to construct their projects. The services of the building authority would also be available to other school districts which want to take advantage of the building authority's construction expertise and realize the economies which the bulk construction activities of the building authority may offer the district.

Under the bill's provisions, any district which wants to undertake

a school construction project would be required to apply to the commissioner for approval of that project. The commissioner would review the proposed project to determine if: a. it is consistent with the district's long range facilities plan (required under a separate section of the bill); and, b. it is consistent with the facilities efficiency standards and area allowances per student derived from those standards.

If the commissioner determines that the proposed project does comply with both of the above, the commissioner calculates the preliminary eligible costs of the project which are the costs on which the district will be aided. The preliminary eligible costs for all school construction projects, whether constructed by the building authority or the district, will include State support of "soft costs" including site acquisition, site development, issuance costs, legal fees, and fees for professional services. The commissioner is required to approve area allowances in excess of those derived from the facilities efficiency standards if the board of education demonstrates that required programs cannot be addressed within the standards and that all other proposed spaces are consistent with those standards. One exception to this procedure is in the case of county special services school districts and county vocational school districts. For those districts the preliminary eligible costs will equal the amount determined by the district's board of school estimate and approved by the board of chosen freeholders. This exception recognizes the fact that these districts often require unique classrooms to accommodate the populations they serve and the programs they offer. Also, the bill requires the commissioner to approve area allowances in excess of those derived from the facilities efficiency standards if the additional allowances are necessary to accommodate centralized facilities to be shared among two or more school buildings in the district and the centralized facilities represent a more cost effective alternative.

If the commissioner determines that the project is not consistent with both the area allowances and facilities efficiency standards and does not approve any additions to those factors, then the commissioner will notify the district of that fact. The district then has the choice of either modifying its project so that it meets the facilities efficiency standards or paying for the excess cost of the project on its own.

Following the approval of the project and the determination of preliminary eligible costs, the bill outlines the finance and construction options for the project depending on the type of school district.

Abbott Districts, Level II Districts, and Districts with a State Aid Percentage of 60% or Greater

Abbott districts will be required to use the building authority for the construction of school facilities projects and will have 100% of their approved costs paid by the State through facilities authority

financing. Districts in level II monitoring and districts which have a State support ratio equal to or greater than 60% will also be required to use the building authority for the construction of school facilities projects. The State will fund an amount of the approved project costs equal to 115% of the district aid percentage through the issuance of facilities authority bonds.

For these groups of districts, once the commissioner determines the project's preliminary eligible costs as previously described, the commissioner submits to the building authority a preliminary project report which describes the project, its preliminary eligible costs, and its priority ranking. Upon review of the report, and in consultation with the district, the building authority will prepare plans and specifications which contain its estimate of the cost to complete the project. The building authority then transmits to the commissioner its recommendation on whether the project can be completed within the preliminary eligible costs.

If the authority determines that the project can be completed within the preliminary eligible costs, then the commissioner calculates the project's final eligible costs and issues a final project report to the building authority. If the building authority determines that the project cannot be completed within the preliminary eligible costs, then prior to making its recommendation to the commissioner, and in consultation with the district, the building authority determines if changes can be made to the project which will result in a reduction in cost while still meeting the school facilities efficiency standards. If that reduction is possible, then the building authority notifies the commissioner of that fact and the commissioner calculates the final eligible costs of the project to include the recommended changes and issues a final project report to the building authority. If the building authority determines that it is not possible to make such changes to the project either because the additional costs are outside of the control of the district or the additional costs are required to meet the facilities efficiency standards, then the building authority will recommend to the commissioner that the cost of the project be increased. The commissioner will calculate the final eligible project costs to include the additional costs recommended by the building authority and will issue a final project report to the building authority.

If the building authority determines that the additional costs are the result of factors which are within the control of the district or are the result of design factors which are not required to meet the facilities efficiency standards, the building authority will recommend to the commissioner that the preliminary eligible costs be accepted. The commissioner will then calculate the project's final eligible costs and the project report which the commissioner issues will detail any excess costs which are to be borne by the district. The bill does stipulate, however, that despite the building authority's recommendation, the commissioner may approve final eligible costs which are in excess of preliminary eligible costs if the commissioner believes that approval is

necessary to meet the educational needs of the district.

For any project constructed by the building authority, the building authority will be responsible for any costs of construction which exceed the amount originally projected by the building authority and approved for financing by the facilities authority if those costs are the result of an underestimate of labor and material costs by the building authority. The district will be responsible only for the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

Districts with a State Aid Percentage of Less Than 60%

A district which has a State support ratio of less than 60% has the option of constructing the project on its own or using the services of the New Jersey Building Authority to construct the project and the New Jersey Educational Facilities Authority to finance the project. If the district determines to handle the project on its own, then the district has the option of either receiving a one-time grant for the State share of the project or annual debt service aid on the final eligible costs of the project. The one-time State share grant will be in an amount equal to the product of the project's final eligible costs and 115% of the district's district aid percentage or 40%, whichever is greater. Debt service aid will also be calculated using the product of the district's district aid percentage and 1.15 as of the date of the commissioner's determination of preliminary eligible costs; again however, even districts which do not qualify for core curriculum standards aid will be aided at a minimum of 40% of approved costs. The calculation of State support at a fixed point in time differs from the current debt service aid formula in which the State support ratio is recalculated annually based on the level of core curriculum standards aid support in each budget year.

In the case of a district which is building a school facilities project on its own, the district may appeal to the commissioner for an increase in the preliminary eligible costs if the detailed plans and specifications completed by a design professional for the project indicate that the cost of constructing that portion of the project which is consistent with the facilities efficiency standards and does not exceed the area allowances per FTE student exceeds the preliminary eligible costs as determined by the commissioner by 10% or more. The district must file its appeal within 30 days of the preparation of the plans and specifications. The appeal must outline the reasons why the preliminary eligible costs calculated for the project are inadequate and estimate the amount of the adjustment which needs to be made to the preliminary eligible costs. The commissioner is to forward the appeal information to the building authority for its review and recommendation. If the additional costs are the result of factors that are within the control of the district or are the result of design factors not required to meet the facilities efficiency standards, the building

authority will recommend to the commissioner that the preliminary eligible costs be accepted as the final eligible costs. If the building authority determines that the additional costs are not within the control of the district or are the result of design factors required to meet the facilities efficiency standards, the authority is to recommend to the commissioner a final eligible cost based on its experience with districts of similar characteristics. The commissioner must make a determination on the appeal within 30 days of its receipt. If the commissioner does not approve an adjustment to the project's preliminary eligible costs, the commissioner must issue findings in writing on the reasons for the denial and on why the preliminary eligible costs as originally calculated are sufficient.

Maintenance Requirements

Upon completion by the building authority of a school facilities project, the district is to enter into a contract with the building authority to provide for the maintenance of the project by the district. If the project is constructed by the district, the district must submit a plan to the commissioner to similarly provide for the project's maintenance. Any agreement or plan must contain a requirement for the establishment of a maintenance reserve fund. The funding levels required for that fund will be established by the commissioner.

In the case of a district which has chosen to receive debt service aid, the debt service aid for districts will be subject to reduction if the district fails to meet the maintenance requirements outlined in the bill. To receive debt service aid for an improvement or addition to an existing facility, a district will be required, beginning ten years following the bill's enactment, to demonstrate a net investment in maintenance over the ten years preceding the issuance of the financing for the improvement or addition of 2% of what the facility's replacement cost was ten years prior. Also, in order to continue to be eligible for full debt service aid for bonds issued for projects approved following the bill's effective date, a district will be required to demonstrate, beginning in the fourth year after occupancy of the facility, an annual investment in maintenance of at least two-tenths of 1% of the facility's replacement cost. The bill establishes a sliding scale reduction in aid for lesser investments.

Refinancing of Existing Debt

The bill authorizes the facilities authority to make loans to local units to finance all or a portion of the cost of a school facilities project. Loans could also be made to refund obligations of a local unit which were previously issued to provide funds to pay for the cost of a school facilities project. These loans will be made pursuant to terms and conditions determined by the facilities authority and will be secured by local unit obligations.

Retroactivity

The bill includes provisions to grandfather in certain school facilities projects which were approved prior to the bill's effective date. Under the retroactivity provisions, any district which obtained approval from the commissioner since September 1, 1998 and prior to the bill's effective date of the educational specifications for a school facilities project or obtained approval from the Department of Community Affairs or the appropriately licensed municipal code official since September 1, 1998 of the final construction plans and specifications, and has issued debt, may elect to have the final eligible costs of the project determined and to receive debt service aid on those costs calculated using the product of the district's district aid percentage and 1.15, or 40%, whichever is greater; or to receive debt service aid on the project's total cost calculated at the district aid percentage.

Any district which received approval from the commissioner for a school facilities project at any time prior to the bill's effective date, and has not issued debt other than short term notes, may have the project's eligible costs calculated under the bill and have the authority construct the project; or may elect to receive debt service aid on eligible costs using the product of the district aid percentage and 1.15 or 40%, whichever is greater; or to receive debt service aid on the project's total cost calculated at the district aid percentage, or to receive a one-time grant in an amount equal to the State support share.

Prequalification of Bidders for School Facilities Projects

The bill requires the New Jersey Building Authority to establish a process to prequalify bidders who intend to submit bids for school facilities projects. The prequalification process would include prime contractors, subcontractors, and construction managers in the following fields: plumbing and gas fitting and all work and materials kindred thereto; steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto; electrical work; and structural steel and ornamental iron work and materials.

The bill requires that the prequalification process include a submission by the prospective bidder of a form that fully describes and establishes the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and any other pertinent and material facts as may be deemed necessary by the building authority. The building authority will then verify the information provided by the prospective bidder. Based on the information provided by the prospective bidder and performance evaluations that will be conducted on all contractors and subcontractors involved in school facilities projects, the building

authority will assign a prospective bidder a performance rating, a trade classification and an aggregate rating limit for the purpose of determining the types of projects for which a prospective bidder is entitled to bid. A person's prequalification classification will be valid for 18 months. In order to maintain eligibility to bid on school facilities projects the person will have to be reclassified every 18 months.

As a condition of bidding, contractors will be required to submit a contractor certification form regarding qualifications and credentials. The form will contain a list of the names and titles of all individuals who own 10% or more of any class stock in the corporation or are a 10% or more partner in the firm. The principal owner or officer of the company will be required to certify that: the firm has certain enumerated licenses, certificates and classifications; the firm has not been suspended or debarred by any governmental agency; the firm has not defaulted for cause on any project in the past three years; the firm has not had any contractor or trade license revoked in the past three years; the firm and its officers, owners and managers have not been convicted of any criminal offense in the past three years; and the amount of the bid proposal and value of all of the firm's outstanding incomplete contracts does not exceed its existing prequalification dollar limit.

The bill includes a grandfather provision that permits a contractor who on the effective date of the bill has a current, valid classification from the Division of Property Management and Construction in the Department of Treasury, to obtain prequalified status under the provisions of the bill by submitting a short-form application. Upon such application, the building authority will prequalify the contractor for the same trade classification and same aggregate rating limit issued by the division.

As amended and reported, this bill is identical to Assembly Bill No. 2041 (1R), as also amended and reported by this committee.

COMMITTEE AMENDMENTS:

The amendments:

(1) replace the New Jersey Economic Development Authority with two authorities: the New Jersey Building Authority, which would be responsible for the construction management of school facilities projects, and the New Jersey Educational Facilities Authority, which would be responsible for the financing of school facilities projects;

(2) provide that any district in district factor group A or B, other than an Abbott district, which is having difficulty financing the local share of a school facilities project may apply to the commissioner to receive 100% State support for the project and the commissioner may request the approval of the Legislature to increase the State share of the project to 100%;

(3) delete a provision providing funds prior to project approval for

site acquisition and preliminary design work in Abbott districts;

(4) provide that beginning on July 1, 2002, the commissioner shall periodically submit to the Legislature a list that includes any school facilities project which has a State share of 100% and the final eligible costs of the project. If the Legislature does not disapprove the project by the adoption of a concurrent resolution within 45 days, the project shall be deemed approved;

(5) delete a provision for demonstration projects;

(6) establish a "School Facilities Construction Fund" in the building authority, which would be credited with the proceeds of bonds issued by the facilities authority and specifically dedicated to the cost of projects undertaken by the building authority;

(7) provide that the aggregate amount of bonds that may be issued by the New Jersey Educational Facilities Authority for the school construction program may not exceed: \$100,000,000 for the State share of costs for county vocational school district projects; \$6,000,000,000 for the State share of costs for Abbott district projects; and \$2,500,000,000 for the State share of costs for projects in all other districts;

(8) permit a district to establish a capital reserve account to be used to finance the district's long-range facilities plan;

(9) create the "County Vocational School District Facilities Rehabilitation Fund" in the Department of Education, which would enable a county vocational school district to apply for a matching grant of \$500,000 for health and safety rehabilitation projects;

(10) require the commissioner to study the Safe School Design Guidelines and to make recommendations to districts on the appropriateness of including the guidelines in the design and construction of school facilities projects;

(11) require the building authority to establish a prequalification process for bidders on school facilities projects and any contractor who submits a bid for a school facilities project to maintain a bona fide office in the State;

(12) require a mandatory uniform performance evaluation to be conducted on all school facilities projects;

(13) require the Commissioner of Education, in conjunction with the Commissioner of Labor, to establish a program to provide additional funding for apprenticeship programs and appropriate \$3 million for the program;

(14) authorize the building authority to require the use of wrap-up insurance coverage for a project; and

(15) delete a provision for a reduction in the State sales tax whenever annual appropriations were not made in an amount determined by the Department of Education as necessary for debt service aid.

FISCAL IMPACT:

A cost estimate for this bill is difficult to produce because the

annual and long run costs are dependent on actual annual eligible costs of school facilities constructed statewide and the mixture of State support and local support for the particular construction projects. These annual costs cannot be determined prior to the approval of the specific projects.

The bill caps State authority debt issuance to meet the State's share of school facilities project costs at \$8.6 billion. Of this amount \$6 billion would be available for projects in Abbott districts, \$2.5 billion would be available for projects in the non-Abbott districts and \$100 million would be set aside for projects in county vocational schools. When combined with the local contributions, the non-Abbott funds would cover nearly \$5.7 billion in school projects. Assuming that the full bonding capacity is utilized in equal proportions over the first ten years of the program, potential annual cost estimates can be made under certain assumptions. Initial costs in the first year should be about \$75 million and increasing each year by this amount until a peak of about \$770 million is realized in fiscal year 2010. Annual total State debt service and debt service aid costs should then remain steady before beginning to decline in fiscal year 2021. The estimate assumes a 6.5 percent interest rate and 20 year bonds. During the peak years between fiscal years 2010 and 2020, about 70 percent of the annual State cost will be attributable to financing school construction in the Abbott districts.

It is important to note that the actual costs of this program will vary from the estimate if the actual level of approved construction is more or less than that assumed, if construction costs vary from the amount in the bill, if the amount of school construction is more concentrated in districts that receive higher or lower levels of State support, if borrowing costs vary from the assumed rate of 6.5 percent and if funds are available for pay-as-you-go financing of school payments in FY 2001 and 2002. However, the bonding caps in the bill limit the State's debt service liability to a maximum of about \$770 million in the highest years.

The effects of this bill are partially offset by the replacement of the existing funding mechanism for school facilities. Under current State practice, annual debt service and facilities aid costs for school construction may be estimated to grow to over \$200 million annually by fiscal year 2010. Current State school facilities costs equal approximately \$156 million. Since certain debt service aid costs would be incurred by the State without the passage of this bill and would be replaced under this bill by a new facilities funding mechanism, the *net* cost to the State under this bill would be less than the *total* cost by the amount of future debt service and facilities aid under the current funding mechanism.

The potential annual costs of the bill are partially funded by a maximum dedication of \$100 million from the State's tobacco settlement fund and about \$117 million in funds from lottery proceeds (\$62 million), the State tobacco tax dedication (\$50 million) and the Fund for Free Public Schools (\$5 million).

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 11, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

Co-Sponsored by:

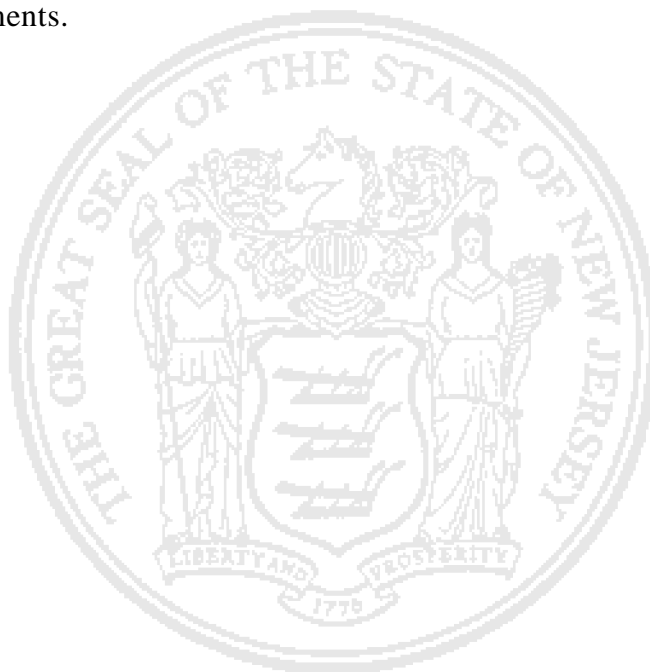
Assemblymen Collins, Malone, Zecker, LeFevre, Holzapfel and Augustine

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 1, 2000,
with amendments.



(Sponsorship Updated As Of: 6/6/2000)

1 AN ACT concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30² and 59 through 76² of
9 this act shall be known and may be cited as the “Educational Facilities
10 Construction and Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning² [and located as
18 far as possible in economically and socially viable communities]².

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the
40 requirements of a thorough and efficient education, the State must also
41 protect the interests of taxpayers who will bear the burden of this

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:

¹ Senate floor amendments adopted May 18, 2000.

² Assembly AAP committee amendments adopted June 1, 2000.

1 obligation. Design of school facilities should incorporate maximum
2 operating efficiencies and new technologies to advance the energy
3 efficiency of school facilities and the efficiency of other school
4 building systems, construction should be achieved in as efficient a
5 manner as possible, and a mechanism to assure proper maintenance of
6 new facilities should be established and implemented, in order to
7 reduce the overall cost of the program and to preserve this
8 infrastructure investment.

9 ²[e. At the same time, the location of school facilities in the
10 context of the communities which they serve is important to both the
11 educational success of the schools and the development of those
12 communities. It is highly desirable, particularly in urban communities
13 where the State has indicated a particular concern respecting local
14 development efforts, that the planning and construction of schools be
15 integrated where possible into the economic and community
16 development efforts of local governments and community
17 redevelopment entities in order to promote more effective and efficient
18 use of land, resources and expertise and to better assure the future
19 viability of local neighborhoods and communities.]²

20

21 3. (New section) As used in sections 1 through 30 ²and 59
22 through 76² of this act, unless the context clearly requires a different
23 meaning:

24 "Abbott district" means an Abbott district as defined in section 3
25 of P.L.1996, c.138 (C.18A:7F-3);

26 "Area cost allowance" means \$131 per square foot for the school
27 year 1999-2000 and shall be inflated by an appropriate cost index for
28 the 2000-2001 school year. For subsequent school years, the area
29 cost allowance shall be as established in the biennial Report on the
30 Cost of Providing a Thorough and Efficient Education and inflated by
31 an appropriate cost index for the second year to which the report
32 applies. The area cost allowance used in determining preliminary
33 eligible costs of school facilities projects shall be that of the year of
34 application for approval of the project;

35 ²["Authority" means the New Jersey Economic Development
36 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1et seq.)]
37 "Building authority" means the New Jersey Building Authority
38 established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.)² ;

39 "Commissioner" means the Commissioner of Education;

40 "Core curriculum content standards" means the standards
41 established pursuant to the provisions of subsection a. of section 4 of
42 P.L.1996, c.138 (C.18A:7F-4);

43 "Cost index" means the average annual increase, expressed as a
44 decimal, in actual construction cost factors for the New York City and
45 Philadelphia areas during the second fiscal year preceding the budget
46 year as determined pursuant to regulations promulgated by the

1 ²building² authority pursuant to section 26 of this act;

2 "Debt service" means and includes payments of principal and
3 interest upon school bonds issued to finance the acquisition of school
4 sites and the purchase or construction of school facilities, additions to
5 school facilities, or the reconstruction, remodeling, alteration,
6 modernization, renovation or repair of school facilities, including
7 furnishings, equipment, architect fees and the costs of issuance of such
8 obligations and shall include payments of principal and interest upon
9 school bonds heretofore issued to fund or refund such obligations, and
10 upon municipal bonds and other obligations which the commissioner
11 approves as having been issued for such purposes. Debt service
12 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
13 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
14 (C.18A:58-33.2 et seq.) is excluded;

15 ²["Demonstration project" means a school facilities project
16 selected by the State Treasurer for construction by a redevelopment
17 entity pursuant to section 6 of this act;]²

18 "District" means a local or regional school district established
19 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
20 Statutes, a county special services school district established pursuant
21 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
22 county vocational school district established pursuant to article 3 of
23 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
24 operated school district established pursuant to P.L.1987, c.399
25 (C.18A:7A-34 et seq.);

26 "District aid percentage" means the number expressed as a
27 percentage derived from dividing the district's core curriculum
28 standards aid calculated pursuant to section 15 of P.L.1996, c.138
29 (C.18A:7F-15) as of the date of the commissioner's determination of
30 preliminary eligible costs by the district's T & E budget calculated
31 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
32 13) as of the date of the commissioner's determination of preliminary
33 eligible costs;

34 "Excess costs" means the additional costs, if any, which shall be
35 borne by the district, of a school facilities project which result from
36 design factors that are not required to meet the facilities efficiency
37 standards and not approved pursuant to paragraph (1) of subsection
38 g. of section 5 of this act ²[or are not authorized as community design
39 features included in final eligible costs pursuant to subsection c. of
40 section 6 of this act]²;

41 ²Facilities authority" means the New Jersey Educational Facilities
42 Authority created pursuant to N.J.S.18A:72A-1 et seq.;²

43 "Facilities efficiency standards" means the standards developed by
44 the commissioner pursuant to ²[subsection h. of]² section ²[4] 6² of
45 this act;

46 "Final eligible costs" means for school facilities projects to be

1 constructed by the ²building² authority, the final eligible costs of the
2 school facilities project as determined by the commissioner, in
3 consultation with the ²building² authority, pursuant to section 5 of this
4 act; ²[for demonstration projects, the final eligible costs of the project
5 as determined by the commissioner and reviewed by the authority
6 which may include the cost of community design features determined
7 by the commissioner to be an integral part of the school facility and
8 which were reviewed by the authority and approved by the State
9 Treasurer pursuant to section 6 of this act;]² and for districts whose
10 district aid percentage is less than 60% and which elect not to have the
11 ²building² authority construct a school facilities project, final eligible
12 costs as determined pursuant to paragraph (1) of subsection h. of
13 section 5 of this act;

14 "FTE" means a full-time equivalent student which shall be
15 calculated as follows: in districts that qualify for early childhood
16 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
17 each student in grades kindergarten through 12 shall be counted at
18 100% of the actual count of students, and each preschool student
19 approved by the commissioner to be served in the district shall be
20 counted at 50% or 100% of the actual count of preschool students for
21 an approved half-day or full-day program, respectively; in districts that
22 do not qualify for early childhood program aid pursuant to section 16
23 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
24 12 shall be counted at 100% of the actual count of students, in the
25 case of districts which operate a half-day kindergarten program each
26 kindergarten student shall be counted at 50% of the actual count of
27 kindergarten students, in the case of districts which operate a full-day
28 kindergarten program or which currently operate a half-day
29 kindergarten program but propose to build facilities to house a full-
30 day kindergarten program each kindergarten student shall be counted
31 at 100% of the actual count of kindergarten students, and preschool
32 students shall not be counted. In addition, each preschool
33 handicapped child who is entitled to receive a full-time program
34 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
35 count of these students in the district;

36 "Functional capacity" means the number of students that can be
37 housed in a building in order to have sufficient space for it to be
38 educationally adequate for the delivery of programs and services
39 necessary for student achievement of the core curriculum content
40 standards. Functional capacity is determined by dividing the existing
41 gross square footage of a school building by the minimum area
42 allowance per FTE student pursuant to subsection b. of section 8 of
43 this act for the grade level students contained therein. The difference
44 between the projected enrollment determined pursuant to subsection
45 a. of section 8 of this act and the functional capacity is the unhoused
46 students that are the basis upon which the additional costs of space to

1 provide educationally adequate facilities for the entire projected
2 enrollment are determined. The existing gross square footage for the
3 purposes of defining functional capacity is exclusive of existing spaces
4 that are not contained in the facilities efficiency standards but which
5 are used to deliver programs and services aligned to the core
6 curriculum content standards, used to provide support services directly
7 to students, or other existing spaces that the district can demonstrate
8 would be structurally or fiscally impractical to convert to other uses
9 contained in the facilities efficiency standards;

10 "Lease purchase payment" means and includes payment of
11 principal and interest for lease purchase agreements in excess of five
12 years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to
13 the effective date of P.L. , c. (C.) (now pending before the
14 Legislature as this bill) to finance the purchase or construction of
15 school facilities, additions to school facilities, or the reconstruction,
16 remodeling, alteration, modernization, renovation or repair of school
17 facilities, including furnishings, equipment, architect fees and issuance
18 costs. Approved lease purchase agreements in excess of five years
19 shall be accorded the same accounting treatment as school bonds;

20 "Level II district" means a district which is directed by the
21 commissioner to enter level II monitoring pursuant to the provisions
22 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

23 "Local share" means, in the case of a school facilities project to be
24 constructed by the ²building² authority, the total costs less the State
25 share as determined pursuant to section 5 of this act; ²[in the case of
26 a demonstration project, the total costs less the State share as
27 determined pursuant to section 6 of this act;]² and in the case of a
28 school facilities project to be financed pursuant to section 15 of this
29 act, the total costs less the State share as determined pursuant to that
30 section;

31 "Local unit" means a county, municipality, board of education or
32 any other political subdivision or instrumentality authorized to
33 construct, operate and maintain a school facilities project and to
34 borrow money for those purposes pursuant to law;

35 "Local unit obligations" means bonds, notes, refunding bonds,
36 refunding notes, lease obligations and all other obligations of a local
37 unit which are issued or entered into for the purpose of paying for all
38 or a portion of the costs of a school facilities project, including
39 moneys payable to the authority;

40 "Long-range facilities plan" means the plan required to be
41 submitted to the commissioner by a district pursuant to section 4 of
42 this act;

43 "Maintenance" means expenditures which are approved for repairs
44 and replacements for the purpose of keeping a school facility open and
45 safe for use or in its original condition, including repairs and
46 replacements to a school facility's heating, lighting, ventilation,

1 security and other fixtures to keep the facility or fixtures in effective
2 working condition. Maintenance shall not include contracted custodial
3 or janitorial services, expenditures for the cleaning of a school facility
4 or its fixtures, the care and upkeep of grounds or parking lots, and the
5 cleaning of, or repairs and replacements to, movable furnishings or
6 equipment, or other expenditures which are not required to maintain
7 the original condition over the school facility's useful life. Approved
8 maintenance expenditures shall be as determined by the commissioner
9 pursuant to regulations to be adopted by the commissioner pursuant
10 to section 26 of this act;

11 "Preliminary eligible costs" means the initial eligible costs of a
12 school facilities project as calculated pursuant to the formulas set forth
13 in section 7 of this act;

14 ²["Redevelopment entity" means a redevelopment entity
15 authorized by a municipal governing body to implement plans and
16 carry out redevelopment projects in the municipality pursuant to the
17 "Local Redevelopment and Housing Law," P.L.1992, c.79
18 (C.40A:12A-1 et seq);]²

19 "Report on the Cost of Providing a Thorough and Efficient
20 Education" or "Report" means the report issued by the commissioner
21 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

22 "School bonds" means, in the case of a school facilities project
23 which is to be constructed by the ²building ²authority [²a
24 redevelopment entity,]² or a district under section 15 of this act,
25 bonds, notes or other obligations issued by a district to finance the
26 local share; and, in the case of a school facilities project which is not
27 to be constructed by the ²building ²authority ¹, a redevelopment
28 entity,]² or a district under section 15 of this act, bonds, notes or
29 other obligations issued by a district to finance the total costs;

30 "School enrollment" means the number of FTE students other than
31 evening school students, including post-graduate students and post-
32 secondary vocational students, who, on the last school day prior to
33 October 16 of the current school year, are recorded in the registers of
34 the school;

35 "School facility" means and includes any structure, building or
36 facility used wholly or in part for academic purposes by a district, but
37 shall exclude athletic stadiums, grandstands, and any structure,
38 building or facility used solely for school administration;

39 "School facilities project" means the acquisition, demolition,
40 construction, improvement, repair, alteration, modernization,
41 renovation, reconstruction or maintenance of all or any part of a
42 school facility or of any other personal property necessary for, or
43 ancillary to, any school facility, and shall include fixtures, furnishings
44 and equipment, and shall also include, but is not limited to, site
45 acquisition, site development, the services of design professionals,
46 such as engineers and architects, construction management, legal

1 services, financing costs and administrative costs and expenses
2 incurred in connection with the project;

3 "Special education services pupil" means a pupil receiving specific
4 services pursuant to chapter 46 of Title 18A of the New Jersey
5 Statutes;

6 "State aid" means State municipal aid and State school aid;

7 "State debt service aid" means for school bonds issued for school
8 facilities projects approved by the commissioner after the effective
9 date of P.L. , c. (C.) (now pending before the Legislature as this
10 bill) of districts which elect not to have the ²building² authority ²[or
11 a redevelopment entity]² construct the project or which elect not to
12 finance the project under section 15 of this act, the amount of State
13 aid determined pursuant to section 9 of this act; and for school bonds
14 or certificates of participation issued for school facilities projects
15 approved by the commissioner prior to the effective date of P.L. ,
16 c. (C.) (now pending before the Legislature as this bill) the
17 amount of State aid determined pursuant to section 10 of this act;

18 "State municipal aid" means business personal property tax
19 replacement revenues, State urban aid and State revenue sharing, as
20 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
21 other similar forms of State aid payable to the local unit and to the
22 extent permitted by federal law, federal moneys appropriated or
23 apportioned to the municipality or county by the State;

24 "State school aid" means the funds made available to school
25 districts pursuant to sections 15 and 17 of P.L.1996, c.138
26 (C.18A:7F-15 and 17);

27 "State share" means the State's proportionate share of the final
28 eligible costs of a school facilities project to be constructed by the
29 ²building² authority as determined pursuant to section 5 of this act;
30 ²[in the case of a demonstration project, the State's proportionate
31 share of the final eligible costs of the project as determined pursuant
32 to sections 5 and 6 of this act;]² and in the case of a school facilities
33 project to be financed pursuant to section 15 of this act, the State
34 share as determined pursuant to that section;

35 "Total costs" means, in the case of a school facilities project which
36 is to be constructed by the ²building² authority ²[or a redevelopment
37 entity]² or financed pursuant to section 15 of this act, the final
38 eligible costs plus excess costs if any; and in the case of a school
39 facilities project which is not to be constructed by the ²building²
40 authority ²[or a redevelopment entity]² or financed pursuant to
41 section 15 of this act, the total cost of the project as determined by
42 the district ²[;].²

43

44 4. (New section) a. Beginning in the 1999-2000 school year and
45 in every school year thereafter ending with a "0" or a "5", each district
46 shall prepare and submit to the commissioner a long-range facilities

1 plan that details the district's school facilities needs and the district's
2 plan to address those needs for the ensuing five years. The long-range
3 facilities plan shall incorporate the facilities efficiency standards and
4 shall be filed with the commissioner no later than October 1, 2000 and
5 no later than October 1 of the other filing years for approval in
6 accordance with those standards. For those Abbott districts that have
7 submitted long-range facilities plans to the commissioner prior to the
8 effective date of P.L. , c. (C) (now pending before the
9 Legislature as this bill), this subsection shall not be read to require an
10 additional filing by October 1, 2000.

11 b. Notwithstanding any other law or regulation to the contrary,
12 an application for a school facilities project pursuant to section 5 of
13 this act shall not be approved unless the district has filed a long-range
14 facilities plan that is consistent with the application and the plan has
15 been approved by the commissioner; except that prior to October 1,
16 2000, the commissioner may approve an application if the project is
17 necessary to protect the health or safety of occupants of the school
18 facility, or is related to required early childhood education programs,
19 or is related to a school facility in which the functional capacity is less
20 than 90% of the facilities efficiency standards based on current school
21 enrollment, or the district received bids on the school facilities project
22 prior to the effective date of P.L. , c. (C.) (now pending before
23 the Legislature as this bill) and the district demonstrates that further
24 delay will negatively affect the cost of the project.

25 c. An amendment to a long-range facilities plan may be submitted
26 at any time to the commissioner for review and approval.

27 d. Each long-range facilities plan shall include a cohort survival
28 methodology or other methodology approved by the commissioner,
29 accompanied by a certification by a qualified demographer retained by
30 the district that serves as the basis for identifying the capacity and
31 program needs detailed in the long-range facilities plan.

32 e. The long-range facilities plan shall include an educational
33 adequacy inventory of all existing school facilities in the district, the
34 identification of all deficiencies in the district's current inventory of
35 school facilities, which includes the identification of those deficiencies
36 that involve emergent health and safety concerns, and the district's
37 proposed plan for future construction and renovation. The long-range
38 facilities plan submissions shall conform to the guidelines, criteria and
39 format prescribed by the commissioner.

40 f. Each district shall determine the number of "unhoused students"
41 for the ensuing five-year period calculated pursuant to the provisions
42 of section 8 of this act.

43 g. Each district shall submit the long-range facilities plan to the
44 planning board of the municipality or municipalities in which the
45 district is situate for the planning board's review and findings
46 ²[pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31)]².

1 ²[h. The commissioner shall develop, for the March 2002 Report
2 on the Cost of Providing a Thorough and Efficient Education and for
3 subsequent reports, facilities efficiency standards for elementary,
4 middle, and high schools consistent with the core curriculum school
5 delivery assumptions in the report and sufficient for the achievement
6 of the core curriculum content standards, and for the provision of
7 required programs in Abbott districts and early childhood education
8 programs in the districts in which these programs are required by the
9 State. The area allowances per FTE student in each class of the
10 district shall be derived from these facilities efficiency standards.

11 The facilities efficiency standards developed by the commissioner
12 shall not be construction design standards but rather shall represent the
13 instructional spaces, specialized instructional areas, and administrative
14 spaces that are determined by the commissioner to be educationally
15 adequate to support the achievement of the core curriculum content
16 standards and for the provision of required programs in Abbott
17 districts and early childhood education programs in the districts in
18 which these programs are required. A district may design, at its
19 discretion, the educational and other spaces to be included within the
20 school facilities project. The design of the project may eliminate
21 spaces in the facilities efficiency standards, include spaces not in the
22 facilities efficiency standards, or size spaces differently than in the
23 facilities efficiency standards upon a demonstration of the adequacy of
24 the school facilities project to deliver the core curriculum content
25 standards pursuant to paragraph (2) of subsection g. of section 5 of
26 this act.

27 Within a reasonable period of time after the effective date of
28 P.L. , c. (C.) (now pending before the Legislature as this bill),
29 the commissioner shall publish the facilities efficiency standards
30 developed for the 2000-2001, 2001-2002, and 2002-2003 school years
31 in the New Jersey Register. Within a reasonable period of time after
32 30 days after publication in the New Jersey Register, the commissioner
33 shall file the facilities efficiency standards with the Office of
34 Administrative Law and those standards shall become effective
35 immediately upon filing with the Office of Administrative Law.
36 During the 30-day period the commissioner shall provide an
37 opportunity for public comment on the proposed facilities efficiency
38 standards.

39 i. Within 90 days of the commissioner's receipt of a long-range
40 facilities plan for review, the commissioner shall determine whether the
41 plan is fully and accurately completed and whether all information
42 necessary for a decision on the plan has been filed by the district. If
43 the commissioner determines that the plan is complete, the
44 commissioner shall promptly notify the district in writing and shall
45 have 60 days from the date of that notification to determine whether
46 to approve the plan or not. If the commissioner determines that the

1 plan is not complete, the commissioner shall notify the district in
2 writing. The district shall provide to the commissioner whatever
3 information the commissioner determines is necessary to make the plan
4 accurate and complete. The district shall submit that information to
5 the commissioner, and the commissioner shall have 60 days from the
6 date of receipt of accurate and complete information to determine
7 whether to approve the plan or not.

8 j. Notwithstanding any provision of subsection i. of this section,
9 if at any time the number of long-range facilities plans filed by school
10 districts with the commissioner and pending review exceeds 20% of
11 the number of school districts in New Jersey, the commissioner may
12 extend by 60 days the deadline for reviewing each plan pending at that
13 time.

14 k. By July 1, 2001, the commissioner shall provide the Legislature
15 with recommendations to address the circumstances of districts which
16 are contiguous with two or more Abbott districts. The
17 recommendations shall address the issues of the financing of school
18 facilities projects and the funding of the educational and other
19 programs required within these districts as a result of their unique
20 demographic situation.]]²

21

22 5. (New section) a. The ²building² authority shall construct and
23 ²the facilities authority shall² finance the school facilities projects of
24 Abbott districts, level II districts, and districts with a district aid
25 percentage equal to or greater than 60%.

26 b. Any district whose district aid percentage is less than 60% may
27 elect to have the ²facilities² authority undertake the ²financing and the
28 building authority undertake the² construction of a school facilities
29 project in the district and the State share shall be determined pursuant
30 to this section. In the event that the district elects not to have the
31 ²building² authority undertake the construction of the project, State
32 support for the project shall be determined pursuant to section 9 or
33 section 15 of this act, as applicable.

34 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
35 contrary, the procedures for obtaining approval of a school facilities
36 project shall be as set forth in this act; provided that any district
37 whose district aid percentage is less than 60%, which elects not to
38 have the ²building ² authority [for a redevelopment entity] ²
39 undertake the construction of the project, shall also be required to
40 comply with the provisions of N.J.S.18A:18A-16.

41 d. Any district seeking to initiate a school facilities project shall
42 apply to the commissioner for approval of the project. The application
43 shall, at a minimum, contain the following information: a description
44 of the school facilities project; a schematic drawing of the project or,
45 at the option of the district, preliminary plans and specifications; a
46 delineation and description of each of the functional components of the

1 project; the number of unhoused students to be housed in the project;
2 the area allowances per FTE student as calculated pursuant to section
3 8 of this act; and the estimated cost to complete the project as
4 determined by the district.

5 e. The commissioner shall review each proposed school facilities
6 project to determine whether it is consistent with the district's long-
7 range facilities plan and whether it complies with the facilities
8 efficiency standards and the area allowances per FTE student derived
9 from those standards. The commissioner shall make a decision on a
10 district's application within 90 days from the date he determines that
11 the application is fully and accurately completed and that all
12 information necessary for a decision has been filed by the district, or
13 from the date of the last revision made by the district. If the
14 commissioner is not able to make a decision within 90 days, he shall
15 notify the district in writing explaining the reason for the delay and
16 indicating the date on which a decision on the project will be made,
17 provided that the date shall not be later than 60 days from the
18 expiration of the original 90 days set forth in this subsection. If the
19 decision is not made by the subsequent date indicated by the
20 commissioner, then the project shall be deemed approved and the
21 preliminary eligible costs shall equal the proposed cost of the project.

22 f. If the commissioner determines that the school facilities project
23 complies with the facilities efficiency standards and the district's long-
24 range facilities plan and does not exceed the area allowance per FTE
25 student derived from those standards, the commissioner shall calculate
26 the preliminary eligible costs of the project pursuant to the formulas
27 set forth in section 7 of this act; except that in the case of a county
28 special services school district or a county vocational school district,
29 the commissioner shall calculate the preliminary eligible costs to equal
30 the amount determined by the board of school estimate and approved
31 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
32 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

33 g. If the commissioner determines that the school facilities project
34 is inconsistent with the facilities efficiency standards or exceeds the
35 area allowances per FTE student derived from those standards, the
36 commissioner shall notify the district.

37 (1) The commissioner shall approve area allowances in excess of
38 the area allowances per FTE student derived from the facilities
39 efficiency standards if the board of education or State district
40 superintendent, as appropriate, demonstrates that school facilities
41 needs related to required programs cannot be addressed within the
42 facilities efficiency standards and that all other proposed spaces are
43 consistent with those standards. The commissioner shall approve area
44 allowances in excess of the area allowances per FTE student derived
45 from the facilities efficiency standards if the additional area allowances
46 are necessary to accommodate centralized facilities to be shared

1 among two or more school buildings within the district and the
2 centralized facilities represent a more cost effective alternative.

3 (2) The commissioner may waive a facilities efficiency standard if
4 the board of education or State district superintendent, as appropriate,
5 demonstrates to the commissioner's satisfaction that the waiver will
6 not adversely affect the educational adequacy of the school facility,
7 including the ability to deliver the programs and services necessary to
8 enable all students to achieve the core curriculum content standards.

9 (3) To house the district's central administration, a district may
10 request an adjustment to the approved areas for unhoused students of
11 2.17 square feet for each FTE student in the projected total district
12 school enrollment if the proposed administrative offices will be housed
13 in a school facility and the district demonstrates either that the existing
14 central administrative offices are obsolete or that it is more practical
15 to convert those offices to instructional space. To the extent that
16 existing administrative space will continue to be used for
17 administrative purposes, the space shall be included in the formulas set
18 forth in section 7 of this act.

19 If the commissioner approves excess facilities efficiency standards
20 or additional area allowances pursuant to paragraphs (1), (2), or (3)
21 of this subsection, the commissioner shall calculate the preliminary
22 eligible costs based upon the additional area allowances or excess
23 facilities efficiency standards pursuant to the formulas set forth in
24 section 7 of this act. In the event that the commissioner does not
25 approve the excess facilities efficiency standards or additional area
26 allowances, the district may either: modify its submission so that the
27 school facilities project meets the facilities efficiency standards; or pay
28 for the excess costs.

29 (4) The commissioner shall approve spaces in excess of, or
30 inconsistent with, the facilities efficiency standards, hereinafter
31 referred to as nonconforming spaces, upon a determination by the
32 district that the spaces are necessary to comply with State or federal
33 law concerning individuals with disabilities. A district may apply for
34 additional State aid for nonconforming spaces that will permit pupils
35 with disabilities to be educated to the greatest extent possible in the
36 same buildings or classes with their nondisabled peers. The
37 nonconforming spaces may: (a) allow for the return of pupils with
38 disabilities from private facilities; (b) permit the retention of pupils
39 with disabilities who would otherwise be placed in private facilities; (c)
40 provide space for regional programs in a host school building that
41 houses both disabled and nondisabled pupils; and (d) provide space for
42 the coordination of regional programs by a county special services
43 school district, educational services commission, jointure commission,
44 or other agency authorized by law to provide regional educational
45 services in a school building that houses both disabled and nondisabled
46 pupils. A district's State support ratio shall be adjusted to equal the

1 lesser of the sum of its district aid percentage as defined in section 3
2 of this act plus 0.25, or 100% for any nonconforming spaces approved
3 by the commissioner pursuant to this paragraph.

4 h. Upon approval of a school facilities project and determination
5 of the preliminary eligible costs:

6 (1) In the case of a district whose district aid percentage is less
7 than 60% and which has elected not to have the ²building² authority
8 undertake the construction of the school facilities project, the
9 commissioner shall notify the district whether the school facilities
10 project is approved and, if so approved, the preliminary eligible costs
11 and the excess costs, if any. Following the determination of
12 preliminary eligible costs and the notification of project approval, the
13 district may appeal to the commissioner for an increase in those costs
14 if the detailed plans and specifications completed by a design
15 professional for the school facilities project indicate that the cost of
16 constructing that portion of the project which is consistent with the
17 facilities efficiency standards and does not exceed the area allowances
18 per FTE student exceeds the preliminary eligible costs as determined
19 by the commissioner for the project by 10% or more. The district shall
20 file its appeal within 30 days of the preparation of the plans and
21 specifications. If the district chooses not to file an appeal, then the
22 final eligible costs shall equal the preliminary eligible costs.

23 The appeal shall outline the reasons why the preliminary eligible
24 costs calculated for the project are inadequate and estimate the amount
25 of the adjustment which needs to be made to the preliminary eligible
26 costs. The commissioner shall forward the appeal information to the
27 ²building² authority for its review and recommendation. If the
28 additional costs are the result of factors that are within the control of
29 the district or are the result of design factors that are not required to
30 meet the facilities efficiency standards, the ²building² authority shall
31 recommend to the commissioner that the preliminary eligible costs be
32 accepted as the final eligible costs. If the ²building² authority
33 determines the additional costs are not within the control of the district
34 or are the result of design factors required to meet the facilities
35 efficiency standards, the ²building² authority shall recommend to the
36 commissioner a final eligible cost based on its experience for districts
37 with similar characteristics. The commissioner shall make a
38 determination on the appeal within 30 days of its receipt. If the
39 commissioner does not approve an adjustment to the school facilities
40 project's preliminary eligible costs, the commissioner shall issue his
41 findings in writing on the reasons for the denial and on why the
42 preliminary eligible costs as originally calculated are sufficient.

43 (2) In all other cases, the commissioner shall promptly prepare and
44 submit to the ²building² authority a preliminary project report which
45 shall consist, at a minimum, of the following information: a complete
46 description of the school facilities project; the actual location of the

1 project; the total square footage of the project together with a
2 breakdown of total square footage by functional component; the
3 preliminary eligible costs of the project; the project's priority ranking
4 determined pursuant to subsection m. of this section; any other
5 factors to be considered by the ²building² authority in undertaking the
6 project; and the name and address of the person from the district to
7 contact in regard to the project.

8 i. Upon receipt by the ²building² authority of the preliminary
9 project report, the ²building² authority, upon consultation with the
10 district, shall prepare detailed plans, schedules and specifications
11 which contain the ²building² authority's estimated cost and schedule
12 to complete the school facilities project. The ²building² authority shall
13 transmit to the commissioner the ²building² authority's
14 recommendations in regard to the project which shall, at a minimum,
15 contain the detailed plans and specifications; whether the school
16 facilities project can be completed within the preliminary eligible costs;
17 and any other factors which the ²building² authority determines should
18 be considered by the commissioner.

19 (1) In the event that the ²building² authority determines that the
20 school facilities project can be completed within the preliminary
21 eligible costs: the final eligible costs shall be deemed to equal the
22 preliminary eligible costs; the commissioner shall be deemed to have
23 given final approval to the project; and the preliminary project report
24 shall be deemed to be the final project report delivered to the
25 ²building² authority pursuant to subsection j. of this section.

26 (2) In the event that the ²building² authority determines that the
27 school facilities project cannot be completed within the preliminary
28 eligible costs, prior to the submission of the ²building² authority's
29 recommendations to the commissioner, the ²building² authority shall,
30 in consultation with the district and the commissioner, determine
31 whether changes can be made in the project which will result in a
32 reduction in costs while at the same time meeting the facilities
33 efficiency standards approved by the commissioner.

34 (a) If the ²building² authority determines that changes in the
35 school facilities project are possible so that the project can be
36 accomplished within the scope of the preliminary eligible costs while
37 still meeting the facilities efficiency standards, the ²building² authority
38 shall so advise the commissioner, whereupon the commissioner shall:
39 calculate the final eligible costs to equal the preliminary eligible costs;
40 give final approval to the project with the changes noted; and issue
41 a final project report to the ²building² authority pursuant to
42 subsection j. of this section.

43 (b) If the ²building² authority determines that it is not possible to
44 make changes in the school facilities project so that it can be
45 completed within the preliminary eligible costs either because the
46 additional costs are the result of factors outside the control of the

1 district or the additional costs are required to meet the facilities
2 efficiency standards, the ²building² authority shall recommend to the
3 commissioner that the preliminary eligible costs be increased
4 accordingly, whereupon the commissioner shall: calculate the final
5 eligible costs to equal the sum of the preliminary eligible costs plus the
6 increase recommended by the ²building² authority; give final approval
7 to the project; and issue a final project report to the ²building²
8 authority pursuant to subsection j. of this section.

9 (c) If the additional costs are the result of factors that are within
10 the control of the district or are the result of design factors that are
11 not required to meet the facilities efficiency standards or approved
12 pursuant to paragraph (1) of subsection g. of this section, the
13 ²building² authority shall recommend to the commissioner that the
14 preliminary eligible costs be accepted, whereupon the commissioner
15 shall: calculate the final eligible costs to equal the preliminary eligible
16 costs and specify the excess costs which are to be borne by the district;
17 give final approval to the school facilities project; and issue a final
18 project report to the ²building² authority pursuant to subsection j. of
19 this section; provided that the commissioner may approve final eligible
20 costs which are in excess of the preliminary eligible costs if, in his
21 judgment, the action is necessary to meet the educational needs of the
22 district.

23 (d) For a school facilities project constructed by the ²building²
24 authority, the ²building² authority shall be responsible for any costs of
25 construction, but only from the proceeds of bonds issued by the
26 ²facilities² authority pursuant to this act, which exceed the amount
27 originally projected by the ²building² authority and approved for
28 financing by the ²facilities² authority, provided that the excess is the
29 result of an underestimate of labor or materials costs by the ²building²
30 authority. After receipt by the ²building² authority of the final project
31 report, the district shall be responsible only for the costs associated
32 with changes, if any, made at the request of the district to the scope
33 of the school facilities project.

34 j. The ²building² authority shall not commence the acquisition or
35 construction of a school facilities project unless the commissioner
36 transmits to the ²building² authority a final project report and the
37 district complies with the approval requirements for the local share,
38 if any, pursuant to section 11 of this act. The final project report shall
39 contain all of the information contained in the preliminary project
40 report and, in addition, shall contain: the final eligible costs; the excess
41 costs, if any; the total costs which equals the final eligible costs plus
42 excess costs, if any; the State share; and the local share.

43 k. For the Abbott districts, the State share shall be 100% of the
44 final eligible costs. For all other districts, the State share shall be an
45 amount equal to 115% of the district aid percentage; except that the
46 State share shall not be less than 40% of the final eligible costs.

1 ²If any district which is included in district factor group A or B,
2 other than an Abbott district, is having difficulty financing the local
3 share of a school facilities project, the district may apply to the
4 commissioner to receive 100% State support for the project and the
5 commissioner may request the approval of the Legislature to increase
6 the State share of the project to 100%.²

7 l. The local share for school facilities projects constructed by the
8 ²building² authority ²[or a redevelopment entity]² shall equal the
9 final eligible costs plus any excess costs less the State share.

10 m. The commissioner shall establish, in consultation with the
11 Abbott districts, a priority ranking of all school facilities projects in the
12 Abbott districts based upon his determination of critical need, and shall
13 establish priority categories for all school facilities projects in non-
14 Abbott districts. The commissioner shall rank projects from Tier I to
15 Tier IV in terms of critical need according to the follow prioritization:

16 Tier I: health and safety, including electrical system upgrades;
17 required early childhood education programs; unhoused students/class
18 size reduction as required to meet the standards of the
19 "Comprehensive Educational Improvement and Financing Act of
20 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

21 Tier II: educational adequacy - specialized instructional spaces,
22 media centers, cafeteriums, and other non-general classroom spaces
23 contained in the facilities efficiency standards; special education spaces
24 to achieve the least restrictive environment;

25 Tier III: technology projects; regionalization or consolidation
26 projects;

27 Tier IV: other local objectives.

28 n. The provisions of the "Public School Contracts Law,"
29 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
30 project constructed by a district but shall not be applicable to projects
31 constructed by the ²building² authority ²[or a redevelopment entity]²
32 pursuant to the provisions of this act.

33 o. In the event that a district whose district aid percentage is less
34 than 60% elects not to have the ²building² authority undertake
35 construction of a school facilities project, any proceeds of school
36 bonds issued by the district for the purpose of funding the project
37 which remain unspent upon completion of the project shall be used
38 by the district to reduce the outstanding principal amount of the school
39 bonds.

40 p. Upon completion by the ²building ²authority of a school
41 facilities project, if the cost of construction and completion of the
42 project is less than the total costs, the district shall be entitled to
43 receive a portion of the local share based on a pro rata share of the
44 difference based on the ratio of the State share to the local share.

45 q. The ²building² authority shall determine the cause of any costs
46 of construction which exceed the amount originally projected by the

1 ²building² authority and approved for financing by the ²facilities²
2 authority.

3 r. In the event that a district has engaged architectural services
4 that have been prequalified by the ²building² authority to prepare the
5 documents required for initial proposal of a school facilities project,
6 the district shall, if permitted by the terms of the district's contract for
7 architectural services, assign the contract for architectural services to
8 the ²building² authority, provided that the fees for the architectural
9 services shall not exceed the fees normally paid by the ²building²
10 authority for such services.

11 s. ²[The commissioner may authorize the authority to provide
12 funds to Abbott districts prior to the approval of a school facilities
13 project to enable an Abbott district to finance site acquisition and
14 preliminary design work.] Beginning on July 1, 2002, the
15 commissioner shall periodically submit to the Legislature a list which
16 includes any school facilities project which has a State share of 100%
17 and the final eligible costs of the project. If the Legislature does not
18 disapprove the school facilities project by the adoption of a concurrent
19 resolution within 45 days, the project shall be deemed authorized.²
20

21 ²[6. (New section) The provisions of section 5 of P.L. , c.
22 (C.) (now pending before the Legislature as this bill) shall pertain
23 to school facilities projects designated to be demonstration projects
24 except as otherwise provided in this section.

25 a. For the initial three full fiscal years following the effective date
26 of this act, the State Treasurer may designate up to six school facilities
27 projects which the State Treasurer determines to be in the best
28 interests of the State and of the districts to be demonstration projects
29 pursuant to the provisions of this section.

30 b. A district and municipality may apply to the authority for the
31 designation of a school facilities project contained in a long-range
32 facilities plan submitted to the commissioner pursuant to section 4 of
33 P.L. , c. (C.) (now pending before the Legislature as this bill)
34 to be a demonstration project to provide for the coordination of local
35 economic development, redevelopment or community development
36 with a school facilities project. The application shall be accompanied
37 by substantively, parallel resolutions requesting the designation
38 adopted by the board of education of the district and the governing
39 body of the municipality. The application shall set forth: (1) a plan
40 for carrying out the redevelopment project as a whole, including the
41 construction of the school facilities project; (2) the name of the
42 redevelopment entity to undertake the project under the "Local
43 Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et
44 seq.); (3) a description of how the project fits into a redevelopment
45 plan adopted or to be adopted by the municipal governing body
46 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a

1 description of the community design features to be included in the
2 school facilities project.

3 c. The authority shall evaluate the request to determine whether
4 the school facilities project is suitable for designation as a
5 demonstration project and whether the proposed redevelopment entity
6 is suitable for designation as the entity to construct the demonstration
7 project based upon consideration of the following factors:

8 (1) whether the demonstration project furthers definite local
9 objectives as to appropriate land uses, density of population, and
10 improved traffic and public transportation, public utilities, recreational
11 and community facilities and other public improvements;

12 (2) whether the demonstration project provides significant social
13 and economic benefits to the municipality, its neighborhoods and
14 residents;

15 (3) whether the development of the school facilities project is
16 consistent with the local development plan;

17 (4) the extent to which the school facilities project contains
18 community design features which can be used by the community;

19 (5) whether the redevelopment entity has the current capacity to
20 construct the demonstration project;

21 (6) whether the redevelopment entity has the appropriate prior
22 experience in developing similar types of projects; and

23 (7) whether there exist donations from private entities for the
24 purpose of the demonstration project.

25 d. The authority's review of the proposed school facilities project
26 for designation as a demonstration project under this section shall
27 commence upon approval by the commissioner of the school facilities
28 project pursuant to section 5 of P.L. , c. (C.) (now pending
29 before the Legislature as this bill). Upon approval by the
30 commissioner of the school facilities project, and recommendation by
31 the authority that the school facilities project be a demonstration
32 project, the recommendation of the authority shall be forwarded to the
33 State Treasurer who shall determine whether the school facilities
34 project should be designated as a demonstration project. At the same
35 time as the authority forwards its recommendation to the State
36 Treasurer, the authority shall forward its recommendation to the
37 Urban Coordinating Council for review pursuant to subsection i. of
38 this section.

39 e. In addition to the requirements set forth in section 5 of this
40 act, a demonstration project may request inclusion in the final eligible
41 costs of the school facilities project, of all or any portion of the cost
42 of any community design features including any area, rooms,
43 equipment, recreational area or playground included in the school
44 facilities project which are to be used in common by students of the
45 district and by residents of the community, but there shall not be
46 included in the final eligible costs any portion of the cost of any

1 features which are not an integral part of the school building and
2 grounds and are not related to the advancement of the educational
3 success of district students. The commissioner shall approve the
4 inclusion of the community design features as part of the school
5 facilities project if he finds that the inclusion of the community design
6 features as part of the school facilities project would be conducive to
7 the usefulness and success of the project for both the students of the
8 district and the residents of the community. The commissioner may
9 condition his approval upon the adoption by the district of policies
10 suitable for assuring continuing community or educational access to
11 the community design features.

12 f. The cost of the community design features approved by the
13 commissioner shall be reviewed by the authority. The district shall
14 submit the documentation required by the authority for the authority
15 to make its determination. The authority shall, in its recommendation
16 to the commissioner pursuant to section 5 of this act, include its
17 recommendation with respect to the cost of the community design
18 features. The commissioner shall make the final determination with
19 respect to the inclusion of the cost of community design features in the
20 final eligible costs.

21 g. The authority shall provide funding for the State's share of the
22 final eligible costs of a school facilities project to be constructed as
23 part of a demonstration project pursuant to an agreement among the
24 authority, the redevelopment entity and the district which shall, in
25 addition to any other terms and conditions, set forth the terms for
26 disbursement of the State share and provide for the monitoring of
27 construction by the authority.

28 h. Upon completion of a demonstration project by a
29 redevelopment entity, the district shall submit to the commissioner a
30 plan to provide for the maintenance of the project and shall enter into
31 a contract which provides for that maintenance.

32 i. The Urban Coordinating Council shall review the
33 recommendations of the authority with respect to the demonstration
34 projects and shall advise the authority, redevelopment entity and the
35 district regarding the potential availability of funding for the
36 demonstration project, including, but not limited to, sources of funds
37 for acquisition, clearance, site remediation, and assemblage of land and
38 the development, redevelopment, construction or rehabilitation of any
39 structure or improvement included in the project.]]²

40

41 ² 6. (New section) a. The commissioner shall develop, for the
42 March 2002 Report on the Cost of Providing a Thorough and Efficient
43 Education and for subsequent reports, facilities efficiency standards for
44 elementary, middle, and high schools consistent with the core
45 curriculum school delivery assumptions in the report and sufficient for
46 the achievement of the core curriculum content standards, and for the

1 provision of required programs in Abbott districts and early childhood
2 education programs in the districts in which these programs are
3 required by the State. The area allowances per FTE student in each
4 class of the district shall be derived from these facilities efficiency
5 standards.

6 The facilities efficiency standards developed by the commissioner
7 shall not be construction design standards but rather shall represent the
8 instructional spaces, specialized instructional areas, and administrative
9 spaces that are determined by the commissioner to be educationally
10 adequate to support the achievement of the core curriculum content
11 standards and for the provision of required programs in Abbott
12 districts and early childhood education programs in the districts in
13 which these programs are required. A district may design, at its
14 discretion, the educational and other spaces to be included within the
15 school facilities project. The design of the project may eliminate
16 spaces in the facilities efficiency standards, include spaces not in the
17 facilities efficiency standards, or size spaces differently than in the
18 facilities efficiency standards upon a demonstration of the adequacy of
19 the school facilities project to deliver the core curriculum content
20 standards pursuant to paragraph (2) of subsection g. of section 5 of
21 this act.

22 Within a reasonable period of time after the effective date of
23 P.L. , c. (C.) (now pending before the Legislature as this bill),
24 the commissioner shall publish the facilities efficiency standards
25 developed for the 2000-2001, 2001-2002, and 2002-2003 school years
26 in the New Jersey Register. Within a reasonable period of time after
27 30 days after publication in the New Jersey Register, the commissioner
28 shall file the facilities efficiency standards with the Office of
29 Administrative Law and those standards shall become effective
30 immediately upon filing with the Office of Administrative Law.
31 During the 30-day period the commissioner shall provide an
32 opportunity for public comment on the proposed facilities efficiency
33 standards.

34 b. Within 90 days of the commissioner's receipt of a long-range
35 facilities plan for review, the commissioner shall determine whether the
36 plan is fully and accurately completed and whether all information
37 necessary for a decision on the plan has been filed by the district. If
38 the commissioner determines that the plan is complete, the
39 commissioner shall promptly notify the district in writing and shall
40 have 60 days from the date of that notification to determine whether
41 to approve the plan or not. If the commissioner determines that the
42 plan is not complete, the commissioner shall notify the district in
43 writing. The district shall provide to the commissioner whatever
44 information the commissioner determines is necessary to make the plan
45 accurate and complete. The district shall submit that information to
46 the commissioner, and the commissioner shall have 60 days from the

1 date of receipt of accurate and complete information to determine
2 whether to approve the plan or not.

3 c. Notwithstanding any provision in subsection b. of this section,
4 if at any time the number of long-range facilities plans filed by school
5 districts with the commissioner and pending review exceeds 20 % of
6 the number of school districts in New Jersey, the commissioner may
7 extend by 60 days the deadline for reviewing each plan pending at that
8 time.

9 d. By July 1, 2001 and every five years thereafter, the
10 Commissioner of Education shall recommend to the Legislature
11 criteria to be used in the designation of districts as Abbott districts.
12 The criteria may include, but not be limited to: the number of residents
13 per 1,000 within the municipality or municipalities in which the district
14 is situate who receive TANF; the district's equalized valuation per
15 resident pupil as equalized valuation is defined in section 3 of
16 P.L.1996, c.136 (C.18A:7F-3); the district's income per resident pupil
17 as district income is defined in section 3 of P.L.1996, c.138
18 (C.18A:7F-3); the population per square mile of the municipality or
19 municipalities in which the district is situate; and the municipal
20 overburden of the municipality or municipalities in which the district
21 is situate as that term is defined by the New Jersey Supreme Court in
22 Abbott v. Burke.

23 e. By July 1, 2001, the commissioner shall provide the Legislature
24 with recommendations to address the circumstances of districts which
25 are contiguous with two or more Abbott districts. The
26 recommendations shall address the issues of the financing of school
27 facilities projects and the funding of the educational and other
28 programs required within these districts as a result of their unique
29 demographic situation.

30 f. By July 1, 2001, the commissioner shall study the Safe Schools
31 Design Guidelines, prepared by the Florida Center for Community
32 Design and Research, which address the issues of school safety and
33 security through the design of school facilities. Based upon his study,
34 the commissioner shall issue recommendations to districts on the
35 appropriateness of including the Safe Schools Design Guidelines in the
36 design and construction of school facilities projects.²

37
38 7. (New section) a. Preliminary eligible costs for construction of
39 new school facilities and additions to school facilities, characterized by
40 an increase in the square footage of the school facility, shall be
41 approved only if necessary for reasons of unhoused students.
42 Unhoused students are the number of students to be housed in a
43 school building, but which cannot be housed in an existing building
44 without additional space or a new building in order to maintain
45 educational adequacy; or which are temporarily being housed in space
46 that was originally designed or intended for instruction in specialized

1 areas including, but not limited to, science, art, music, other hands-on
2 ²learning² experiences and comprehensive health and physical
3 education. Unhoused students are calculated by subtracting the
4 projected enrollment for a school building from its functional capacity.

5 Preliminary eligible costs for construction of new school facilities
6 and additions to school facilities pursuant to this subsection shall be
7 calculated as follows:

8 Preliminary eligible costs = AU x C plus other allowable costs
9 where

10 AU is the approved area for unhoused students; and

11 C is the area cost allowance.

12 b. Preliminary eligible costs shall be approved for a rehabilitation
13 project which means the reconstruction, remodeling, alteration,
14 modernization, renovation or repair of school facilities but only for the
15 purpose of keeping the school building functional for its original
16 purpose or for new purposes that can be accomplished without
17 increasing the gross square footage of the original facility.

18 Preliminary eligible costs for rehabilitation projects pursuant to this
19 subsection shall be calculated as follows:

20 Preliminary eligible costs = estimated actual costs.

21 All school facilities shall be deemed suitable for rehabilitation
22 unless a pre-construction evaluation undertaken by the district
23 demonstrates to the satisfaction of the commissioner that the structure
24 might pose a risk to the safety of the occupants even after
25 rehabilitation, or that rehabilitation is not cost-effective. Whenever a
26 district determines to undertake new construction rather than a
27 rehabilitation project, the district shall undertake a preconstruction
28 evaluation to determine whether, because of health and safety or
29 efficiency, it would be more feasible to replace rather than renovate
30 the school facility. When the district demonstrates to the satisfaction
31 of the commissioner that replacement is more feasible, the district shall
32 be authorized to have the school facility replaced rather than renovated
33 and the preliminary eligible costs shall be determined pursuant to
34 subsection a. of this section. The estimated costs of a rehabilitation
35 project shall contain only those costs necessary for compliance with
36 the Uniform Construction Code, health and safety, and educational
37 adequacy as determined pursuant to the facilities efficiency standards
38 and paragraph (1) of subsection g. of section 5 of this act.

39 c. When construction done in lieu of rehabilitation projects
40 qualifies as new construction, the approved area for unhoused students
41 shall be determined by the commissioner, with consideration of the
42 existing school facilities in the district.

43 d. Preliminary eligible costs for construction done in lieu of
44 rehabilitation projects which does not meet the requirements of
45 subsection b. of this section shall be determined in accordance with the
46 methodology for aiding rehabilitation projects, with the preliminary

1 eligible costs determined pursuant to subsection b. of this section.

2 e. Preliminary eligible costs for purchase of an existing facility to
3 be used as a school facility shall be determined in accordance with the
4 methodology for new construction, with preliminary eligible costs
5 determined pursuant to subsection a. of this section.

6 f. Notwithstanding the provisions of subsections a. and b. of this
7 section, preliminary eligible costs for any addition or reconstruction,
8 remodeling, alteration, modernization, renovation or repair made to a
9 purchased facility within five years of purchase shall be determined as
10 follows:

11 Preliminary eligible costs = $(ACP-PC) \times (C/CP)$ plus other
12 allowable costs

13 where

14 ACP is the preliminary eligible costs for the facilities purchase
15 pursuant to subsection e. of this section;

16 PC is the purchase cost for the facility;

17 C is the area cost allowance at the time of application for the
18 renovation; and

19 CP is the area cost allowance at the time of purchase of the
20 facility.

21 Preliminary eligible costs so calculated shall not be less than
22 zero.

23 g. Other allowable costs shall include the costs of site
24 development, acquisition of land or other real property interests
25 necessary to effectuate the school facilities project, fees for the
26 services of design professionals, including architects, engineers,
27 construction managers and other design professionals, legal fees, and
28 the costs associated with financing the school facilities project. Other
29 allowable costs for school facilities projects to be undertaken by the
30 authority shall be determined by the authority. Other allowable costs
31 for school facilities projects to be undertaken by a district ²[or, in the
32 case of a demonstration project, by a redevelopment entity]² shall be
33 equal to the actual costs unless the commissioner, in consultation with
34 the authority, determines these costs to be unreasonable in light of the
35 experience of similarly situated districts.

36

37 8. (New section) a. The number of unhoused students shall be
38 calculated as the number of FTE students who are projected to be
39 enrolled in preschool handicapped, preschool, kindergarten, grades 1
40 through 12, and special education services pupil educational programs
41 provided in a district within five years, which are in excess of the
42 functional capacity of the district's current school facilities or the
43 functional capacity of the school facilities which will be available
44 within five years other than the school facilities for which the
45 preliminary eligible costs are determined, based upon the district's
46 long-range facilities plan. The determination of unhoused capacity

1 shall separately consider projected enrollments and functional
 2 capacities at the early childhood and elementary (preschool through
 3 grade 5), middle (grades 6 through 8), and high school (grades 9
 4 through 12) levels. For the purpose of calculating the district's
 5 unhoused students, special education services students shall be
 6 considered part of the grade level to which the students' chronological
 7 age corresponds. In the event that the commissioner approves a
 8 school facilities project which involves the construction of a new
 9 school facility to replace an existing school facility, which shall
 10 accommodate both the unhoused students and the students in the
 11 existing school facility, the calculation of the number of unhoused
 12 students shall include the number of students currently attending the
 13 existing facility which is to be replaced.

14 b. Approved area for unhoused students (AU) shall be determined
 15 according to the following formula:

$$16 \quad AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$$

17 where

18 UEC, UE, UM, UH are the numbers of unhoused students in the
 19 early childhood, elementary, middle, and high school enrollment
 20 categories, respectively; and

21 SEC, SE, SM, SH are the area allowances per FTE student in
 22 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
 23 and grades 9 through 12, respectively. Area allowances shall be
 24 determined based on the grade level of a student regardless of the
 25 grade configurations used in the school buildings of the district.

26 The minimum area allowance per FTE student shall be as follows:

27	Preschool through grade 5	125 sq. ft.
28	Grades 6 through 8	136 sq. ft.
29	Grades 9 through 12	151 sq. ft.

30

31 The commissioner, in consultation with the State Treasurer and the
 32 Commissioner of the Department of Community Affairs, shall adopt
 33 regulations that establish a process for the consideration of special
 34 circumstances, in addition to those provided in section 5 of this act, in
 35 which the area allowances per FTE student established pursuant to this
 36 subsection may be adjusted. Any decision made by the commissioner
 37 pursuant to those regulations shall be made in consultation with the
 38 State Treasurer and the Commissioner of the Department of
 39 Community Affairs.

40

41 9. (New section) a. State debt service aid for capital investment
 42 in school facilities for a district whose district aid percentage is less
 43 than 60% and which elects not to have the ¹[building]¹ ²building²
 44 authority construct a school facilities project or to finance the project
 45 under section 15 of this act, shall be distributed upon a determination
 46 of preliminary eligible costs by the commissioner, according to the

1 following formula:

2 Aid is the sum of A for each issuance of school bonds issued for a
3 school facilities project approved by the commissioner after the
4 effective date of P.L. , c. (C.) (now pending before the
5 Legislature as this bill)

6 where

7 $A = B \times AC/P \times (DAP \times 1.15) \times M$, with $AC/P = 1$

8 whenever AC/P would otherwise yield a number greater than one,

9 and where:

10 B is the district's debt service for the individual issuance for the
11 fiscal year;

12 AC is the preliminary eligible costs determined pursuant to section
13 7 of this act;

14 P is the principal of the individual issuance plus any other funding
15 sources approved for the school facilities project;

16 DAP is the district's district aid percentage as defined pursuant to
17 section 3 of this act; and

18 M is a factor representing the degree to which a district has
19 fulfilled maintenance requirements for a school facilities project
20 determined pursuant to subsection b. of this section.

21 For county special services school districts, DAP shall be that of
22 the county vocational school district in the same county.
23 Notwithstanding any provision of this subsection to the contrary, State
24 debt service aid shall not be less than 40% of the preliminary eligible
25 ²[cost] costs².

26 b. The maintenance factor (M) shall be 1.0 except when one of the
27 following conditions applies, in which case the maintenance factor
28 shall be as specified:

29 (1) Effective ten years from the date of the enactment of P.L. ,
30 c. (C.) (now pending before the Legislature as this bill), the
31 maintenance factor for aid for reconstruction, remodeling, alteration,
32 modernization, renovation or repair, or for an addition to a school
33 facility, shall be zero for all school facilities projects for which the
34 district fails to demonstrate over the ten years preceding issuance a net
35 investment in maintenance of the related school facility of at least 2%
36 of the replacement cost of the school facility, determined pursuant to
37 subsection b. of section 7 of this act using the area cost allowance of
38 the year ten years preceding the year in which the school bonds are
39 issued.

40 (2) For new construction, additions, and school facilities aided
41 under subsection b. of section 7 of this act supported by financing
42 issued for projects approved by the commissioner after the effective
43 date of P.L. , c. (C.) (now pending before the Legislature as
44 this bill), beginning in the fourth year after occupancy of the school
45 facility, the maintenance factor shall be reduced according to the
46 following schedule for all school facilities projects for which the

1 district fails to demonstrate in the prior fiscal year an investment in
 2 maintenance of the related school facility of at least two-tenths of 1 %
 3 of the replacement cost of the school facility, determined pursuant to
 4 subsection b. of section 7 of this act.

5

6 Maintenance Percentage	Maintenance Factor (M)
7 .199% - .151%	75%
8 .150% - .100%	50%
9 Less than .100%	Zero

10

11 (3) Within one year of the enactment of P.L. , c. (C.) (now
 12 pending before the Legislature as this bill), the commissioner shall
 13 promulgate rules requiring districts to develop a long-range
 14 maintenance plan and specifying the expenditures that qualify as an
 15 appropriate investment in maintenance for the purposes of this
 16 subsection.

17 c. Any district which obtained approval from the commissioner
 18 since September 1, 1998 and prior to the effective date of P.L. ,
 19 c. (C.) (now pending before the Legislature as this bill) of the
 20 educational specifications for a school facilities project or obtained
 21 approval from the Department of Community Affairs or the
 22 appropriately licensed municipal code official since September 1, 1998
 23 of the final construction plans and specifications, and the district has
 24 issued debt, may elect to have the final eligible costs of the project
 25 determined pursuant to section 5 of this act and to receive debt service
 26 aid under this section or under section 10 of this act.

27 Any district which received approval from the commissioner for a
 28 school facilities project at any time prior to the effective date of
 29 P.L. , c. (C.) (now pending before the Legislature as this bill),
 30 and has not issued debt, other than short term notes, may submit an
 31 application pursuant to section 5 of this act to have the final eligible
 32 costs of the project determined pursuant to that section and to have
 33 the authority construct the project; or, at its discretion, the district
 34 may choose to receive debt service aid under this section or under
 35 section 10 of this act or to receive a grant under section 15 of this act.

36 ¹For the purposes of this subsection, the "issuance of debt" shall
 37 include lease purchase agreements in excess of five years.¹

38

39 10. (New section) For each issuance of school bonds or
 40 certificates of participation issued for a school facilities project
 41 approved by the commissioner prior to the effective date of P.L. ,
 42 c. (C.) (now pending before the Legislature as this bill):

43 Aid is the sum of A

44 where

45 $A = B \times \text{CCSAID/TEBUD}$

46 and where

1 B is the district's total debt service or lease purchase payment for
2 the individual issuance for the fiscal year ²[, provided that for the
3 purpose of determining debt service or lease purchase payment under
4 this section the cost of site acquisition may be included]²;

5 CCSAID is the district's core curriculum standards aid amount
6 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
7 and

8 TEBUD is the district's T&E budget determined pursuant to
9 section 13 of P.L.1996, c.138(C.18A:7F-13).

10 For county special services school districts, CCSAID/TEBUD shall
11 be that of the county vocational school district in the same county.
12

13 11. (New section) A school facilities project shall not be
14 constructed unless the local share of the project, if any, is approved
15 in accordance with the provisions for the approval of capital projects
16 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
17 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.
18

19 12. (New section) A district, other than a State-operated school
20 district, that sought approval pursuant to section 11 of this act of a
21 school facilities project without excess costs but failed to receive that
22 approval, and within the three years prior to that, sought and failed to
23 receive approval of that school facilities project with or without excess
24 costs, may submit the project to the commissioner and request that the
25 commissioner approve the project and authorize the issuance of school
26 bonds for the local share of the project. Upon receipt of the request,
27 the commissioner shall review the school facilities project and
28 determine whether the project is necessary for the provision of a
29 thorough and efficient system of education in the district. If the
30 commissioner concludes that the project is necessary, the
31 commissioner may approve the project without excess costs and
32 authorize the issuance of school bonds to fund the local share. In
33 addition to the amount of taxes determined by the legal voters of the
34 district at the annual school election, the secretary of the board of
35 education shall certify the amount required for the repayment of the
36 interest and principal of the bonds required to fund the local share
37 amount approved by the commissioner in the same manner required
38 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
39 and the amount so certified shall be included in the taxes assessed,
40 levied and collected in the municipality or municipalities comprising
41 the school district for those purposes.

42 Any school facilities project authorized pursuant to this section
43 shall be constructed by the ²building² authority. Nothing in this
44 section shall preclude a State-operated school district from using the
45 process established pursuant to section 2 of P.L.1991, c.139
46 (C.18A:7A-46.2) to obtain the approval of the commissioner to

1 undertake a school facilities project.

2

3 13. (New section) a. The ²facilities² authority shall be
4 responsible for the financing ²[, planning, design, construction
5 management, acquisition, construction, and completion]² of school
6 facilities projects ²and the building authority shall be responsible for
7 the planning, design, construction management, acquisition,
8 construction, and completion of school facilities projects². Upon
9 submission to the ²building² authority of a final project report, the
10 ²building² authority shall undertake the acquisition, construction, and
11 all other appropriate actions necessary to complete the project. When
12 the final eligible costs of a school facilities project are less than or
13 equal to \$500,000, the ²building² authority may, in its discretion,
14 authorize a district to undertake the acquisition, construction and all
15 other appropriate actions necessary to complete the project and enter
16 into a grant agreement with the district for the payment of the State
17 share.

18 b. The ²facilities² authority shall undertake the financing of school
19 facilities projects pursuant to the provisions of this act. The
20 ²facilities² authority may, in its discretion and upon consultation with
21 the district, finance only the State share of the school facilities project
22 or the State share and the local share of the project. In the event that
23 the ²facilities² authority finances only the State share of a project, the
24 ²building² authority shall not commence acquisition or construction of
25 the project until the ²building² authority receives the local share from
26 the district.

27 c. In order to implement the ²construction and finance²
28 arrangements established for school facilities projects which are to be
29 constructed by the ²building² authority and financed ²by the facilities
30 authority² pursuant to this section, a district shall enter into an
31 agreement with the ²building² authority ², the facilities authority,² and
32 the commissioner containing the terms and conditions determined by
33 the parties to be necessary to effectuate the project.

34 d. Upon completion by the ²building² authority of a school
35 facilities project, the district shall enter into an agreement with the
36 ²building² authority to provide for the maintenance of the project by
37 the district. In the event that the school facilities project is
38 constructed by a district, upon the completion of the project, the
39 district shall submit to the commissioner a plan to provide for the
40 maintenance of the project by the district. Any agreement or plan shall
41 contain, in addition to any other terms and provisions, a requirement
42 for the establishment of a maintenance reserve fund, the funding levels
43 of which shall be as set forth in regulations adopted by the
44 commissioner pursuant to section 26 of this act.

45 ²e. There is hereby established a separate fund entitled the "School
46 Facilities Construction Fund." This fund shall be maintained by the

1 building authority separate and apart from any other funds of the
2 building authority and may be held in depositaries as may be selected
3 by the building authority and invested and reinvested as other funds in
4 the custody of the building authority, subject to the approval of the
5 State Treasurer. All interest or other income or earnings derived from
6 the investment or reinvestment of moneys in the fund shall be credited
7 to the fund. Any grants, contributions, donations and reimbursements
8 from federal aid programs and from other public or private sources as
9 may be used lawfully for the purposes of this act shall also be held in
10 the fund, but shall be expended in accordance with any conditions or
11 requirements attached thereto. The moneys in the fund are specifically
12 dedicated and shall be applied to the cost of school facilities projects
13 undertaken by the building authority pursuant to this act. The fund
14 shall be credited with the proceeds of bonds issued pursuant to section
15 14 of this act; any moneys appropriated or otherwise made available
16 to it by the Legislature; net earnings received from the investment or
17 deposit of monies in the fund, and any other moneys which the
18 building authority determines to deposit therein.

19 f. Upon the issuance by the facilities authority of bonds pursuant
20 to section 14 of this act, the proceeds of the bonds less costs of
21 issuance shall be transferred to the building authority for deposit into
22 the School Facilities Construction Fund.

23 g. In order to implement the arrangements provided for in this act,
24 the State Treasurer, the facilities authority, the building authority and
25 the commissioner are hereby authorized to enter into one or more
26 contracts. The contracts shall provide, in addition to other terms and
27 conditions, for the payment by the facilities authority to the building
28 authority pursuant to subsection f. of this section in order for the
29 building authority to carry out its responsibilities as set forth in this
30 act. The contract or contracts shall be on terms and conditions as
31 determined by the parties, provided that the incurrence of any
32 obligations of the State under the contract or contracts, if any, shall be
33 subject to and dependent upon appropriations being made from time
34 to time by the Legislature for the purposes of this act.²

35

36 14. (New section) Notwithstanding any other provisions of law
37 to the contrary:

38 a. The ²facilities² authority shall have the power, pursuant to the
39 provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
40 N.J.S.18A:72A-1 et seq.², to issue bonds and refunding bonds, incur
41 indebtedness and borrow money secured, in whole or in part, by
42 monies received pursuant to sections 17, 18 and 19 of this act for the
43 purposes of: financing all or a portion of the costs of school facilities
44 projects and any costs related to the issuance thereof, including, but
45 not limited to, the administrative, insurance, operating and other
46 expenses of the ²facilities² authority to undertake the financing ²[],

1 design, construction and maintenance]² of school facilities projects
2 ²and the administrative, insurance and operating expenses of the
3 building authority to undertake the design, construction and
4 maintenance of school facilities projects²; lending moneys to local
5 units to pay the costs of all or a portion of school facilities projects
6 and any costs related to the issuance thereof; funding the grants to be
7 made pursuant to section 15 of this act; and financing the acquisition
8 of school facilities projects to permit the refinancing of debt by the
9 district pursuant to section 16 of this act. ²The aggregate principal
10 amount of the bonds, notes or other obligations issued by the facilities
11 authority shall not exceed: \$100,000,000 for the State share of costs
12 for county vocational school district school facilities projects;
13 \$6,000,000,000 for the State share of costs for Abbott district school
14 facilities projects; and \$2,500,000,000 for the State share of costs for
15 school facilities projects in all other districts. This limitation shall not
16 include any bonds, notes or other obligations issued for refunding
17 purposes.²

18 The ²facilities² authority may establish reserve funds to further
19 secure bonds and refunding bonds issued pursuant to this section and
20 may issue bonds to pay for the administrative, insurance and operating
21 costs of the ²facilities² authority ²and the building authority² in
22 carrying out the provisions of this act. In addition to its bonds and
23 refunding bonds, the ²facilities² authority shall have the power to issue
24 subordinated indebtedness, which shall be subordinate in lien to the
25 lien of any or all of its bonds or refunding bonds as the ²facilities²
26 authority may determine.

27 b. The ²facilities² authority shall issue the bonds or refunding
28 bonds in such manner as it shall determine in accordance with the
29 provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
30 N.J.S.18A:72A-1 et seq.²; provided that notwithstanding any other
31 law to the contrary, no resolution adopted by the ²facilities² authority
32 authorizing the issuance of bonds or refunding bonds pursuant to this
33 section shall be adopted or otherwise made effective without the
34 approval in writing of the State Treasurer; and refunding bonds issued
35 to refund bonds issued pursuant to this section shall be issued on such
36 terms and conditions as may be determined by the ²facilities² authority
37 and the State Treasurer. The ²facilities² authority may, in any
38 resolution authorizing the issuance of bonds or refunding bonds issued
39 pursuant to this section, pledge the contract with the State Treasurer
40 provided for pursuant to section 18 of this act, or any part thereof, or
41 may pledge all or any part of the repayments of loans made to local
42 units pursuant to section 19 of this act for the payment or redemption
43 of the bonds or refunding bonds, and covenant as to the use and
44 disposition of money available to the authority for payment of the
45 bonds and refunding bonds. All costs associated with the issuance of
46 bonds and refunding bonds by the ²facilities² authority for the

1 purposes set forth in this act may be paid by the ²facilities² authority
2 from amounts it receives from the proceeds of the bonds or refunding
3 bonds, and from amounts it receives pursuant to sections 17, 18, and
4 19 of this act. The costs may include, but shall not be limited to, any
5 costs relating to the issuance of the bonds or refunding bonds,
6 administrative costs of the ²facilities² authority attributable to the
7 making and administering of loans and grants to fund school facilities
8 projects, and costs attributable to the agreements entered into pursuant
9 to subsection d. of this section.

10 c. Each issue of bonds or refunding bonds of the ²facilities²
11 authority shall be special obligations of the ²facilities² authority
12 payable out of particular revenues, receipts or funds, subject only to
13 any agreements with the holders of bonds or refunding bonds, and may
14 be secured by other sources of revenue, including, but not limited to,
15 one or more of the following:

16 (1) Pledge of the revenues and other receipts to be derived from
17 the payment of local unit obligations and any other payment made to
18 the ²facilities² authority pursuant to agreements with any local unit, or
19 a pledge or assignment of any local unit obligations, and the rights and
20 interest of the authority therein;

21 (2) Pledge of rentals, receipts and other revenues to be derived
22 from leases or other contractual arrangements with any person or
23 entity, public or private, including one or more local units, or a pledge
24 or assignment of those leases or other contractual arrangements and
25 the rights and interests of the ²facilities² authority therein;

26 (3) Pledge of all moneys, funds, accounts, securities and other
27 funds, including the proceeds of the bonds;

28 (4) Pledge of the receipts to be derived from payments of State
29 aid to the ²facilities² authority pursuant to section 21 of this act;

30 (5) Pledge of the contract or contracts with the State Treasurer
31 pursuant to section 18 of this act;

32 (6) Pledge of any sums remitted to the local unit by donation from
33 any person or entity, public or private, subject to the approval of the
34 State Treasurer;

35 (7) A mortgage on all or any part of the property, real or personal,
36 comprising a school facilities project then owned or thereafter to be
37 acquired, or a pledge or assignment of mortgages made to the
38 ²facilities² authority by any person or entity, public or private,
39 including one or more local units and rights and interests of the
40 ²facilities² authority therein; and

41 (8) The receipt of any grants, reimbursements or other payments
42 from the federal government.

43 d. The resolution authorizing the issuance of bonds or refunding
44 bonds pursuant to this section may also provide for the ²facilities²
45 authority to enter into any revolving credit agreement, agreement
46 establishing a line of credit or letter of credit, reimbursement

1 agreement, interest rate exchange agreement, currency exchange
2 agreement, interest rate floor or cap, options, puts or calls to hedge
3 payment, currency, rate, spread or similar exposure or similar
4 agreements, float agreements, forward agreements, insurance
5 contracts, surety bonds, commitments to purchase or sell bonds,
6 purchase or sale agreements, or commitments or other contracts or
7 agreements and other security agreements approved by the ²facilities²
8 authority in connection with the issuance of the bonds or refunding
9 bonds pursuant to this section. In addition, the ²facilities² authority
10 may, in anticipation of the issuance of the bonds or the receipt of
11 appropriations, grants, reimbursements or other funds, including,
12 without limitation, grants from the federal government for school
13 facilities projects, issue notes, the principal of or interest on which, or
14 both, shall be payable out of the proceeds of notes, bonds or other
15 obligations of the ²facilities² authority or appropriations, grants,
16 reimbursements or other funds or revenues of the ²facilities² authority.

17 e. The ²facilities² authority is authorized to engage, subject to the
18 approval of the State Treasurer and in such manner as the State
19 Treasurer shall determine, the services of financial advisors and
20 experts, placement agents, underwriters, appraisers, and other
21 advisors, consultants and agents as may be necessary to effectuate the
22 financing of school facilities projects.

23 f. Bonds and refunding bonds issued by the ²facilities² authority
24 pursuant to this section shall be special and limited obligations of the
25 ²facilities² authority payable from, and secured by, funds and moneys
26 determined by the ²facilities² authority in accordance with this section.
27 Notwithstanding any other provision of law or agreement to the
28 contrary, any bonds and refunding bonds issued by the ²facilities²
29 authority pursuant to this section shall not be secured by the same
30 property as bonds and refunding bonds issued by the ²facilities²
31 authority to finance projects other than school facilities projects.
32 Neither the members of the ²facilities² authority nor any other person
33 executing the bonds or refunding bonds shall be personally liable with
34 respect to payment of interest and principal on these bonds or
35 refunding bonds. Bonds or refunding bonds issued pursuant to this
36 section shall not be a debt or liability of the State or any agency or
37 instrumentality thereof, except as otherwise provided by this
38 subsection, either legal, moral or otherwise, and nothing contained in
39 this act shall be construed to authorize the ²facilities² authority to
40 incur any indebtedness on behalf of or in any way to obligate the State
41 or any political subdivision thereof, and all bonds and refunding bonds
42 issued by the ²facilities² authority shall contain a statement to that
43 effect on their face.

44 g. The State hereby pledges and covenants with the holders of any
45 bonds or refunding bonds issued pursuant to this act that it will not
46 limit or alter the rights or powers vested in the ²facilities² authority by

1 this act, nor limit or alter the rights or powers of the State Treasurer
2 in any manner which would jeopardize the interest of the holders or
3 any trustee of the holders, or inhibit or prevent performance or
4 fulfillment by the ²facilities² authority or the State Treasurer with
5 respect to the terms of any agreement made with the holders of the
6 bonds or refunding bonds or agreements made pursuant to subsection
7 d. of this section; except that the failure of the Legislature to
8 appropriate moneys for any purpose of this act shall not be deemed a
9 violation of this section.

10 h. The ²facilities authority and the building² authority may charge
11 to and collect from local units, districts, the State and any other
12 person, any fees and charges in connection with the ²facilities
13 authority's or building² authority's actions undertaken with respect to
14 school facilities projects, including, but not limited to, fees and charges
15 for the ²facilities² authority's administrative, organization, insurance,
16 operating and other expenses incident to the financing ²[, planning,
17 design, construction management, acquisition, construction,
18 completion and placing into service and maintenance]² of school
19 facilities projects ²and the building authority's administrative,
20 organization, insurance, operating and other expenses incident to the
21 planning, design, construction management, acquisition, construction,
22 completion and placing into service and maintenance of school
23 facilities projects². Notwithstanding any provision of this act to the
24 contrary, no Level II district or a district whose district aid percentage
25 is greater than or equal to 60% but less than 100% shall be responsible
26 for the payment of any fees and charges related to the ²building²
27 authority's operating expenses.

28
29 15. (New section) In the case of a district whose district aid
30 percentage is less than 60% and which elects not to have the
31 ²building² authority undertake the construction of the school facilities
32 project, for any project approved by the commissioner after the
33 effective date of this act, the district may elect to receive a one-time
34 grant for the State share of the project rather than annual debt service
35 aid under section 9 of this act. The State share payable to the district
36 shall equal the product of the project's final eligible costs and 115% of
37 the district aid percentage or 40%, whichever is greater. The
38 ²facilities² authority shall provide grant funding for the State's share
39 of the final eligible costs of a school facilities project pursuant to an
40 agreement between the district and the ²facilities² authority which
41 shall, in addition to other terms and conditions, set forth the terms of
42 disbursement of the State share. The funding of the State share shall
43 not commence until the district secures financing for the local share.
44

45 16. (New section) In addition to the other powers and duties
46 which have been granted to the ²facilities² authority, whenever any

1 local unit finances the construction or acquisition of a school facilities
2 project which would otherwise qualify under this act except that the
3 debt was issued prior to the effective date of this act, the ²facilities²
4 authority may refinance the debt issued by the local unit through the
5 issuance of bonds secured by repayments of loans made to the local
6 units and may purchase the work or improvement and lease the same
7 to the district, subject to the approval of the State Treasurer; except
8 that the amount of the purchase price for a school facilities project
9 shall not exceed the original cost. Each loan to a local unit pursuant
10 to this section shall be evidenced by local unit obligations and shall be
11 authorized and issued as provided by law. Notwithstanding the
12 provisions of any law to the contrary, the local unit obligations may be
13 sold at private sale to the ²facilities² authority at any price, whether or
14 not less than par value, and shall be subject to redemption prior to
15 maturity at any times and at any prices as the ²facilities² authority and
16 the local unit may agree. All powers, rights, obligations and duties
17 granted to or imposed upon the ²facilities² authority, districts, State
18 departments and agencies or others by this act in respect to school
19 facilities projects shall apply to the same extent with respect to any
20 refinance of debt pursuant to this section; except that any action
21 otherwise required to be taken at a particular time in the
22 implementation of a school facilities project may, when the
23 circumstances require in connection with a refinance of debt pursuant
24 to this section, be taken with the same effect as if taken at that
25 particular time. Upon repayment of the bonds or provision for
26 repayment of bonds issued by the ²facilities² authority to refinance the
27 debt of the local unit, the school facilities project shall be transferred
28 to the district.

29

30 17. (New section) In each fiscal year the State Treasurer shall pay
31 from the General Fund to the ²facilities² authority ²and the building
32 authority², in accordance with a contract ²[between] among² the State
33 Treasurer ²[and],² the ²facilities authority and the building² authority
34 as authorized pursuant to section 18 of this act, an amount equal to
35 the debt service amount due to be paid in the State fiscal year on the
36 bonds or refunding bonds of the ²facilities² authority issued or
37 incurred pursuant to section 14 of this act and any additional costs
38 authorized pursuant to that section; provided that all such payments
39 from the General Fund shall be subject to and dependent upon
40 appropriations being made from time to time by the Legislature for
41 those purposes, and provided further that all payments shall be used
42 only to pay for the costs of school facilities projects and the costs of
43 financing those projects.

44

45 18. (New section) The State Treasurer ²[and],² the ²facilities²
46 authority ²and the building authority² are authorized to enter into one

1 or more contracts to implement the payment arrangement provided for
2 in section 17 of this act. The contract shall provide for payment by the
3 State Treasurer of the amounts required pursuant to section 17 of this
4 act and shall set forth the procedure for the transfer of monies for the
5 purpose of that payment. The contract shall contain terms and
6 conditions as determined by the parties and shall, where appropriate,
7 contain terms and conditions necessary and desirable to secure any
8 bonds or refunding bonds of the ²facilities² authority issued or
9 incurred pursuant to this act; provided that notwithstanding any other
10 provision of law or regulation of the ²facilities² authority to the
11 contrary, the ²facilities² authority ²and the building authority² shall be
12 paid only such funds as shall be determined by the contract, and the
13 incurrence of any obligation of the State under the contract, including
14 any payments to be made thereunder from the General Fund, shall be
15 subject to and dependent upon appropriations being made from time
16 to time by the Legislature for the purposes of this act.

17

18 19. (New section) a. The ²facilities² authority may make and
19 contract to make loans to local units in accordance with and subject to
20 the provisions of this act to finance all or any portion of the cost of a
21 school facilities project which the local unit may lawfully undertake or
22 acquire and for which the local unit is authorized by law to borrow
23 money; or to refund obligations of the local unit which were issued to
24 provide funds to pay for the cost of a school facilities project. The
25 loans may be made subject to the terms and conditions the ²facilities²
26 authority determines to be consistent with the purposes of this act.
27 Each loan by the ²facilities² authority and the terms and conditions
28 thereof shall be subject to approval by the State Treasurer.

29 b. Each loan to a local unit shall be evidenced by local unit
30 obligations and shall be authorized and issued as provided by law.
31 Notwithstanding the provisions of any other law to the contrary, the
32 local unit obligations may be sold at private sale to the ²facilities²
33 authority at any price, whether or not less than par value, and shall be
34 subject to redemption prior to maturity at any times and at any prices
35 as the ²facilities² authority and the local unit may agree. Each loan to
36 a local unit and the local unit obligations issued to evidence the loan
37 shall bear interest at a rate or rates per annum, including zero interest,
38 and shall be repaid in whole or in part, as the ²facilities² authority and
39 the local unit may agree, with the approval of the State Treasurer.

40

41 20. (New section) A local unit may purchase, lease, rent, sublease
42 or otherwise acquire any school facilities project or any space within
43 a project and pay the amounts as may be agreed upon between the
44 local unit and the ²facilities² authority as the purchase price, rent or
45 other charge therefor; provided that the terms and conditions of the
46 agreement between the ²facilities² authority and the local unit relating

1 to the purchase, lease, rental or sublease shall be subject to the
2 approval of the State Treasurer.

3
4 21. (New section) a. In the event that a local unit has failed or is
5 unable to pay to the ²facilities² authority in full when due any local
6 unit obligations issued by the local unit to the ²facilities² authority,
7 including, but not limited to, any lease or sublease obligations, or any
8 other monies owed by the district to the ²facilities² authority, to assure
9 the continued operation and solvency of the ²facilities² authority, the
10 State Treasurer shall pay directly to the ²facilities² authority an
11 amount sufficient to satisfy the deficiency from State aid payable to the
12 local unit; provided that if the local unit is a school district, the State
13 aid shall not include any State aid which may otherwise be restricted
14 pursuant to the provisions of P.L.1996, c.138 (C.18A:7F-1 et seq.).
15 As used in this section, local unit obligations include the principal or
16 interest on local unit obligations or payment pursuant to a lease or
17 sublease of a school facilities project to a local unit, including the
18 subrogation of the ²facilities² authority to the right of the holders of
19 those obligations, any fees or charges payable to the ²facilities²
20 authority, and any amounts payable by a local unit under a service
21 contract or other contractual arrangement the payments under which
22 are pledged to secure any local unit obligations issued to the
23 ²facilities² authority by another local unit.

24 b. If the ²facilities² authority requires, and if there has been a
25 failure or inability of a local unit to pay its local unit obligations to the
26 ²facilities² authority for a period of 30 days, the chairman or the
27 executive director of the ²facilities² authority shall certify to the State
28 Treasurer, with written notice to the fiscal officer of the local unit, the
29 amount remaining unpaid, and the State Treasurer shall pay that
30 amount to the ²facilities² authority; or if the right to receive those
31 payments has been pledged or assigned to a trustee for the benefit of
32 the holders of bonds or refunding bonds of the ²facilities² authority,
33 to that trustee, out of the State aid payable to the local unit, until the
34 amount so certified has been paid. Notwithstanding any provision of
35 this act to the contrary, the State Treasurer's obligation to pay the
36 ²facilities² authority pursuant to this section shall not extend beyond
37 the amount of State aid payable to the local unit.

38 c. The amount paid to the ²facilities² authority pursuant to this
39 section shall be deducted from the appropriation or apportionment of
40 State aid payable to the local unit and shall not obligate the State to
41 make, nor entitle the local unit to receive, any additional appropriation
42 or apportionment. The obligation of the State Treasurer to make
43 payments to the ²facilities² authority or trustee and the right of the
44 ²facilities² authority or trustee to receive those payments shall be
45 subject and subordinate to the rights of holders of qualified bonds
46 issued prior to the effective date of this act pursuant to P.L.1976, c.38

1 (C.40A:3-1 et seq.) and P.L.1976, c.39 (C.18A:24-85 et seq.).

2

3 22. (New section) a. The ²facilities² authority ²and the building
4 authority² shall have the power to accept and use any funds
5 appropriated and paid by the State to the ²facilities² authority ²and
6 the building authority² for the purposes for which the appropriations
7 are made. The ²facilities² authority ²and the building authority² shall
8 have the power to apply for and receive and accept appropriations or
9 grants of property, money, services or reimbursements for money
10 previously spent and other assistance offered or made available to it by
11 or from any person, government agency, public authority or any public
12 or private entity whatever for any lawful corporate purpose of the
13 ²facilities² authority, including, without limitation, grants,
14 appropriations or reimbursements from the federal government, and to
15 apply and negotiate for the same upon such terms and conditions as
16 may be required by any person, government agency, authority or entity
17 as the ²facilities² authority ²and the building authority² may determine
18 to be necessary, convenient or desirable.

19 b. The ²facilities² authority shall establish a financial incentive
20 program for the purpose of promoting donations to school facilities
21 projects. Any entity which makes a donation approved by the State
22 Treasurer to the preliminary eligible costs of a school facilities project
23 shall receive an incentive payment pursuant to the provisions of this
24 subsection. The amount of the incentive payment shall equal 50% of
25 the fair market value of the donation but shall not in any one year
26 exceed one-half of the amount of taxes paid or otherwise due from the
27 donor pursuant to the provisions of the "New Jersey Gross Income
28 Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation
29 Business Tax Act," P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable,
30 for the tax year in which the donation is made. The fair market value
31 of a non-cash donation shall be determined by the State Treasurer. The
32 carry-forward for incentive payments shall not be inconsistent with
33 that allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a
34 donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in
35 the case of a donation by a corporation.

36 All incentive payments made pursuant to this section shall be funded
37 by and shall be subject to annual appropriations to the ²facilities²
38 authority for this purpose, and shall in no way rely upon funds raised
39 by the issuance of bonds for school facilities projects.

40

41 23. (New section) ²a.² Not less than the prevailing wage rate
42 determined by the Commissioner of Labor pursuant to the provisions
43 of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers
44 employed in the performance of construction contracts in connection
45 with any school facilities project that is undertaken by the ²building²
46 authority ²[, a redevelopment entity,]² or a district ²and any

1 contractor who violates the provisions of this subsection shall be
2 prohibited from subsequently bidding on any State or district contract.

3 b. Registration fees collected pursuant to P.L.1999, c.238 (C.34:11-
4 56.48 et seq.) shall be applied toward the enforcement and
5 administrative costs of the Division of Workplace Standards, Office of
6 Wage and Hour Compliance, Public Contracts section and Registration
7 section within the Department of Labor².

8
9 24. (New section) The commissioner, in consultation with the State
10 Treasurer, shall annually submit to the Governor, the Joint Budget
11 Oversight Committee, the President of the Senate and the Speaker of
12 the General Assembly a report on the school facilities construction
13 program established pursuant to the provisions of this act. The report
14 shall be submitted no later than August 1 of each year and shall
15 include, but not be limited to, the following information for the prior
16 fiscal year: the number of school facilities projects approved by the
17 commissioner pursuant to section 5 of this act; the number of projects
18 constructed by the ²building² authority and the amount of time that
19 it has taken the ²building² authority to complete those projects; the
20 ²[amount] value² of bonds issued by the ²facilities² authority for the
21 ²State share of² construction and renovation of school facilities ²and
22 whether there is a need to adjust the amount of bonds authorized for
23 issuance pursuant to subsection a. of section 14 of this act²; the
24 number of projects constructed by districts; ²[the number of
25 demonstration projects approved;]² the number of approved projects
26 which exceeded the facilities efficiency standards, the components of
27 those projects which exceeded the standards, and the amount of
28 construction by individual districts and Statewide estimated to have
29 exceeded the standards; and recommendations for changes in the
30 school facilities construction program established pursuant to this act.

31
32 25. (New section) Notwithstanding the provisions of P.L.1999,
33 c.138 to the contrary concerning the conditions on the appropriation
34 and reappropriation of the balance in the School Construction and
35 Renovation Fund, the unexpended balance in the School Construction
36 and Renovation Fund on the effective date of this act is appropriated
37 to the ²building² authority ²[to be used to pay for school facilities
38 projects and the administrative, insurance, and other operating cost of
39 the authority incurred in connection with those projects] for deposit
40 in the School Facilities Construction Fund established pursuant to
41 subsection e. of section 13 of this act².

42
43 26. (New section) a. The commissioner shall adopt, pursuant to the
44 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
45 seq.), rules and regulations necessary to implement the provisions of
46 sections 1 through 12 ²and 58 through 60² of this act; except that

1 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
2 to the contrary, the commissioner may adopt, immediately upon filing
3 with the Office of Administrative Law, such rules and regulations as
4 the commissioner deems necessary to implement the provisions of
5 sections 1 through 12 of this act which shall be effective for a period
6 not to exceed 12 months. Determinations made by the commissioner
7 pursuant to this act and the rules and regulations adopted by the
8 commissioner to implement this act shall be considered to be final
9 agency action and appeal of that action shall be directly to the
10 Appellate Division of the Superior Court. The regulations shall
11 thereafter be amended, adopted or re-adopted by the State Board of
12 Education in accordance with the provisions of P.L.1968, c.410
13 (C.52:14B-1 et seq.).

14 b. The ²facilities² authority shall adopt, pursuant to the
15 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
16 seq.), and in consultation with the State Treasurer, rules and
17 regulations necessary to implement the provisions of sections 13
18 through 22 of this act; except that notwithstanding any provision of
19 P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the ²facilities²
20 authority may adopt, immediately upon filing with the Office of
21 Administrative Law, such rules and regulations as the ²facilities²
22 authority deems necessary to implement the provisions of sections 13
23 through 22 of this act which shall be effective for a period not to
24 exceed 12 months and shall thereafter be amended, adopted or re-
25 adopted by the ²facilities² authority, in accordance with the provisions
26 of P.L.1968, c.410 (C.52:14B-1 et seq.).

27 c. ²The building authority shall adopt, pursuant to the
28 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
29 seq.), rules and regulations necessary to implement the provisions of
30 this act as they apply to the building authority; except that
31 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
32 to the contrary, the building authority may adopt, immediately upon
33 filing with the Office of Administrative Law, such rules and regulations
34 as the building authority deems necessary to implement the provisions
35 of this act as they apply to the building authority which shall be
36 effective for a period not to exceed 12 months and shall thereafter be
37 amended, adopted or re-adopted by the building authority, in
38 accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et
39 seq.).

40 d.² Any regulations adopted to implement this act shall include
41 provisions to ensure that all programs necessary to comply with
42 Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), are approved.

43

44 27. (New section) All property of the ²facilities authority and the
45 building² authority shall be exempt from levy and sale by virtue of an
46 execution and no execution of other judicial process shall issue against

1 the same nor shall any judgment against the ²facilities authority and
2 the building² authority be a charge or lien upon ²[its] their² property;
3 provided that nothing herein contained shall apply to or limit the rights
4 of the holder of any bonds, notes or other obligations to pursue any
5 remedy for the enforcement of any pledge or lien given by the
6 ²facilities authority and the building² authority on or with respect to
7 any project, school facilities project, or any revenues or other moneys.

8
9 28. (New section) If any clause, sentence, paragraph, section or
10 part of this act shall be adjudged by any court of competent
11 jurisdiction to be invalid, the judgment shall not affect, impair or
12 invalidate the remainder thereof, but shall be confined in its operation
13 to the clause, sentence, paragraph, section or part thereof directly
14 involved in the controversy in which the judgment shall have been
15 rendered.

16
17 29. (New section) This act shall be construed liberally to effectuate
18 the legislative intent and the purposes of this act as complete and
19 independent authority for the performance of each act and thing herein
20 authorized and all powers herein granted shall be broadly interpreted
21 to effectuate the intent and purposes and not as a limitation of
22 powers.

23
24 30. (New section) There shall be appropriated annually for the
25 purposes of this act up to \$100,000,000 from monies made available
26 to the State from tobacco companies under the nationwide settlement
27 of the respective actions by the various states against those companies,
28 entered into by this State in the Master Settlement Agreement in State
29 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
30 Court, Chancery Division, Middlesex County, No.C.254-96.

31
32 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
33 read as follows:

34 11. Each school district and county vocational school district shall
35 make an annual report of its progress in conforming to the standards
36 for the evaluation of school performance adopted pursuant to section
37 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
38 shall include but not be limited to:

- 39 a. Demographic data related to each school;
40 b. Results of designated assessment programs, including Statewide
41 assessment programs established pursuant to law and regulation;
42 c. Information on each school's fiscal operation, including the
43 budget of each school;
44 d. (Deleted by amendment, P.L.1996, c.138).
45 e. Plans and programs for professional improvement;
46 f. Plans to carry out innovative educational programs designed to
47 improve the quality of education;

1 g. Recommendations for school improvements during the ensuing
2 year; and

3 h. Such additional information as may be prescribed by the
4 commissioner.

5 [Additionally, the State Board of Education may require each
6 district to submit a facilities survey, including current use practices and
7 projected capital project needs.]

8 The district reports shall be submitted to the commissioner annually
9 on a date to be prescribed by the commissioner, who shall make them
10 the basis for an annual report to the Governor and the Legislature,
11 describing the condition of education in New Jersey, the efforts of
12 New Jersey schools in meeting the standards of a thorough and
13 efficient education, the steps underway to correct deficiencies in
14 school performance, and the progress of New Jersey schools in
15 comparison to other state education systems in the United States.

16 (cf: P.L.1996, c.138, s.36)

17

18 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
19 read as follows:

20 1. a. In any State-operated school district created pursuant to the
21 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
22 established a Capital Project Control Board, hereinafter the board,
23 which shall be responsible for the review of any capital project
24 proposed by the State district superintendent provided that the State
25 district superintendent proposes that the capital project be financed in
26 whole or in part by school bonds or notes, or through a lease purchase
27 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
28 shall also be responsible for the certification to the State district
29 superintendent of schools and the Commissioner of Education of the
30 necessity for the capital project and the certification of the
31 appropriation to be made by the governing body of the municipality.

32 b. The board shall consist of five voting members. One member
33 shall be appointed by the Commissioner of Education and two
34 members shall be appointed by the chief executive officer with the
35 consent of a majority of the full membership of the local governing
36 body of the municipality or municipalities in which the school district
37 is located. If the school district is comprised of two municipalities,
38 each municipality shall be entitled to one member, appointed by the
39 executive officer with the consent of the governing body. If the school
40 district is comprised of more than two municipalities, each of the two
41 municipalities with the largest population according to the most recent
42 federal decennial census shall be entitled to one member, appointed by
43 the executive officer with the consent of the governing body.
44 However, if a local governing body fails to agree upon the selection of
45 either board member appointed by an executive officer, then the
46 Commissioner of Education shall make the appointment. One member

1 shall be appointed by the Director of the Division of Local
2 Government Services in the Department of Community Affairs who
3 shall have experience in the area of local finance and capital projects.
4 The fifth member shall be the State district superintendent of schools
5 who shall serve ex-officio and shall act as chairperson of the board.
6 The board members, except for the State district superintendent, shall
7 each serve for a term of one year commencing on July 1 of each year
8 and expiring on June 30 of the following year. Any vacancy in the
9 membership of the board shall be filled for the unexpired term in the
10 manner provided by the original appointment. Members of the board
11 may be employees of the State or any subdivision thereof. All
12 members of the board shall serve without compensation.

13 c. The board shall meet from time to time upon the request of the
14 State district superintendent. All meetings of the board shall be
15 conducted pursuant to the provisions of the "Open Public Meetings
16 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
17 superintendent, or his designee, shall be charged with the responsibility
18 of preparing a transcript of the proceedings and all votes shall be
19 recorded in writing.

20 (cf: P.L.1991, c.139, s.1)

21

22 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
23 read as follows:

24 2. The board shall hear the recommendation of the State district
25 superintendent concerning any proposed capital project, which is to be
26 financed in whole or in part by school bonds or notes, or through a
27 lease purchase agreement pursuant to subsection f. of
28 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
29 the proposed capital project to determine whether the project will
30 assist the State-operated school district in providing a thorough and
31 efficient system of education in that district. In making this
32 determination it may take into consideration factors such as the
33 conditions in the school district, any applicable educational goals, the
34 objectives and standards established by the State, the need for the
35 capital project, the reasonableness of the amount to be expended for
36 the capital project, the estimated time for the undertaking and
37 completion of the capital project, and any other factors which the
38 board may deem necessary including the relationship of the capital
39 project to the long-term capital budget or plan of the school district
40 and the fiscal implications thereof.

41 Following its review and within 60 days of the date on which the
42 State district superintendent submits the recommendation to the board,
43 the board shall adopt a resolution as to whether the State-operated
44 school district should undertake the capital project and providing its
45 reasons therefor. The board shall adopt a resolution indicating the
46 necessity for the capital project and shall also fix and determine by

1 resolution the amount necessary to be raised locally for the capital
2 project. If the board fails to act within 60 days of the submission date,
3 the State district superintendent shall submit the recommendation to
4 the commissioner who shall approve or disapprove the capital project.
5 If the board makes a decision which is contrary to the recommendation
6 of the superintendent, the superintendent may, within 30 days from the
7 date of the board's action, submit the matter to the commissioner for
8 final decision. If the commissioner determines that a capital project
9 should be undertaken, the commissioner shall so notify the board and
10 shall indicate the amount necessary to be raised locally for the capital
11 project. Upon notification, the board shall adopt a resolution
12 indicating the necessity for the capital project and shall also fix and
13 determine by resolution the amount necessary for the capital project
14 as indicated by the commissioner. Certified copies of any resolution
15 requesting the authorization and issuance of bonds and notes or the
16 authorization of a lease purchase agreement shall be delivered to the
17 State district superintendent, the Commissioner of Education, the
18 Director of the Division of Local Government Services in the
19 Department of Community Affairs and the governing body of the
20 municipality or municipalities in which the school district is located.
21 The board shall not approve or recommend any capital project which
22 is inconsistent with the provisions of N.J.S.18A:21-1.

23 (cf: P.L.1991, c.139, s.2)

24

25 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
26 read as follows:

27 3. Notwithstanding the provisions of any law to the contrary, the
28 cost of any capital project authorized pursuant to this act which is to
29 be funded by bonds or notes and certified by the board to the State
30 district superintendent, the Commissioner of Education, the Director
31 of the Division of Local Government Services in the Department of
32 Community Affairs and the governing body of the municipality or
33 municipalities in which the school district is located shall be financed
34 by the issuance of school bonds or notes pursuant to the provisions of
35 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
36 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
37 other obligations shall be authorized, issued, sold and delivered in the
38 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).

39 (cf: P.L.1991, c.139, s.3)

40

41 35. N.J.S.18A:20-4.2 is amended to read as follows:

42 18A:20-4.2 The board of education of any school district may, for
43 school purposes:

44 (a) Purchase, take and condemn lands within the district and lands
45 not exceeding 50 acres in extent without the district but situate in a
46 municipality or municipalities adjoining the district, but no more than

1 25 acres may be so acquired in any one such municipality, without the
2 district, except with the consent, by ordinance, of such municipality;

3 (b) Grade, drain and landscape lands owned or to be acquired by it
4 and improve the same in like manner;

5 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
6 repair or furnish buildings;

7 (d) Borrow money therefor, with or without mortgage; in the case
8 of a type II district without a board of school estimate, when
9 authorized so to do at any annual or special school election; and in the
10 case of a type II district having a board of school estimate, when the
11 amount necessary to be provided therefor shall have been fixed,
12 determined and certified by the board of school estimate; and in the
13 case of a type I district, when an ordinance authorizing expenditures
14 for such purpose is finally adopted by the governing body of a
15 municipality comprised within the district; provided, however, that no
16 such election shall be held nor shall any such resolution of a school
17 estimate board or ordinance of a municipal governing body be
18 introduced to authorize any lease of any building for a term exceeding
19 one year, until the proposed terms of such lease have been reviewed
20 and approved by the Commissioner of Education and the Local
21 Finance Board in the Department of Community Affairs;

22 (e) Construct, purchase, lease or otherwise acquire a building with
23 the federal government, the State, a political subdivision thereof or any
24 other individual or entity properly authorized to do business in the
25 State; provided that: (1) the noneducational uses of the building are
26 compatible with the establishment and operation of a school, as
27 determined by the Commissioner of Education; (2) the portion of the
28 building to be used as a school meets regulations of the Department of
29 Education; (3) the board of education has complied with the
30 provisions of law and regulations relating to the selection and approval
31 of sites; and (4) in the case of a lease, that any lease in excess of five
32 years shall be approved by the Commissioner of Education and the
33 Local Finance Board in the Department of Community Affairs;

34 (f) Acquire [by lease purchase agreement a site and school
35 building; provided that the site and building meet guidelines and
36 regulations of the Department of Education and that any lease
37 purchase agreement in excess of five years shall be approved by the
38 Commissioner of Education as in the best interest of the school district
39 after determining that the relationship of the proposed lease purchase
40 project to the district's goals and objectives established pursuant to
41 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
42 provided that for any lease purchase agreement in excess of five years
43 the Local Finance Board in the Department of Community Affairs shall
44 determine within 30 days that the cost and the financial terms and
45 conditions of the agreement are reasonable], with the approval of
46 either the commissioner, or voters or board of school estimate, as

1 applicable, improvements or additions to school buildings through
2 lease purchase agreements not in excess of five years. The agreement
3 shall be recorded as an expenditure of the General Fund of the district.
4 The commissioner shall approve the agreement only upon a
5 demonstration by the district that the lease purchase payments and any
6 operating expenses related to the agreement can be included within the
7 district's net budget spending growth limitation and will not result in
8 the need for approval by the voters or board of school estimate, as
9 appropriate, of additional spending proposals to maintain existing
10 instructional programs and extracurricular activities. If the
11 commissioner cannot approve the agreement, the board of education
12 may frame a separate question to authorize the lease purchase
13 agreement and obtain voter or board of school estimate approval to
14 enter into the agreement. A district may, without separate prior
15 approval of the commissioner, also acquire equipment through a lease
16 purchase agreement not in excess of five years, provided that the
17 amount of the first installment and each subsequent installment for the
18 lease purchase payments is included in the budget that is advertised
19 and submitted for approval to the voters of the district or the board of
20 school estimate, as appropriate. As used herein, a "lease purchase
21 agreement" refers to any agreement which gives the board of
22 education as lessee the option of purchasing the leased [premises]
23 equipment or improvements or additions to existing school buildings
24 during or upon termination of the lease, with credit toward the
25 purchase price of all or part of rental payments which have been made
26 by the board of education in accordance with the lease. As part of
27 such a transaction [approved by the Commissioner of Education], the
28 board of education may transfer or lease land or rights in land,
29 including any building thereon, after publicly advertising for proposals
30 for the transfer for nominal or fair market value, to the party selected
31 by the board of education, by negotiation or otherwise, after
32 determining that the proposal is in the best interest of the taxpayers of
33 the district, to construct or to improve and to lease or to own or to
34 have ownership interests in the site and the school building to be
35 leased pursuant to such lease purchase agreement, notwithstanding the
36 provisions of any other law to the contrary. The land and any building
37 thereon which is described in a lease purchase agreement entered into
38 pursuant to this amendatory act, shall be deemed to be and treated as
39 property of the school district, used for school purposes pursuant to
40 R.S.54:4-3.3, and shall not be considered or treated as property leased
41 to another whose property is not exempt, and shall not be assessed as
42 real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any
43 lease purchase agreement authorized by this section shall contain a
44 provision making payments thereunder subject to the annual
45 appropriation of funds sufficient to meet the required payments or
46 shall contain an annual cancellation clause and shall require all

1 construction contracts let by public school districts or let by
2 developers or owners of property used for school purposes to be
3 competitively bid, pursuant to [P.L.1977, c.114 (N.J.S.18A:18A-1 et
4 seq.)] N.J.S.18A:18A-1 et seq.;

5 (g) Establish with an individual or entity authorized to do business
6 in the State a tenancy in common, condominium, horizontal property
7 regime or other joint ownership arrangement on a site contributed by
8 the school district; provided the following conditions are met:

9 (1) The individual or entity agrees to construct on the site, or
10 provide for the construction thereon, a building or buildings for use of
11 the board of education separately or jointly with the individual or
12 entity, which shall be subject to the joint ownership arrangement;

13 (2) The provision of the building shall be at no cost or at a reduced
14 cost to the board of education;

15 (3) The school district shall not make any payment for use of the
16 building other than its pro rata share of costs of maintenance and
17 improvements;

18 (4) The noneducational uses of the building are compatible with the
19 establishment and operation of a school, as determined by the
20 Commissioner of Education;

21 (5) The portion of the building to be used as a school, and the site,
22 meet regulations of the Department of Education; and

23 (6) Any such agreement shall be approved by the Commissioner
24 of Education and the Local Finance Board in the Department of
25 Community Affairs;

26 (h) Acquire through sale and lease-back textbooks and
27 non-consumable instructional materials provided that the sale price and
28 principal amount of the lease-back do not exceed the fair market value
29 of the textbooks and instructional materials and that the interest rate
30 applied in the lease-back is consistent with prevailing market rates or
31 is less.

32 (cf: P.L.1998, c.55, s.1)

33
34 36. N.J.S.18A:22-18 is amended to read as follows:

35 18A:22-18. When a board of education of a type I district shall
36 determine by resolution that it is necessary to sell school bonds to
37 raise money for any capital project authorized by law, it shall prepare
38 and deliver to each member of the board of school estimate a
39 statement of the amount of money estimated to be necessary for such
40 purpose. The statement shall include the amount needed to be raised
41 by school bonds, the final eligible costs of the project as approved by
42 the commissioner pursuant to section 5 of P.L. .c. (C.) (now
43 pending before the Legislature as this bill) ²[and in the case of a
44 demonstration project pursuant to section 6 of P.L. , c. (C.)
45 (now pending before the Legislature as this bill)]², and, if applicable,
46 the amount of any costs of the project which are in addition to the final

1 eligible costs.

2 (cf: P.L.1993, c.83, s.6)

3

4 37. N.J.S.18A:22-19 is amended to read as follows:

5 18A:22-19. The board of school estimate shall fix and determine the
6 local share amount necessary for said purpose and shall certify such
7 amount separately to the board of education and to the governing body
8 of the municipality.

9 (cf: N.J.S.18A:22-19)

10

11 38. N.J.S.18A:22-27 is amended to read as follows:

12 18A:22-27. Whenever the board of education in a type II school
13 district having a board of school estimate shall, by resolution adopted
14 by recorded roll call affirmative vote of two thirds of its full
15 membership, determine that it is necessary to sell school bonds to raise
16 money for any capital project, it shall, by such resolution, estimate the
17 amount necessary to be raised for such project or projects, itemizing
18 such estimate so as to make it readily understandable, and the
19 secretary of the board of education shall certify a copy of such
20 resolution to each member of the board of school estimate of the
21 district. The resolution shall include the amount needed to be raised
22 by school bonds, the final eligible costs of the project as approved by
23 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
24 pending before the Legislature as this bill) ²[and in the case of a
25 demonstration project pursuant to section 6 of P.L. , c. (C.)
26 (now pending before the Legislature as this bill)]², and, if applicable,
27 the amount of any costs of the project which are in addition to the final
28 eligible costs.

29 (cf: P.L.1993, c.83, s.8)

30

31 39. N.J.S.18A:22-28 is amended to read as follows:

32 18A:22-28. The board of education of such district shall also, upon
33 delivery of such certificate to the members of the board of school
34 estimate, fix a date, place and time for the holding of a public hearing
35 by the board of school estimate with respect to the amount of money
36 to be raised locally for such project or projects, which date shall be not
37 less than 15 nor more than 30 days after the date of such delivery, and
38 shall cause notice of such public hearing and such resolution, including
39 a statement that said resolution will be on file and open to
40 examination to the public between reasonable hours to be fixed and at
41 a place to be named therein from the date of such notice until the date
42 of said public hearing, to be published at least once and not less than
43 seven days before such public hearing in at least one newspaper,
44 published in each municipality comprised within the school district,
45 and if no newspaper is published in any such municipality, then, as to
46 such municipality, in at least one newspaper circulating in the
47 municipality, and said board of education shall cause said resolution

1 to be on file and open to the examination of the public accordingly and
2 to be produced at said public hearing for the information of those
3 attending the same.

4 (cf: N.J.S.18A:22-28)

5

6 40. N.J.S.18A:22-29 is amended to read as follows:

7 18A:22-29. On the date and at the time and place so fixed for such
8 public hearing, the board of school estimate shall grant the taxpayers
9 and other interested persons an opportunity to present objections and
10 to be heard with respect to said resolution and the amount of money
11 necessary to be raised locally for such project or projects and with
12 respect to the various items and projects for which the same is to be
13 raised.

14 (cf: N.J.S.18A:22-29)

15

16 41. N.J.S.18A:22-30 is amended to read as follows:

17 18A:22-30. At or after such hearing the board of school estimate
18 shall fix and determine the amount of money necessary to be raised
19 locally for said project or projects, and the secretary of said board
20 shall certify said amount to the board of education of the district and
21 to the board or body of each municipality comprised therein which has
22 power to make appropriations of money to be raised by taxes in such
23 municipality. The board of education of the district and the governing
24 body of each such municipality comprising the district shall apportion
25 the amount so to be appropriated, assessed, levied and raised in each
26 of such municipalities, as nearly as may be, on the same basis and by
27 the application of the same standards as are provided by law for
28 apportionment of appropriations by county tax boards.

29 (cf: N.J.S.18A:22-30)

30

31 42. N.J.S.18A:22-39 is amended to read as follows:

32 18A:22-39. Whenever the undertaking of any capital project or
33 projects to be paid for from the proceeds of an issue or issue of bonds
34 is submitted to the voters of a type II district at an annual or special
35 school election for their approval or disapproval, the board shall frame
36 and adopt by a recorded roll call majority vote of its full membership
37 the question or questions to be submitted so that each project is
38 submitted in a separate question, or all or any number of them are
39 submitted in one question, which shall state the project or projects so
40 submitted and the amounts to be raised for each of the projects so
41 separately submitted or for each or for all of the projects so jointly
42 submitted, as the case may be, but any proposal for the purchase of
43 land shall be sufficient to authorize the taking and condemning of such
44 land. If the project is to be constructed by the New Jersey
45 ²[Economic Development] Building² Authority² [or a redevelopment
46 entity]² or by the district with a grant pursuant to section 15 of

1 P.L. , c. (C.) (now pending before the Legislature as this bill), the
 2 referendum shall, when framed as a single question, request approval
 3 for the local share and shall disclose the final eligible costs of the
 4 project as approved by the commissioner pursuant to section 5 of
 5 P.L. , c. (C.) (now pending before the Legislature as this bill)
 6 ²[and in the case of a demonstration project pursuant to section 6 of
 7 P.L. , c. (C.) (now pending before the Legislature as this bill)]²,
 8 and, if applicable, the amount of any costs of the project which are in
 9 addition to the final eligible costs. If the school facilities project is not
 10 to be constructed by the New Jersey ²[Economic Development]
 11 Building² Authority ²[or a redevelopment entity]² or by the district
 12 with a grant pursuant to section 15 of P.L. . c. (C.) (now pending
 13 before the Legislature as this bill), the referendum shall, when framed
 14 as a single question, request approval for the total costs of the project,
 15 shall disclose State debt service aid for the project and, if applicable,
 16 the amount of any costs of the project which are in addition to the final
 17 eligible costs of the project. When a project is framed in more than
 18 one question, a summary shall be included in the explanatory statement
 19 which accompanies the questions that includes the total costs of the
 20 project, total State debt service aid, and, if applicable, the amount of
 21 the costs of the project which are in addition to the final eligible costs
 22 of the project, and any individual question containing costs in addition
 23 to the final eligible costs shall include the amount of those additional
 24 costs.

25 The statement of additional costs in any ballot question and in any
 26 explanatory statement that accompanies a ballot question shall describe
 27 the additional costs as follows: "This project includes \$(insert
 28 amount) for school facility construction elements in addition to the
 29 facilities efficiency standards developed by the Commissioner of
 30 Education."

31 (cf: P.L.1993, c.83, s.12)

32

33 ²[43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read
 34 as follows:

35 2. The Legislature hereby finds and determines that:

36 a. Department of Labor **[and Industry]** statistics of recent years
 37 indicate a continuing decline in manufacturing employment within the
 38 State, which is a contributing factor to the drastic unemployment
 39 existing within the State, which far exceeds the national average, thus
 40 adversely affecting the economy of the State and the prosperity,
 41 safety, health and general welfare of its inhabitants and their standard
 42 of living; that there is an urgent need to protect and enhance the
 43 quality of the natural environment and to reduce, abate and prevent
 44 environmental pollution derived from the operation of industry,
 45 utilities and commerce within the State; and that the availability of
 46 financial assistance and suitable facilities are important inducements to

1 new and varied employment promoting enterprises to locate in the
2 State, to existing enterprises to remain and expand in the State, and
3 to industry, utilities and commerce to reduce, abate and prevent
4 environmental pollution.

5 b. The provision of buildings, structures and other facilities to
6 increase opportunity for employment in manufacturing, industrial,
7 commercial, recreational, retail and service enterprises in the State is
8 in the public interest and it is a public purpose for the State to induce
9 and to accelerate opportunity for employment in such enterprises.

10 c. In order to aid in supplying these needs and to assist in the
11 immediate reduction of unemployment and to provide sufficient
12 employment for the citizens of the State in the future, it is necessary
13 and in the public interest to aid and encourage the immediate
14 commencement of new construction projects of all types, to induce
15 and facilitate the acquisition and installation at an accelerated rate of
16 such devices, equipment and facilities as may be required to reduce,
17 abate and prevent environmental pollution by industry, utilities and
18 commerce.

19 d. The availability of financial assistance by the State will reduce
20 present unemployment and improve future employment opportunities
21 by encouraging and inducing the undertaking of such construction
22 projects, the location, retaining or expanding of employment
23 promoting enterprises within the State, and the accelerated acquisition
24 and installation of energy saving improvements and pollution control
25 devices, equipment and facilities.

26 e. In many municipalities in our State substantial and persistent
27 unemployment exists; and many existing residential, industrial,
28 commercial and manufacturing facilities within such municipalities are
29 either obsolete, inefficient, dilapidated or are located without regard
30 to the master plans of such municipalities; and the obsolescence and
31 abandonment of existing facilities will increase with further
32 technological advances, the provision of modern, efficient facilities in
33 other states and the difficulty which many municipalities have in
34 attracting new facilities; and that many existing and planned
35 employment promoting facilities are far from or not easily accessible
36 to the places of residence of substantial numbers of unemployed and
37 underemployed persons.

38 f. By virtue of their architectural and cultural heritage, their
39 positions as principal centers of communication and transportation
40 and their concentration of productive and energy efficient facilities,
41 many municipalities are capable of ameliorating the conditions of
42 deterioration which impede sound community growth and
43 development; and that building a proper balance of housing, industrial
44 and commercial facilities and increasing the attractiveness of such
45 municipalities to persons of all income levels is essential to restoring
46 such municipalities as desirable places to live, work, shop and enjoy

1 life's amenities; that the accomplishment of these objectives is beyond
2 remedy solely by the regulatory process in the exercise of the police
3 power and cannot be dealt with effectively by the ordinary operations
4 of private enterprise without the powers provided herein, and that the
5 exercise of the powers herein provided is critical to continuing the
6 process of revitalizing such municipalities and will serve an urgent
7 public use and purpose.

8 The Legislature further determines that in order to aid in remedying
9 the aforesaid conditions and to further and implement the purposes of
10 this act, that there shall be created a body politic and corporate having
11 the powers, duties and functions provided in this act; and that the
12 authority and powers conferred under this act, and the expenditure of
13 moneys pursuant thereto constitute a serving of a valid public purpose;
14 and that the enactment of the provisions hereinafter set forth is in the
15 public interest and for the public benefit and good, and is hereby so
16 declared to be as a matter of express legislative determination.

17 The Legislature further finds and determines that:

18 g. It is essential that this and future generations of young people be
19 given the fullest opportunity to learn and develop their intellectual
20 capacities; that institutions of public elementary and secondary
21 education within the State be provided with the appropriate additional
22 means required to assist these young citizens in achieving the required
23 levels of learning and the complete development of their intellectual
24 abilities; and that the resources of the State be employed to meet the
25 tremendous demand for public elementary and secondary educational
26 opportunities.

27 h. Public elementary and secondary educational facilities are an
28 integral part of the effort in this State to provide educational
29 opportunities; it is the purpose of P.L. , c. (C.)(now pending
30 before the Legislature as this bill) to provide a measure of assistance
31 and an alternative method of financing to enable school districts to
32 provide the facilities which are so critically needed; the inventory of
33 public elementary and secondary school buildings and the equipment
34 and capital resources currently available are aging, both
35 chronologically and technologically; and the current funding at the
36 federal, State, and local levels and the current mechanisms for
37 construction of these capital projects are inadequate to meet the
38 demonstrated need for school facilities, and these inadequacies
39 necessitate additional sources of funding and the coordination of
40 construction activities at the State level to meet those needs.

41 i. While the credit status of New Jersey's school districts is sound,
42 it can be economically more reasonable to finance the costs of
43 developing the educational infrastructure of the State's public
44 elementary and secondary schools by providing for the funding of
45 capital projects through the issuance of bonds, notes or other
46 obligations by the New Jersey Economic Development Authority, to

1 be retired through annual payments made by the State subject to
2 appropriation by the State Legislature, and to provide for the use of
3 the proceeds of those bonds, notes or other obligations to pay for
4 educational infrastructure projects; and such a structure would
5 substantially reduce the costs of financing and provide for a more
6 efficient use of the funds available for the development of the
7 educational infrastructure.

8 j. The New Jersey Economic Development Authority has
9 substantial and significant experience in undertaking major capital
10 construction projects, has a system of internal controls and procedures
11 to ensure the integrity of construction activities, and is therefore the
12 appropriate entity to undertake the planning, design, construction, and
13 operation of educational infrastructure projects; and by authorizing the
14 New Jersey Economic Development Authority to undertake these
15 activities, there will be achieved economies of scale, better
16 coordination of resources, more effective financial management and
17 control and increased monitoring and quality control of school district
18 construction.

19 (cf: P.L.1983, c.282, s.1)]²

20
21 ²[44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read
22 as follows:

23 3. As used in this act, unless a different meaning clearly appears
24 from the context:

25 a. "Authority" means the New Jersey Economic Development
26 Authority, created by section 4 of this act.

27 b. "Bonds" means bonds or other obligations issued by the
28 authority pursuant to this act [or], "Economic Recovery Bonds or
29 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
30 bonds, notes, other obligations and refunding bonds issued by the
31 authority pursuant to P.L. , c. (C.)(now pending before the
32 Legislature as this bill).

33 c. "Cost" means the cost of the acquisition, construction,
34 reconstruction, repair, alteration, improvement and extension of any
35 building, structure, facility including water transmission facilities, or
36 other improvement; the cost of machinery and equipment; the cost of
37 acquisition, construction, reconstruction, repair, alteration,
38 improvement and extension of energy saving improvements or
39 pollution control devices, equipment or facilities; the cost of lands,
40 rights-in-lands, easements, privileges, agreements, franchises, utility
41 extensions, disposal facilities, access roads and site development
42 deemed by the authority to be necessary or useful and convenient for
43 any project or school facilities project or in connection therewith;
44 discount on bonds; cost of issuance of bonds; engineering and
45 inspection costs; costs of financial, legal, professional and other
46 estimates and advice; organization, administrative, insurance,

1 operating and other expenses of the authority or any person prior to
2 and during any acquisition or construction, and all such expenses as
3 may be necessary or incident to the financing, acquisition, construction
4 or completion of any project or school facilities project or part thereof,
5 and also such provision for reserves for payment or security of
6 principal of or interest on bonds during or after such acquisition or
7 construction as the authority may determine.

8 d. "County" means any county of any class.

9 e. "Development property" means any real or personal property,
10 interest therein, improvements thereon, appurtenances thereto and air
11 or other rights in connection therewith, including land, buildings,
12 plants, structures, systems, works, machinery and equipment acquired
13 or to be acquired by purchase, gift or otherwise by the authority within
14 an urban growth zone.

15 f. "Person" means any person, including individuals, firms,
16 partnerships, associations, societies, trusts, public or private
17 corporations, or other legal entities, including public or governmental
18 bodies, as well as natural persons. "Person" shall include the plural as
19 well as the singular.

20 g. "Pollution control project" means any device, equipment,
21 improvement, structure or facility, or any land and any building,
22 structure, facility or other improvement thereon, or any combination
23 thereof, whether or not in existence or under construction, or the
24 refinancing thereof in order to facilitate improvements or additions
25 thereto or upgrading thereof, and all real and personal property
26 deemed necessary thereto, having to do with or the end purpose of
27 which is the control, abatement or prevention of land, sewer, water,
28 air, noise or general environmental pollution, including, but not limited
29 to, any air pollution control facility, noise abatement facility, water
30 management facility, thermal pollution control facility, radiation
31 contamination control facility, wastewater collection system,
32 wastewater treatment works, sewage treatment works system, sewage
33 treatment system or solid waste disposal facility or site; provided that
34 the authority shall have received from the Commissioner of the State
35 Department of Environmental Protection or his duly authorized
36 representative a certificate stating the opinion that, based upon
37 information, facts and circumstances available to the State Department
38 of Environmental Protection and any other pertinent data, (1) said
39 pollution control facilities do not conflict with, overlap or duplicate
40 any other planned or existing pollution control facilities undertaken or
41 planned by another public agency or authority within any political
42 subdivision, and (2) that such facilities, as designed, will be a pollution
43 control project as defined in this act and are in furtherance of the
44 purpose of abating or controlling pollution.

45 h. "Project" means: (1) (a) acquisition, construction,
46 reconstruction, repair, alteration, improvement and extension of any

1 building, structure, facility, including water transmission facilities or
2 other improvement, whether or not in existence or under construction,
3 (b) purchase and installation of equipment and machinery, (c)
4 acquisition and improvement of real estate and the extension or
5 provision of utilities, access roads and other appurtenant facilities; and
6 (2) (a) the acquisition, financing, or refinancing of inventory, raw
7 materials, supplies, work in process, or stock in trade, or (b) the
8 financing, refinancing or consolidation of secured or unsecured debt,
9 borrowings, or obligations, or (c) the provision of financing for any
10 other expense incurred in the ordinary course of business; all of which
11 are to be used or occupied by any person in any enterprise promoting
12 employment, either for the manufacturing, processing or assembly of
13 materials or products, or for research or office purposes, including,
14 but not limited to, medical and other professional facilities, or for
15 industrial, recreational, hotel or motel facilities, public utility and
16 warehousing, or for commercial and service purposes, including, but
17 not limited to, retail outlets, retail shopping centers, restaurant and
18 retail food outlets, and any and all other employment promoting
19 enterprises, including, but not limited to, motion picture and television
20 studios and facilities and commercial fishing facilities, commercial
21 facilities for recreational fishermen, fishing vessels, aquaculture
22 facilities and marketing facilities for fish and fish products and (d)
23 acquisition of an equity interest in, including capital stock of, any
24 corporation; or any combination of the above, which the authority
25 determines will: (i) tend to maintain or provide gainful employment
26 opportunities within and for the people of the State, or (ii) aid, assist
27 and encourage the economic development or redevelopment of any
28 political subdivision of the State, or (iii) maintain or increase the tax
29 base of the State or of any political subdivision of the State, or (iv)
30 maintain or diversify and expand employment promoting enterprises
31 within the State; and (3) the cost of acquisition, construction,
32 reconstruction, repair, alteration, improvement and extension of an
33 energy saving improvement or pollution control project which the
34 authority determines will tend to reduce the consumption in a building
35 devoted to industrial or commercial purposes, or in an office building,
36 of nonrenewable sources of energy or to reduce, abate or prevent
37 environmental pollution within the State; and (4) the acquisition,
38 construction, reconstruction, repair, alteration, improvement,
39 extension, development, financing or refinancing of infrastructure and
40 transportation facilities or improvements related to economic
41 development and of cultural, recreational and tourism facilities or
42 improvements related to economic development and of capital facilities
43 for primary and secondary schools and of mixed use projects
44 consisting of housing and commercial development; and (5) the
45 establishment, acquisition, construction, rehabilitation, improvement,
46 and ownership of port facilities as defined in section 3 of P.L.1997,

1 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
2 any person for costs in connection with any project, or the refinancing
3 of any project or portion thereof, if determined by the authority as
4 necessary and in the public interest to maintain employment and the
5 tax base of any political subdivision and will facilitate improvements
6 thereto or the completion thereof, and (ii) development property and
7 any construction, reconstruction, improvement, alteration, equipment
8 or maintenance or repair, or planning and designing in connection
9 therewith. For the purpose of carrying out mixed use projects
10 consisting of both housing and commercial development, the authority
11 may enter into agreements with the New Jersey Housing and Mortgage
12 Finance Agency for loan guarantees for any such project in accordance
13 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
14 that purpose shall allocate to the New Jersey Housing and Mortgage
15 Finance Agency, under such agreements, funding available pursuant to
16 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
17 shall not include a school facilities project.

18 i. "Revenues" means receipts, fees, rentals or other payments to be
19 received on account of lease, mortgage, conditional sale, or sale, and
20 payments and any other income derived from the lease, sale or other
21 disposition of a project, moneys in such reserve and insurance funds
22 or accounts or other funds and accounts, and income from the
23 investment thereof, established in connection with the issuance of
24 bonds or notes for a project or projects, and fees, charges or other
25 moneys to be received by the authority in respect of projects or school
26 facilities projects and contracts with persons.

27 j. "Resolution" means any resolution adopted or trust agreement
28 executed by the authority, pursuant to which bonds of the authority
29 are authorized to be issued.

30 k. "Energy saving improvement" means the construction, purchase
31 and installation in a building devoted to industrial or commercial
32 purposes of any of the following, designed to reduce the amount of
33 energy from nonrenewable sources needed for heating and cooling that
34 building: insulation, replacement burners, replacement high efficiency
35 heating and air conditioning units, including modular boilers and
36 furnaces, water heaters, central air conditioners with or without heat
37 recovery to make hot water for industrial or commercial purposes or
38 in office buildings, and any solar heating or cooling system
39 improvement, including any system which captures solar radiation to
40 heat a fluid which passes over or through the collector element of that
41 system and then transfers that fluid to a point within the system where
42 the heat is withdrawn from the fluid for direct usage or storage. These
43 systems shall include, but not necessarily be limited to, systems
44 incorporating flat plate, evacuated tube or focusing solar collectors.

45 The foregoing list shall not be construed to be exhaustive, and shall
46 not serve to exclude other improvements consistent with the legislative

1 intent of this amendatory act.

2 l. "Urban growth zone" means any area within a municipality
3 receiving State aid pursuant to the provisions of P.L.1978, c.14
4 (C.52:27D-178 et seq.) or a municipality certified by the
5 Commissioner of Community Affairs to qualify under such law in
6 every respect except population, which area has been so designated
7 pursuant to an ordinance of the governing body of such municipality.

8 m. "District" means a local or regional school district established
9 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
10 Statutes, a county special services school district established pursuant
11 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
12 county vocational school district established pursuant to article 3 of
13 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
14 operated school district established pursuant to P.L.1987, c.399
15 (C.18A:7A-34 et seq.).

16 n. "Local unit" means a county, municipality, board of education or
17 any other political entity authorized to construct, operate and maintain
18 a school facilities project and to borrow money for those purposes
19 pursuant to Title 18A of the New Jersey Statutes.

20 o. "Refunding bonds" means bonds, notes or other obligations
21 issued to refinance bonds previously issued by the authority pursuant
22 to P.L.1974, c.80 (C34:1B-1 et seq.) and P.L. , c. (C.)(now
23 pending before the Legislature as this bill).

24 p. "School facilities project" means the acquisition, demolition,
25 construction, improvement, repair, alteration, modernization,
26 renovation, reconstruction or maintenance of all or any part of a
27 school facility or of any other personal property necessary for, or
28 ancillary to, any school facility, and shall include fixtures, furnishings
29 and equipment, and shall also include, but is not limited to, site
30 acquisition, site development, the services of design professionals,
31 such as engineers and architects, construction management, legal
32 services, financing costs and administrative costs and expenses
33 incurred in connection with the project.

34 q. "School facility" means and includes any structure, building or
35 facility used wholly or in part for academic purposes by a district, but
36 shall exclude athletic stadiums, grandstands, and any structure,building
37 or facility used solely for school administration.

38 (cf: P.L.1997, c.150, s.22)]²

39

40 ²[45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read
41 as follows:

42 4. a. There is hereby established in, but not of, the Department of
43 **[Commerce and Economic Development]** the Treasury a public body
44 corporate and politic, with corporate succession, to be known as the
45 "New Jersey Economic Development Authority." The authority is
46 hereby constituted as an instrumentality of the State exercising public

1 and essential governmental functions, and the exercise by the authority
2 of the powers conferred by this act shall be deemed and held to be an
3 essential governmental function of the State.

4 b. The authority shall consist of the Commissioner of Banking, the
5 ~~Commissioner of Commerce and Economic Development~~ Chief
6 Executive Officer and Secretary of the New Jersey Commerce and
7 Economic Growth Commission, the Commissioner of Labor, the
8 Commissioner of Education, and the State Treasurer, who shall be
9 members ex officio, and ~~six~~ eight public members appointed by the
10 Governor ~~[with the advice and consent of the Senate, of which one]~~
11 as follows: two public ~~[member]~~ members (who shall not be ~~[a~~
12 ~~legislator]~~ legislators) shall be appointed by the Governor upon
13 recommendation of the Senate President ~~[and one]~~; two public
14 ~~[member]~~ members (who shall not be ~~[a legislator]~~ legislators) shall
15 be appointed by the Governor upon recommendation of the Speaker
16 of the General Assembly; and four public members shall be appointed
17 by the Governor, with the advice and consent of the Senate, all for
18 terms of three years. ~~[The first two public member positions on the~~
19 ~~authority that are or become vacant on or after the effective date of~~
20 ~~P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of~~
21 ~~the Governor upon the recommendation of the Senate President and~~
22 ~~the Speaker of the General Assembly, respectively.]~~ Each member
23 shall hold office for the term of his appointment and until his successor
24 shall have been appointed and qualified. A member shall be eligible for
25 reappointment. Any vacancy in the membership occurring other than
26 by expiration of term shall be filled in the same manner as the original
27 appointment but for the unexpired term only. In the event the
28 authority shall by resolution determine to accept the declaration of an
29 urban growth zone by any municipality, the mayor or other chief
30 executive officer of such municipality shall ex officio be a member of
31 the authority for the purpose of participating and voting on all matters
32 pertaining to such urban growth zone.

33 The Governor shall appoint ~~[with the advice and consent of the~~
34 ~~Senate,]~~ three alternate members of the authority~~[, of which]~~ as
35 follows: one alternate member (who shall not be a legislator) shall be
36 appointed by the Governor upon the recommendation of the Senate
37 President~~[, and]~~; one alternate member (who shall not be a legislator)
38 shall be appointed by the Governor upon the recommendation of the
39 Speaker of the General Assembly ; and one alternate member shall be
40 appointed by the Governor with the advice and consent of the Senate,
41 all for terms of three years. ~~[The first two alternate member positions~~
42 ~~on the authority that are or become vacant on or after the effective~~
43 ~~date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by~~
44 ~~appointment of the Governor upon the recommendation of the Senate~~
45 ~~President and the Speaker of the General Assembly, respectively.]~~

1 The chairperson may authorize an alternate member, in order of
2 appointment, to exercise all of the powers, duties and responsibilities
3 of such member, including, but not limited to, the right to vote on
4 matters before the authority.

5 Each alternate member shall hold office for the term of his
6 appointment and until his successor shall have been appointed and
7 qualified. An alternate member shall be eligible for reappointment.
8 Any vacancy in the alternate membership occurring other than by the
9 expiration of a term shall be filled in the same manner as the original
10 appointment but for the unexpired term only. Any reference to a
11 member of the authority in this act shall be deemed to include alternate
12 members unless the context indicates otherwise.

13 The terms of office of the members and alternate members of the
14 authority appointed by the Governor who are serving on the effective
15 date of P.L. , c. (C.) (now pending before the Legislature as this
16 bill) shall expire upon the appointment by the Governor of eight public
17 members and three alternate members. The initial appointments of the
18 eight public members shall be as follows: the two members appointed
19 upon the recommendation of the President of the Senate and the two
20 members appointed upon the recommendation of the Speaker of the
21 General Assembly shall serve terms of three years; two members shall
22 serve terms of two years; and two members shall serve terms of one
23 year. The initial appointments of the alternate members shall be as
24 follows: the alternate member appointed upon the recommendation of
25 the President of the Senate shall serve a term of three years; the
26 alternate member appointed upon the recommendation of the Speaker
27 of the General Assembly shall serve a term of two years; and one
28 alternate member shall serve a term of one year.

29 c. Each member appointed by the Governor may be removed from
30 office by the Governor, for cause, after a public hearing, and may be
31 suspended by the Governor pending the completion of such hearing.
32 Each member before entering upon his duties shall take and subscribe
33 an oath to perform the duties of his office faithfully, impartially and
34 justly to the best of his ability. A record of such oaths shall be filed in
35 the office of the Secretary of State.

36 d. [The Commissioner of Commerce and Economic Development
37 may, at his discretion, serve as the chairperson of the authority or may
38 appoint one of the six public members of the authority as chairperson.
39 Any such designation or appointment shall be made in writing and shall
40 be delivered to the authority and to the Governor and shall continue
41 in effect until revoked or amended by a writing delivered to the
42 authority and the Governor.] A chairperson shall be appointed by the
43 Governor, with the advice and consent of the Senate, from the public
44 members. The members of the authority shall elect from their
45 remaining number a vice chairperson and a treasurer thereof. The
46 authority shall employ an executive director who shall be its secretary

1 and chief executive officer. The powers of the authority shall be
2 vested in the members thereof in office from time to time and [six]
3 seven members of the authority shall constitute a quorum at any
4 meeting thereof. Action may be taken and motions and resolutions
5 adopted by the authority at any meeting thereof by the affirmative vote
6 of at least [six] seven members of the authority. No vacancy in the
7 membership of the authority shall impair the right of a quorum of the
8 members to exercise all the powers and perform all the duties of the
9 authority.

10 e. Each member of the authority shall execute a bond to be
11 conditioned upon the faithful performance of the duties of such
12 member in such form and amount as may be prescribed by the Director
13 of the Division of Budget and Accounting in the Department of the
14 Treasury. Such bonds shall be filed in the office of the Secretary of
15 State. At all times thereafter the members and treasurer of the
16 authority shall maintain such bonds in full force and effect. All costs
17 of such bonds shall be borne by the authority.

18 f. The members of the authority shall serve without
19 compensation, but the authority shall reimburse its members for actual
20 expenses necessarily incurred in the discharge of their duties.
21 Notwithstanding the provisions of any other law, no officer or
22 employee of the State shall be deemed to have forfeited or shall forfeit
23 his office or employment or any benefits or emoluments thereof by
24 reason of his acceptance of the office of ex officio member of the
25 authority or his services therein.

26 g. Each ex officio member of the authority may designate an
27 officer or employee of his department to represent him at meetings of
28 the authority, and each such designee may lawfully vote and otherwise
29 act on behalf of the member for whom he constitutes the designee.
30 Any such designation shall be in writing delivered to the authority and
31 shall continue in effect until revoked or amended by writing delivered
32 to the authority.

33 h. The authority may be dissolved by act of the Legislature on
34 condition that the authority has no debts or obligations outstanding or
35 that provision has been made for the payment or retirement of such
36 debts or obligations. Upon any such dissolution of the authority, all
37 property, funds and assets thereof shall be vested in the State.

38 i. A true copy of the minutes of every meeting of the authority
39 shall be forthwith delivered by and under the certification of the
40 secretary thereof to the Governor. No action taken at such meeting
41 by the authority shall have force or effect until 10 days, Saturdays,
42 Sundays, and public holidays excepted, after the copy of the minutes
43 shall have been so delivered, unless during such 10-day period the
44 Governor shall approve the same in which case such action shall
45 become effective upon such approval. If, in that 10-day period, the
46 Governor returns such copy of the minutes with veto of any action

1 taken by the authority or any member thereof at such meeting, such
2 action shall be null and void and of no effect. The powers conferred
3 in this subsection i. upon the Governor shall be exercised with due
4 regard for the rights of the holders of bonds and notes of the authority
5 at any time outstanding, and nothing in, or done pursuant to, this
6 subsection i. shall in any way limit, restrict or alter the obligation or
7 powers of the authority or any representative or officer of the
8 authority to carry out and perform in every detail each and every
9 covenant, agreement or contract at any time made or entered into by
10 or on behalf of the authority with respect to its bonds or notes or for
11 the benefit, protection or security of the holders thereof.

12 j. On or before March 31 in each year, the authority shall make
13 an annual report of its activities for the preceding calendar year to the
14 Governor and the Legislature. Each such report shall set forth a
15 complete operating and financial statement covering the authority's
16 operations during the year. The authority shall cause an audit of its
17 books and accounts to be made at least once in each year by certified
18 public accountants and cause a copy thereof to be filed with the
19 Secretary of State and the Director of the Division of Budget and
20 Accounting in the Department of the Treasury.

21 k. The Director of the Division of Budget and Accounting in the
22 Department of the Treasury and his legally authorized representatives
23 are hereby authorized and empowered from time to time to examine
24 the accounts, books and records of the authority including its receipts,
25 disbursements, contracts, sinking funds, investments and any other
26 matters relating thereto and to its financial standing.

27 l. No member, officer, employee or agent of the authority shall
28 be interested, either directly or indirectly, in any project or school
29 facilities project, or in any contract, sale, purchase, lease or transfer of
30 real or personal property to which the authority is a party.
31 (cf: P.L.1995, c.227)]²

32

33 ²[46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
34 as follows:

35 5. The authority shall have the following powers:

36 a. To adopt bylaws for the regulation of its affairs and the conduct
37 of its business;

38 b. To adopt and have a seal and to alter the same at pleasure;

39 c. To sue and be sued;

40 d. To acquire in the name of the authority by purchase or
41 otherwise, on such terms and conditions and such manner as it may
42 deem proper, or by the exercise of the power of eminent domain in the
43 manner provided by the Eminent Domain Act of 1971, P.L.1971,
44 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
45 property which it may determine is reasonably necessary for any
46 project or school facilities project; provided, however, that the

1 authority in connection with any project shall not take by exercise of
2 the power of eminent domain any real property except upon consent
3 thereto given by resolution of the governing body of the municipality
4 in which such real property is located; and provided further that the
5 authority shall be limited in its exercise of the power of eminent
6 domain in connection with any project to municipalities receiving State
7 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
8 to municipalities which had a population, according to the latest
9 federal decennial census, in excess of 10,000;

10 e. To enter into contracts with a person upon such terms and
11 conditions as the authority shall determine to be reasonable, including,
12 but not limited to, reimbursement for the planning, designing,
13 financing, construction, reconstruction, improvement, equipping,
14 furnishing, operation and maintenance of the project or the school
15 facilities project and to pay or compromise any claims arising
16 therefrom;

17 f. To establish and maintain reserve and insurance funds with
18 respect to the financing of the project or the school facilities project;

19 g. To sell, convey or lease to any person all or any portion of a
20 project or school facilities project, for such consideration and upon
21 such terms as the authority may determine to be reasonable;

22 h. To mortgage, pledge or assign or otherwise encumber all or any
23 portion of a project , school facilities project or revenues, whenever
24 it shall find such action to be in furtherance of the purposes of this act
25 and P.L. , c. (C.)(now pending before the Legislature as this
26 bill);

27 i. To grant options to purchase or renew a lease for any of its
28 projects or school facilities projects on such terms as the authority may
29 determine to be reasonable;

30 j. To contract for and to accept any gifts or grants or loans of funds
31 or property or financial or other aid in any form from the United States
32 of America or any agency or instrumentality thereof, or from the State
33 or any agency, instrumentality or political subdivision thereof, or from
34 any other source and to comply, subject to the provisions of the act
35 and P.L. , c. (C.)(now pending before the Legislature as this
36 bill), with the terms and conditions thereof;

37 k. In connection with any application for assistance under this act
38 or P.L. , c. (C.)(now pending before the Legislature as this bill)
39 or commitments therefor, to require and collect such fees and charges
40 as the authority shall determine to be reasonable;

41 l. To adopt, amend and repeal regulations to carry out the
42 provisions of this act and P.L. , c. (C.)(now pending before the
43 Legislature as this bill);

44 m. To acquire, purchase, manage and operate, hold and dispose of
45 real and personal property or interests therein, take assignments of
46 rentals and leases and make and enter into all contracts, leases,

- 1 agreements and arrangements necessary or incidental to the
2 performance of its duties;
- 3 n. To purchase, acquire and take assignments of notes, mortgages
4 and other forms of security and evidences of indebtedness;
- 5 o. To purchase, acquire, attach, seize, accept or take title to any
6 project or school facilities project by conveyance or by foreclosure,
7 and sell, lease, manage or operate any project or school facilities
8 project for a use specified in this act and P.L. , c. (C.)(now
9 pending before the Legislature as this bill);
- 10 p. To borrow money and to issue bonds of the authority and to
11 provide for the rights of the holders thereof, as provided in this act and
12 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 13 q. To extend credit or make loans to any person for the planning,
14 designing, acquiring, constructing, reconstructing, improving,
15 equipping and furnishing of a project or school facilities project, which
16 credits or loans may be secured by loan and security agreements,
17 mortgages, leases and any other instruments, upon such terms and
18 conditions as the authority shall deem reasonable, including provision
19 for the establishment and maintenance of reserve and insurance funds,
20 and to require the inclusion in any mortgage, lease, contract, loan and
21 security agreement or other instrument, such provisions for the
22 construction, use, operation and maintenance and financing of a
23 project or school facilities project as the authority may deem necessary
24 or desirable;
- 25 r. To guarantee up to 90% of the amount of a loan to a person, if
26 the proceeds of the loan are to be applied to the purchase and
27 installation, in a building devoted to industrial or commercial
28 purposes, or in an office building, of an energy improvement system;
- 29 s. To employ consulting engineers, architects, attorneys, real estate
30 counselors, appraisers, and such other consultants and employees as
31 may be required in the judgment of the authority to carry out the
32 purposes of the act and P.L. , c. (C.)(now pending before the
33 Legislature as this bill), and to fix and pay their compensation from
34 funds available to the authority therefor, all without regard to the
35 provisions of Title 11A of the New Jersey Statutes;
- 36 t. To do and perform any acts and things authorized by this act and
37 P.L. , c. (C.)(now pending before the Legislature as this bill)
38 under, through or by means of its own officers, agents and employees,
39 or by contract with any person;
- 40 u. To procure insurance against any losses in connection with its
41 property, operations or assets in such amounts and from such insurers
42 as it deems desirable;
- 43 v. To do any and all things necessary or convenient to carry out its
44 purposes and exercise the powers given and granted in the act and
45 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 46 w. To construct, reconstruct, rehabilitate, improve, alter, equip,

1 maintain or repair or provide for the construction, reconstruction,
2 improvement, alteration, equipping or maintenance or repair of any
3 development property and lot, award and enter into construction
4 contracts, purchase orders and other contracts with respect thereto,
5 upon such terms and conditions as the authority shall determine to be
6 reasonable, including, but not limited to, reimbursement for the
7 planning, designing, financing, construction, reconstruction,
8 improvement, equipping, furnishing, operation and maintenance of any
9 such development property and the settlement of any claims arising
10 therefrom and the establishment and maintenance of reserve funds with
11 respect to the financing of such development property;

12 x. When authorized by the governing body of a municipality
13 exercising jurisdiction over an urban growth zone, to construct, cause
14 to be constructed or to provide financial assistance to projects in an
15 urban growth zone which shall be exempt from the terms and
16 requirements of the land use ordinances and regulations, including, but
17 not limited to, the master plan and zoning ordinances, of such
18 municipality; and

19 y. To enter into business employment incentive agreements as
20 provided in the "Business Employment Incentive Program Act,"
21 P.L.1996, c.26 (C.34:1B-124 et al.)[.];

22 z. To undertake school facilities projects and to enter into
23 agreements or contracts, execute instruments, and do and perform all
24 acts or things necessary, convenient or desirable for the purposes of
25 the authority to carry out any power expressly provided pursuant to
26 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
27 pending before the Legislature as this bill), including, but not limited
28 to, entering into contracts with the State Treasurer, the Commissioner
29 of Education, districts and any other entity which may be required in
30 order to carry out the provisions of P.L. , c. (C.)(now pending
31 before the Legislature as this bill);

32 aa. To enter into leases, rentals or other disposition of a real
33 property interest in and of any school facilities project to or from any
34 local unit pursuant to P.L. , c. (C.)(now pending before the
35 Legislature as this bill);

36 bb. To make and contract to make loans or leases and to make
37 grants to local units to finance the cost of school facilities projects and
38 to acquire and contract to acquire bonds, notes or other obligations
39 issued or to be issued by local units to evidence the loans or leases, all
40 in accordance with the provisions of P.L. , c. (C.)(now pending
41 before the Legislature as this bill);

42 cc. Subject to any agreement with holders of its bonds issued to
43 finance a project or school facilities project, obtain as security or to
44 provide liquidity for payment of all or any part of the principal of and
45 interest and premium on the bonds of the authority or for the purchase
46 upon tender or otherwise of the bonds, lines of credit, letters of credit,

1 reimbursement agreements, interest rate exchange agreements,
2 currency exchange agreements, interest rate floors or caps, options,
3 puts or calls to hedge payment, currency, rate, spread or similar
4 exposure or similar agreements, float agreements, forward agreements,
5 insurance contract, surety bond, commitment to purchase or sell
6 bonds, purchase or sale agreement, or commitments or other contracts
7 or agreements, and other security agreements or instruments in any
8 amounts and upon any terms as the authority may determine and pay
9 any fees and expenses required in connection therewith;

10 dd. To charge to and collect from local units, the State and any
11 other person, any fees and charges in connection with the authority's
12 actions undertaken with respect to school facilities projects, including,
13 but not limited to, fees and charges for the authority's administrative,
14 organization, insurance, operating and other expenses incident to the
15 financing, construction and placing into service and maintenance of
16 school facilities projects.

17 (cf: P.L.1996, c.26, s.16)]²

18
19 ²[47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to
20 read as follows:

21 1. The New Jersey Economic Development Authority shall adopt
22 rules and regulations requiring that not less than the prevailing wage
23 rate be paid to workers employed in the performance of construction
24 contracts undertaken in connection with [Authority financial
25 assistance] any of its projects or school facilities projects. The
26 prevailing wage rate shall be the rate determined by the Commissioner
27 of Labor [and Industry] pursuant to the provisions of P.L.1963,
28 c.150 (C.34:11-56.25 et seq.).

29 (cf: P.L.1979, c.303, s.1)]²

30
31 ²[48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to
32 read as follows:

33 4. a. The New Jersey Economic Development Authority shall adopt
34 rules and regulations to establish an affirmative action program for the
35 hiring of minority workers employed in the performance of
36 construction contracts undertaken in connection with any of its
37 projects [receiving Authority assistance] and school facilities
38 projects, and to expand the business opportunities of socially and
39 economically disadvantaged contractors and vendors seeking to
40 provide materials and services for those contracts, consistent with the
41 provisions of the "Law Against Discrimination," P.L.1945, c.169
42 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
43 proper enforcement and administration of such rules and regulations.

44 b. Within 180 days of the effective date of P.L. , c. (C.)(now
45 pending before the Legislature as this bill), but before adoption of its

1 rules and regulations concerning its affirmative action program, the
2 authority shall submit the proposed rules and regulations to the
3 presiding officers and the standing committees on State government
4 of both houses of the Legislature for their review.

5 (cf: P.L.1979, c.303, s.4)]²

6
7 ²[49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to
8 read as follows:

9 15. The exercise of the powers granted by this act and P.L. , c.
10 (C.)(now pending before the Legislature as this bill) shall constitute
11 the performance of an essential governmental function and the
12 authority shall not be required to pay any taxes or assessments upon
13 or in respect of a project or school facilities project, or any property
14 or moneys of the authority, and the authority, its projects and school
15 facilities projects, property and moneys and any bonds and notes
16 issued under the provisions of this act and P.L. , c. (C.)(now
17 pending before the Legislature as this bill), their transfer and the
18 income therefrom, including any profit made on the sale thereof, shall
19 at all times be free from taxation of every kind by the State except for
20 transfer, inheritance and estate taxes and by any political subdivision
21 of the State; provided, that any person occupying a project whether
22 as lessee, vendee or otherwise shall, as long as title thereto shall
23 remain in the authority, pay to the political subdivision in which such
24 project is located a payment in lieu of taxes which shall equal the
25 taxes on real and personal property, including water and sewer service
26 charges or assessments, which such person would have been required
27 to pay had it been the owner of such property during the period for
28 which such payment is made and neither the authority nor its projects,
29 properties, money or bonds and notes shall be obligated, liable or
30 subject to lien of any kind for the enforcement, collection or payment
31 thereof. If and to the extent the proceedings under which the bonds
32 authorized to be issued under the provisions of this act so provide, the
33 authority may agree to cooperate with such person occupying a
34 project, in connection with any administrative or judicial proceedings
35 for determining the validity or amount of such payments and may
36 agree to appoint or designate and reserve the right in and for such
37 person to take all action which the authority may lawfully take in
38 respect of such payments and all matters relating thereto, provided
39 such person shall bear and pay all costs and expenses of the authority
40 thereby incurred at the request of such person or by reason of any
41 such action taken by such person in behalf of the authority. If such
42 person occupying a project has paid the amounts in lieu of taxes
43 required by this section to be paid such person shall not be required
44 to pay any such taxes as to which a payment in lieu thereof has been
45 made to the State or to any political subdivision, any other statute to

1 the contrary notwithstanding.

2 (cf: P.L.1974, c.80, s.15)]²

3

4 ²[50. (New section) In the exercise of powers granted by P.L. ,
5 c. (C.)(now pending before the Legislature as this bill) in
6 connection with any school facilities project, any and all claims,
7 damages, losses, liabilities or costs that the authority may incur shall
8 be payable only from the amounts made available to the authority
9 pursuant to that act. In connection with any agreement or contract
10 entered into by the authority relating to any school facilities project,
11 there shall be no recovery against the authority for punitive or
12 consequential damages arising out of contract nor shall there be any
13 recovery against the authority for claims based upon implied
14 warranties or upon contracts implied in law.]²

15

16 ²[51. (New section) a. No municipality shall modify or change the
17 drawings, plans or specifications for the construction, reconstruction,
18 rehabilitation, alteration or improvement of any school facilities
19 project of the authority, or the construction, plumbing, heating,
20 lighting or other mechanical branch of work necessary to complete the
21 work in question, nor to require that any person, firm or corporation
22 employed on any such work shall perform the work in any other or
23 different manner than that provided by the drawings, plans and
24 specifications, nor to require that any person, firm or corporation
25 obtain any other or additional authority, approval, permit or certificate
26 from the municipality in relation to the work being done, and the doing
27 of the work by any person, firm or corporation in accordance with the
28 terms of the drawings, plans, specifications or contracts shall not
29 subject the person, firm or corporation to any liability or penalty, civil
30 or criminal, other than as may be stated in the contracts or incidental
31 to the proper enforcement thereof; nor shall any municipality require
32 the authority or any person, firm, partnership or corporation which
33 leases or purchases the school facilities project for lease or purchase
34 to a State agency, to obtain any other or additional authority,
35 approval, permit, certificate or certificate of occupancy from the
36 municipality as a condition of owning, using, maintaining, operating or
37 occupying any school facilities project acquired, constructed,
38 reconstructed, rehabilitated, altered or improved by the authority or by
39 any subsidiary thereof. The foregoing provisions shall not preclude
40 any municipality from exercising the right of inspection for the purpose
41 of requiring compliance by any school facilities project with local
42 requirements for operation and maintenance affecting the health, safety
43 and welfare of the occupants thereof, provided that the compliance
44 does not require changes, modifications or additions to the original
45 construction of the school facilities project.

46 b. Each municipality in which any school facilities project of the

1 authority is located shall provide for the school facilities project,
2 whether then owned by the authority, any subsidiary, any State agency
3 or any person, firm, partnership or corporation, police, fire, sanitation,
4 health protection and other municipal services of the same character
5 and to the same extent as those provided for other residents of the
6 municipality.

7 c. In carrying out any school facilities project, the authority may
8 enter into contractual agreements with local government agencies with
9 respect to the furnishing of any community, municipal or public
10 facilities or services necessary or desirable for the school facilities
11 project, and any local government agency may enter into these
12 contractual agreements with the authority and do all things necessary
13 to carry out its obligations.]²

14

15 ²[52. (New section) a. The authority, in the exercise of its
16 authority to make and enter into contracts and agreements for school
17 facilities projects necessary or incidental to the performance of its
18 duties and the execution of its powers, shall adopt standing rules and
19 procedures providing that no contract on behalf of the authority in
20 connection with a school facilities project shall be entered into for the
21 doing of any work, or for the hiring of equipment or vehicles, where
22 the sum to be expended exceeds the sum of \$7,500 unless the
23 authority shall first publicly advertise for bids therefor, and shall award
24 the contract to the lowest responsible bidder. Advertising shall not
25 be required where the contract to be entered into is one for the
26 furnishing or performing of services of a professional nature or for the
27 supplying of any product or the rendering of any service by a public
28 utility subject to the jurisdiction of the Board of Public Utilities and
29 tariffs and schedules of the charges made, charged, or exacted by the
30 public utility for any products to be supplied or services to be
31 rendered are filed with the board. This section shall not prevent the
32 authority from having any work done by its own employees, nor shall
33 it apply to repairs, or to the furnishing of materials, supplies or labor,
34 or the hiring of equipment or vehicles, when the safety or protection
35 of its or other public property or the public convenience requires, or
36 the exigency of the accomplishment of the school facilities projects
37 will not allow advertisement. In that case, the board of directors of
38 the authority shall, by resolution, declare the exigency or emergency
39 to exist, and set forth in the resolution the nature thereof and the
40 approximate amount to be so expended.

41 b. (1) In undertaking any school facilities project where the cost of
42 construction, reconstruction, rehabilitation or improvement will exceed
43 \$25,000 the authority shall be subject to the rules and regulations of
44 the Division of Property Management and Construction concerning
45 procedural requirements for the making, negotiating or awarding of
46 purchases, contracts or agreements and the prequalification and

1 classification of bidders; and the authority, with the assistance of the
2 division, may prepare, or cause to be prepared, separate plans and
3 specifications for:

4 (a) The plumbing and gas fitting and all work and materials kindred
5 thereto,

6 (b) The steam and hot water heating and ventilating apparatus,
7 steam power plants and all work and materials kindred thereto,

8 (c) The electrical work,

9 (d) Structural steel and ornamental iron work and materials, and

10 (e) General construction, which shall include all other work and
11 materials required to complete the building.

12 (2) The authority shall receive (a) separate bids for each of the
13 branches of work specified in paragraph (1) of this subsection; or (b)
14 bids for all the work and materials required to complete the school
15 facilities projects to be included in a single overall contract, in which
16 case there shall be set forth in the bid the name or names of all
17 subcontractors to whom the bidder will subcontract for the furnishing
18 of any of the work and materials specified in branches (a) through (d)
19 in paragraph (1) of this subsection; or (c) both.

20 (3) Contracts shall be awarded to the lowest responsible bidder in
21 each branch of work in the case of separate bids and to the single
22 lowest responsible bidder in the case of single bids. In the event that
23 a contract is advertised in accordance with subparagraph (c) of
24 paragraph (2) of this subsection, the contract shall be awarded in the
25 following manner: If the sum total of the amounts bid by the lowest
26 responsible bidder for each branch is less than the amount bid by the
27 lowest responsible bidder for all of the work and materials, the
28 authority shall award separate contracts for each of branches to the
29 lowest responsible bidder therefor, but if the sum total of the amount
30 bid by the lowest responsible bidder for each branch is not less than
31 the amount bid by the lowest responsible bidder for all the work and
32 materials, the authority shall award a single over-all contract to the
33 lowest responsible bidder for all of the work and materials.

34 Whenever a contract is awarded under subparagraph (b) or (c) of
35 paragraph (2) of this subsection, all payments required to be made by
36 the authority under the contract for work and materials supplied by a
37 subcontractor may, upon the certification of the contractor of the
38 amount due to the subcontractor, be paid directly to the
39 subcontractor. Payments to a subcontractor for work and materials
40 supplied in connection with the contract shall be made within 10
41 calendar days of the receipt of payment for that work or the delivery
42 of those materials by the subcontractor in accordance with the
43 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
44 regulations promulgated thereunder.

45 (4) All construction, reconstruction, rehabilitation or improvement
46 of school facilities projects undertaken by the authority pursuant to

1 the provisions of P.L. , c. (C.) (now pending before the
2 Legislature as this bill) shall be subject during such undertaking to the
3 supervision of the Division of Property Management and Construction
4 to the same extent as any project undertaken by the State.]²

5
6 ²[53. (New section) a. If the authority shall find it necessary in
7 connection with the undertaking of any school facilities project to
8 change the location of any portion of any public highway or road, it
9 may contract with any government agency, or public or private
10 corporation which may have jurisdiction over the public highway or
11 road to cause the public highway or road to be constructed at such
12 locations as the authority shall deem most favorable. The cost of the
13 reconstruction and any damage incurred in changing the location of the
14 highway shall be ascertained and paid by the authority as part of the
15 cost of the school facilities project. Any public highway affected by
16 the construction of any school facilities project may be vacated or
17 relocated by the authority in the manner now provided by law for the
18 vacation or relocation of public roads, and any damages awarded on
19 account thereof shall be paid by the authority as a part of the cost of
20 the school facilities project. In all undertakings authorized by this
21 subsection, the authority shall consult and obtain the approval of the
22 Commissioner of Transportation.

23 b. The authority and its authorized agents and employees may enter
24 upon any lands, waters and premises for the purpose of making
25 surveys, soundings, drillings and examinations as it may deem
26 necessary or convenient for the purposes of this act, all in accordance
27 with due process of law, and this entry shall not be deemed a trespass
28 nor shall an entry for this purpose be deemed an entry under any
29 condemnation proceedings which may be then pending. The authority
30 shall make reimbursement for any actual damages resulting to the
31 lands, waters and premises as a result of these activities.

32 c. The authority shall have the power to make reasonable
33 regulations for the installation, construction, maintenance, repair,
34 renewal, relocation and removal of tracks, pipes, mains, conduits,
35 cables, wires, towers, poles and other equipment and appliances,
36 herein called "public utility facilities," or any public utility as defined
37 in R.S.48:2-13, in, on, along, over or under any school facilities
38 project. Whenever the authority shall determine that it is necessary
39 that any public utility facilities which now are, or hereafter may be,
40 located in, on, along, over or under any school facilities project shall
41 be relocated in the school facilities project, or should be removed from
42 the school facilities project, the public utility owning or operating the
43 facilities shall relocate or remove them in accordance with the order
44 of the authority. The cost and expenses of the relocation or removal,
45 including the cost of installing the facilities in a new location or new
46 locations, and the cost of any lands, or any rights or interests in lands,

1 and any other rights, acquired to accomplish the relocation or removal,
2 shall be ascertained and paid by the authority as a part of the cost of
3 the school facilities project. In case of any relocation or removal of
4 facilities, the public utility owning or operating them, its successors or
5 assigns, may maintain and operate the facilities, with the necessary
6 appurtenances, in the new location or new locations, for as long a
7 period, and upon the same terms and conditions, as it had the right to
8 maintain and operate the facilities in their former location or locations.
9 In all undertakings authorized by this subsection the authority shall
10 consult and obtain the approval of the Board of Public Utilities.]²

11

12 ²[54. (New section) Notwithstanding the provisions of any law to
13 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
14 pending before the Legislature as this bill) shall be fully negotiable
15 within the meaning and for all purposes of Title 12A of the New Jersey
16 Statutes, and each holder or owner of such a bond or other obligation,
17 or of any coupon appurtenant thereto, by accepting the bond or
18 coupon shall be conclusively deemed to have agreed that the bond or
19 coupon is and shall be fully negotiable within the meaning and for all
20 purposes of Title 12A.]²

21

22 ²[55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to
23 read as follows:

24 22. a. Whenever the planning board shall have adopted any portion
25 of the master plan, the governing body or other public agency having
26 jurisdiction over the subject matter, before taking action necessitating
27 the expenditure of any public funds, incidental to the location,
28 character or extent of such project, shall refer the action involving
29 such specific project to the planning board for review and
30 recommendation in conjunction with such master plan and shall not act
31 thereon, without such recommendation or until 45 days have elapsed
32 after such reference without receiving such recommendation. This
33 requirement shall apply to action by a housing, parking, highway,
34 special district, or other authority, redevelopment agency, school
35 board or other similar public agency, State, county or municipal.

36 b. The planning board shall review and issue findings concerning
37 any long-range facilities plan submitted to the board pursuant to the
38 "Educational Facilities Construction and Financing Act," P.L. ,
39 c. (C.)(now pending before the Legislature as this bill), for the
40 purpose of review of the extent to which the long-range facilities plan
41 is informed by, and consistent with, at least the land use plan element
42 and the housing element contained within the municipal master plan
43 adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and
44 such other elements of the municipal master plan as the planning board
45 deems necessary to determine whether the prospective sites for school
46 facilities contained in the long range facilities plan promote more

1 effective and efficient coordination of school construction with the
2 development efforts of the municipality. The planning board shall
3 devote at least one full meeting of the board to presentation and
4 review of the long-range facilities plan prior to adoption of a
5 resolution setting forth the board's findings.

6 (cf: P.L.1975, c.291, s.22)]²

7
8 ²43. N.J.S.18A:72A-1 is amended to read as follows:

9 18A:72A-1. [It is hereby declared] The Legislature finds and
10 declares that a serious public emergency exists affecting and
11 threatening the welfare, comfort, health, safety and prosperity of the
12 people of the state and resulting from the fact that financial resources
13 are lacking with which to construct required dormitory and other
14 educational facilities at public and private institutions of higher
15 education and to construct public elementary and secondary school
16 facilities; that it is essential that this and future generations of youth
17 be given the fullest opportunity to learn and to develop their
18 intellectual and mental capacities; that it is essential that institutions
19 for higher education and school districts within the state be provided
20 with appropriate additional means to assist such youth in achieving
21 the required levels of learning and development of their intellectual
22 and mental capacities; that it is essential that all resources of the state
23 be employed in order to meet the tremendous demand for higher
24 educational opportunities and public school facilities; that all
25 institutions of higher education in the state, both public and private,
26 and all public elementary and secondary educational institutions, are
27 an integral part of the total educational effort in the state for
28 providing higher educational opportunities, and that it is the purpose
29 of this chapter and P.L. , c. (C.) (now pending before the
30 Legislature as this bill) to provide a measure of assistance and an
31 alternative method of financing to enable institutions of higher
32 education and public school districts in the state to provide the
33 facilities which are sorely needed to accomplish the purposes of this
34 chapter and P.L. , c. (C.) (now pending before the Legislature as
35 this bill), all to the public benefit and good, to the extent and manner
36 provided herein and in P.L. , c. (C.) (now pending before the
37 Legislature as this bill).

38 The Legislature further finds that the inventory of public
39 elementary and secondary school buildings and the equipment and
40 capital resources currently available are aging, both chronologically
41 and technologically; that the current funding at the federal, State, and
42 local levels and the current mechanisms for construction of these
43 capital projects is inadequate to meet the demonstrated need for public
44 school facilities and these inadequacies necessitate additional sources
45 of funding and the coordination of construction activities at the State
46 level to meet those needs; that while the credit status of New Jersey's
47 school districts is sound, it can be economically more reasonable to

1 finance the costs of developing the educational infrastructure of the
2 State's public elementary and secondary schools, by providing for the
3 funding of capital projects through the issuance of bonds, notes or
4 other obligations by the New Jersey Educational Facilities Authority,
5 to be retired through annual payments made by the State subject to
6 appropriation by the State Legislature, and to provide for the use of
7 the proceeds of those bonds, notes or other obligations to pay for
8 educational infrastructure projects; that such a structure would
9 substantially reduce the costs of financing and provide for a more
10 efficient use of the funds available for the development of the
11 educational infrastructure; that the New Jersey Building Authority has
12 substantial and significant experience in undertaking major capital
13 construction projects, has a system of internal controls and procedures
14 to ensure the integrity of construction activities, and is therefore the
15 appropriate entity to undertake the planning, design, construction and
16 operation of elementary and secondary educational infrastructure
17 projects; and that by authorizing the New Jersey Educational Facilities
18 Authority and the New Jersey Building Authority to undertake these
19 activities, there will be achieved economies of scale, better
20 coordination of resources, effective financial management and
21 reporting, and increased monitoring and quality control of school
22 district instruction. ²

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

24

25 ²44. N.J.S.18A:72A-3 is amended to read as follows:

26 18A:72A-3. As used in this act, the following words and terms
27 shall have the following meanings, unless the context indicates or
28 requires another or different meaning or intent:

29 "Authority" means the New Jersey Educational Facilities Authority
30 created by this chapter or any board, body, commission, department
31 or officer succeeding to the principal functions thereof or to whom the
32 powers conferred upon the authority by this chapter and P.L. , c.
33 (C.) (now pending before the Legislature as this bill) shall be given
34 by law;

35 "Bond" means bonds [or] , notes or other obligations and
36 refunding bonds of the authority issued pursuant to this chapter and
37 P.L. , c. (C.) (now pending before the Legislature as this bill);

38 "Cost" means in connection with a school facilities project, all costs
39 and expenses necessary or incident to all or part of a school facilities
40 project, including the costs associated with financing and
41 administrative fees and expenses ;

42 "County college capital project" means any capital project of a
43 county college certified pursuant to section 2 of P.L.1971, c.12
44 (C.18A:64A-22.2) and approved by the State Treasurer for funding
45 pursuant to the "County College Capital Projects Fund Act,"
46 P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

47 "District" means a local or regional school district established

1 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
2 Statutes, a county special services school district established pursuant
3 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
4 county vocational school district established pursuant to article 3 of
5 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
6 operated school district established pursuant to P.L.1987, c.399
7 (C.18A:7A-34);

8 "Dormitory" means a housing unit with necessary and usual
9 attendant and related facilities and equipment;

10 "Educational facility" means a structure suitable for use as a
11 dormitory, dining hall, student union, administration building,
12 academic building, library, laboratory, research facility, classroom,
13 athletic facility, health care facility, teaching hospital, and parking
14 maintenance storage or utility facility and other structures or facilities
15 related thereto or required or useful for the instruction of students or
16 the conducting of research or the operation of an institution for higher
17 education, and public libraries, and the necessary and usual attendant
18 and related facilities and equipment, but shall not include any facility
19 used or to be used for sectarian instruction or as a place for religious
20 worship;

21 "Emerging needs program" means a program at one or more public
22 or private institutions of higher education directed to meeting new and
23 advanced technology needs or to supporting new academic programs
24 in science and technology;

25 "Higher education equipment" means any property consisting of, or
26 relating to, scientific, engineering, technical, computer,
27 communications or instructional equipment;

28 "Local unit" means a county, municipality, board of education or
29 any other political entity authorized to construct, operate and maintain
30 a school facilities project and to borrow money for those purposes
31 pursuant to Title 18A of the New Jersey Statutes;

32 "Participating college" means a public institution of higher
33 education or private college which, pursuant to the provisions of this
34 chapter, participates with the authority in undertaking the financing
35 and construction or acquisition of a project;

36 "Project" means a dormitory or an educational facility or any
37 combination thereof, or a county college capital project, but shall not
38 include a school facilities project;

39 "Private college" means an institution for higher education other
40 than a public college, situated within the State and which, by virtue of
41 law or charter, is a nonprofit educational institution empowered to
42 provide a program of education beyond the high school level;

43 "Private institution of higher education" means independent colleges
44 or universities incorporated and located in New Jersey, which by virtue
45 of law or character or license, are nonprofit educational institutions
46 authorized to grant academic degrees and which provide a level of
47 education which is equivalent to the education provided by the State's

1 public institutions of higher education as attested by the receipt of and
2 continuation of regional accreditation by the Middle States Association
3 of Colleges and Schools, and which are eligible to receive State aid;

4 "Public institution of higher education" means Rutgers, The State
5 University, the State colleges, the New Jersey Institute of Technology,
6 the University of Medicine and Dentistry of New Jersey, the county
7 colleges and any other public university or college now or hereafter
8 established or authorized by law;

9 "School facilities project" means the acquisition, demolition,
10 construction, improvement, repair, alteration, modernization,
11 renovation, reconstruction or maintenance of all or any part of any
12 school facility or of any other personal property necessary for or
13 ancillary to any school facility, and shall include fixtures, furnishings
14 and equipment, and shall include, but is not limited to, site
15 acquisition, site development, the services of design professionals such
16 as engineers and architects, construction management, legal services,
17 financing costs and administrative costs and expenses incurred in
18 connection with the school facilities project.

19 "School facility" means and includes any structure, building or
20 facility used wholly or in part for academic purposes by a district, but
21 shall exclude athletic stadiums, grandstands, and any structure,
22 building or facility used solely for school administration.

23 "Refunding bonds" means bonds, notes, or other obligations issued
24 to refinance bonds previously issued by the authority pursuant to this
25 chapter and P.L. , c. (C.) (now pending before the Legislature as
26 this bill).

27 "University" means Rutgers, The State University.²
28 (cf: P.L.1999, c.184, s.6)

29

30 ² 45. N.J.S.18A:72A-4 is amended to read as follows:

31 18A:72A-4. (a) There is hereby established in but not of the
32 Department of the Treasury a public body corporate and politic, with
33 corporate succession to be known as the "New Jersey educational
34 facilities authority." Notwithstanding this allocation, the authority shall
35 be independent of any supervision or control by the department or any
36 officer thereof. The authority shall constitute a political subdivision of
37 the State established as an instrumentality exercising public and
38 essential governmental functions, and the exercise by the authority of
39 the powers conferred by this chapter and P.L. , c. (C.) (now
40 pending before the Legislature as this bill) shall be deemed and held
41 to be an essential governmental function of the State.

42 (b) The authority shall consist of seven members, two of whom
43 shall be the chairman of the Commission on Higher Education, ex
44 officio, and the State Treasurer, ex officio, or when so designated by
45 them, their deputies; one person to be appointed by the Governor upon
46 the recommendation of the President of the Senate and one person
47 appointed by the Governor upon the recommendation of the Speaker

1 of the General Assembly who shall serve during the two-year
2 legislative term in which they are appointed and until their successors
3 are appointed and qualified; and [five] three citizens of the State to be
4 appointed by the Governor [with the advice and consent of the
5 Senate] no more than two of whom shall be of the same political party
6 for terms of five years [; provided that the terms of the members first
7 appointed shall be arranged by the Governor so that one of such terms
8 shall expire on April 30 in each successive year ensuing after such
9 appointments]. Each member shall hold office for the term of his
10 appointment and shall continue to serve during the term of his
11 successor unless and until his successor shall have been appointed and
12 qualified. Any vacancy among the members appointed by the
13 Governor shall be filled by appointment for the unexpired term only.
14 A member of the authority shall be eligible for reappointment.

15 The terms of office of members of the authority appointed by the
16 Governor who are serving on the effective date of P.L. , c. (C.)
17 (now pending before the Legislature as this bill) shall expire upon the
18 appointment by the Governor of five members of the authority as
19 provided by this section. The five members initially appointed by the
20 Governor pursuant to this section shall be as follows: one member
21 upon the recommendation of the President of the Senate and one
22 member upon the recommendation of the Speaker of the General
23 Assembly, who shall serve during the two-year legislative term in
24 which they are appointed; and three members whose terms shall be
25 arranged so that a term of one of the members expires on April 30 in
26 each successive year ensuing after the appointments.

27 (c) Any member of the authority appointed by the Governor may
28 be removed from office by the Governor for cause after a public
29 hearing.

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

33 (e) The authority, upon the first appointment of its members and
34 thereafter on or after April 30 in each year, shall annually elect from
35 among its members a chairman and a vice chairman who shall hold
36 office until April 30 next ensuing and shall continue to serve during the
37 terms of their respective successors unless and until their respective
38 successors shall have been appointed and qualified. The authority may
39 also appoint, retain and employ, without regard to the provisions of
40 Title 11, Civil Service, of the Revised Statutes, such officers, agents,
41 employees and experts as it may require, and it shall determine their
42 qualifications, terms of office, duties, services and compensation.

43 (f) The powers of the authority shall be vested in the members
44 thereof in office from time to time and a majority of the total
45 authorized membership of the authority shall constitute a quorum at
46 any meeting thereof. Action may be taken and motions and resolutions
47 adopted by the authority at any meeting thereof by the affirmative vote

1 of a majority of the members present, unless in any case the bylaws of
2 the authority shall require a larger number. No vacancy in the
3 membership of the authority shall impair the right of a quorum to
4 exercise all the rights and perform all the duties of the authority.

5 (g) Before the issuance of any bonds under the provisions of this
6 chapter or P.L. , c. (C.) (now pending before the Legislature as
7 this bill) , the members and the officer of the authority charged with
8 the handling of the authority's moneys shall be covered by a surety
9 bond or bonds in a penal sum of not less than \$25,000.00 per person
10 conditioned upon the faithful performance of the duties of their
11 respective offices, and executed by a surety company authorized to
12 transact business in the State of New Jersey as surety. Each such bond
13 shall be submitted to the attorney general for his approval and upon his
14 approval shall be filed in the Office of the Secretary of State prior to
15 the issuance of any bonds by the authority. At all times after the
16 issuance of any bonds by the authority the officer of the authority and
17 each member charged with the handling of the authority's moneys shall
18 maintain such surety bonds in full force and effect. All costs of such
19 surety bonds shall be borne by the authority.

20 (h) Notwithstanding any other law to the contrary, it shall not be
21 or constitute a conflict of interest for a trustee, director, officer or
22 employee of a participating college or a member or employee of a
23 board of education to serve as a member of the authority; provided
24 such trustee, director, officer, member or employee shall abstain from
25 discussion, deliberation, action and vote by the authority under this
26 chapter or P.L. , c. (C.) (now pending before the Legislature as
27 this bill) in specific respect to such participating college or board of
28 education of which such member is a trustee, director, officer,
29 member or employee.

30 (i) A true copy of the minutes of every meeting of the authority
31 shall be forthwith delivered by and under the certification of the
32 secretary thereof, to the Governor. No action taken at such meeting
33 by the authority shall have force or effect until 10 days, Saturdays,
34 Sundays and public holidays excepted, after such copy of the minutes
35 shall have been so delivered. If, in said 10-day period, the Governor
36 returns such copy of the minutes with veto of any action taken by the
37 authority or any member thereof at such meeting, such action shall be
38 null and of no effect. If the Governor shall not return the minutes
39 within said 10-day period, any action therein recited shall have force
40 and effect according to the wording thereof. At any time prior to the
41 expiration of the said 10-day period, the Governor may sign a
42 statement of approval of any such action of the authority, in which
43 case the action so approved shall not thereafter be disapproved.

44 Notwithstanding the foregoing provisions of this subsection (i),
45 with regard to the authorization or sale of bonds of the authority, the
46 authority shall furnish to the Governor a certified copy of the minutes
47 of the meeting at which the bonds are authorized or sold and the

1 Governor shall indicate approval or disapproval of the action upon
2 receipt of the certified copy of the minutes.

3 The powers conferred in this subsection (i) upon the Governor shall
4 be exercised with due regard for the rights of the holders of bonds of
5 the authority at any time outstanding, and nothing in, or done pursuant
6 to, this subsection (i) shall in any way limit, restrict or alter the
7 obligation or powers of the authority or any representative or officer
8 of the authority to carry out and perform in every detail each and
9 every covenant, agreement or contract at any time made or entered
10 into by or on behalf of the authority with respect to its bonds or for
11 the benefit, protection or security of the holders thereof. ²

12 (cf: P.L.1999, c.217, s.11)

13

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

15 18A:72A-5. The authority shall have power:

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

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

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

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

24 (e) To borrow money and to issue bonds and notes and other
25 obligations of the authority and to provide for the rights of the holders
26 thereof as provided in this chapter and P.L. , c. (C.) (now
27 pending before the Legislature as this bill);

28 (f) To acquire, lease as lessee, hold and dispose of real and
29 personal property or any interest therein, in the exercise of its powers
30 and the performance of its duties under this chapter and P.L. , c.
31 (C.) (now pending before the Legislature as this bill);

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

41 (h) To receive and accept, from any federal or other public agency
42 or governmental entity, grants or loans for or in aid of the acquisition
43 or construction of any project or school facilities project, and to
44 receive and accept aid or contributions from any other source, of
45 either money, property, labor or other things of value, to be held, used
46 and applied only for the purposes for which such grants, loans and
47 contributions may be made consistent with this chapter and section 22

1 of P.L. , c. (C.) (now pending before the Legislature as this bill);

2 (i) To prepare or cause to be prepared plans, specifications,
3 designs and estimates of costs for the construction and equipment of
4 projects for participating colleges under the provisions of this chapter,
5 and from time to time to modify such plans, specifications, designs or
6 estimates;

7 (j) By contract or contracts or by its own employees to construct,
8 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
9 projects for participating colleges and, pursuant to the provisions of
10 P.L. ,c. (C.) (now pending before the Legislature as this bill), to
11 finance the planning, design, and construction of school facilities
12 projects; however, in any contract or contracts undertaken by the
13 authority for the construction, reconstruction, rehabilitation or
14 improvement of any public college project where the cost of such
15 work will exceed \$25,000, the contracting agent shall advertise for and
16 receive in the manner provided by law:

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

18 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

31 Contracts shall be awarded to the lowest responsible bidder whose
32 bid, conforming to the invitation for bids, will be the most
33 advantageous to the authority;

34 (k) To determine the location and character of any project to be
35 undertaken pursuant to the provisions of this chapter; and to
36 construct, reconstruct, maintain, repair, operate, lease, as lessee or
37 lessor, and regulate the same pursuant to this chapter in the case of
38 any project, and as authorized pursuant to the provisions of P.L. , c.
39 (C.) (now pending before the Legislature as this bill) in the case of
40 any school facilities project; to enter into contracts for any or all such
41 purposes; to enter into contracts for the management and operation of
42 a project and the financing of a school facilities project, and to
43 designate a participating college as its agent to determine the location
44 and character of a project undertaken by such participating college
45 under the provisions of this chapter and, as the agent of the authority,
46 to construct, reconstruct, maintain, repair, operate, lease, as lessee or
47 lessor, and regulate the same, and, as agent of the authority, to enter

- 1 into contracts for any and all such purposes including contracts for the
2 management and operation of such project;
- 3 (l) To establish rules and regulations for the use of a project or any
4 portion thereof and to designate a participating college as its agent to
5 establish rules and regulations for the use of a project undertaken by
6 such participating college;
- 7 (m) Generally to fix and revise from time to time and to charge and
8 collect rates, rents, fees and other charges for the use of and for the
9 services furnished or to be furnished by a project or, if applicable, a
10 school facilities project or any portion thereof and to contract with
11 holders of its bonds and with any other person, party, association,
12 corporation or other body, public or private, in respect thereof;
- 13 (n) To enter into any and all agreements or contracts, execute any
14 and all instruments, and do and perform any and all acts or things
15 necessary, convenient or desirable for the purposes of the authority or
16 to carry out any power expressly given in this chapter or in P.L. ,
17 c. (C.) (now pending before the Legislature as this bill);
- 18 (o) To invest any moneys held in reserve or sinking funds, or any
19 moneys not required for immediate use or disbursement, at the
20 discretion of the authority, in such obligations as are authorized by law
21 for the investment of trust funds in the custody of the State Treasurer;
- 22 (p) To enter into any lease relating to higher education equipment
23 with a public or private institution of higher education pursuant to the
24 provisions of P.L.1993, c.136 (C.18A:72A-40 et al.);
- 25 (q) To enter into loan agreements with any county, to hold bonds
26 or notes of the county evidencing those loans, and to issue bonds or
27 notes of the authority to finance county college capital projects
28 pursuant to the provisions of the "County College Capital Projects
29 Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);
- 30 (r) To enter into agreements or contracts, execute instruments, and
31 do and perform all acts or things necessary, convenient or desirable for
32 the purposes of the authority to carry out any power expressly
33 provided pursuant to this chapter and P.L. , c. (C.)(now
34 pending before the Legislature as this bill), including, but not limited
35 to, entering into contracts with the State Treasurer and the building
36 authority as authorized pursuant to section 18 of P.L. , c. (C.)
37 (now pending before the Legislature as this bill and entering into
38 agreements with districts as may be authorized pursuant to P.L. , c.
39 (C.) (now pending before the Legislature as this bill);
- 40 (s) To enter into leases, rentals or other disposition of a real
41 property interest in and of any school facilities project to or from any
42 local unit, pursuant to P.L. , c. (C.)(now pending before the
43 Legislature as this bill);
- 44 (t) To make and contract to make loans or leases to local units to
45 finance the cost of school facilities projects and to acquire and
46 contract to acquire bonds, notes or other obligations issued or to be
47 issued by local units to evidence the loans or leases, all in accordance

1 with the provisions of this chapter and P.L. , c. (C.)(now
2 pending before the Legislature as this bill);

3 (u) Subject to any agreement with holders of its bonds issued to
4 finance a school facilities project, obtain as security or to provide
5 liquidity for payment of all or any part of the principal of and interest
6 and premium on the bonds of the authority or for the purchase upon
7 tender or otherwise of the bonds, lines of credit, letters of credit,
8 reimbursement agreements, interest rate exchange agreements,
9 currency exchange agreements, interest rate floors or caps, options,
10 puts or calls to hedge payment, currency, rate, spread or similar
11 exposure or similar agreements, float agreements, forward agreements,
12 insurance contract, surety bond, commitment to purchase or sell
13 bonds, purchase or sale agreement, or commitments or other contracts
14 or agreements and other security agreements or instruments in any
15 amounts and upon any terms as the authority may determine and pay
16 any fees and expenses required in connection therewith;

17 (v) To charge to and collect from local units, the State and any
18 other person, any fees and charges in connection with the authority's
19 actions undertaken with respect to projects and school facilities
20 projects, including, but not limited to, fees and charges for the
21 authority's administrative, organization, insurance, operating and other
22 expenses incident to the financing, construction and placing into
23 service and maintenance of projects and school facilities projects .²
24 (cf: P.L.1997, c.360, s.6)

25

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

27 18A:72A-12. **[All]** With respect to projects, all moneys received
28 pursuant to the authority of this chapter, whether as proceeds from the
29 sale of bonds or as revenues, shall be deemed to be trust funds to be
30 held and applied solely as provided in this chapter. Any officer with
31 whom, or any bank or trust company with which, such moneys shall be
32 deposited shall act as trustee of such moneys and shall hold and apply
33 the same for the purposes hereof, subject to such regulations as this
34 chapter and the resolution authorizing the bonds of any issue or the
35 trust agreement securing such bonds may provide.²

36 (cf: N.J.S.18A:72A-12)

37

38 ² 48. N.J.S.18A:72A-15 is amended to read as follows:

39 18A:72A-15. Bonds and notes issued by the authority under the
40 provisions of this chapter and P.L. , c. (C.)(now pending before
41 the Legislature as this bill) are hereby made securities in which the
42 state and all political subdivisions of the state, their officers, boards,
43 commissions, departments or other agencies, all banks, bankers,
44 savings banks, trust companies, savings and loan associations,
45 investment companies and other persons carrying on a banking
46 business, all insurance companies, insurance associations, and other
47 persons carrying on an insurance business, and all administrators,

1 executors, guardians, trustees and other fiduciaries, and all other
2 persons whatsoever who now are or may hereafter be authorized to
3 invest in bonds or other obligations of the state, may properly and
4 legally invest any funds, including capital belonging to them or within
5 their control; and said bonds, notes or other securities or obligations
6 are hereby made securities which may properly and legally be
7 deposited with and received by any state or municipal officers or
8 agency of the state for any purpose for which the deposit of bonds or
9 other obligations of the state is now or may hereafter be authorized
10 by law.²

11 (cf: N.J.S.18A:72A-15)

12

13 ²49. Section 2 of P.L.1981, c.120 (C.52:18A-78.2) is amended to
14 read as follows:

15 2. As used in this act, unless the context clearly indicates
16 otherwise:

17 a. "Authority" means the New Jersey Building Authority created
18 under this act.

19 b. "Bonds" means bonds , notes, other obligations and refunding
20 bonds issued by the authority pursuant to this act.

21 c. "Building" includes any portion thereof, such as an apartment
22 created under the "Horizontal Property Act," P.L.1963, c.168
23 (C.46:8A-1 et seq.) or a unit created under the "Condominium Act,"
24 P.L.1969, c.257 (C.46:8B-1 et seq.).

25 d. "Local governmental agency" means any municipality, county,
26 school district, or any agency, department or instrumentality of any of
27 the foregoing, or any other public body having local or regional
28 jurisdiction or powers and not constituting a State agency.

29 e. "Notes" means notes issued by the authority pursuant to this act.

30 f. "Project" means any building or buildings, including related
31 structures, parking facilities, improvements, real and personal property
32 or any interest therein, including lands under water, space rights and
33 air rights, and other appurtenances and facilities necessary or
34 convenient to the use or operation of the building or buildings,
35 acquired, owned, constructed, reconstructed, extended, rehabilitated,
36 renovated, preserved or improved by the authority for the purposes set
37 forth in section 8 of P.L.1992, c.174 (C.52:18A-78.5a), but shall not
38 include a school facilities project.

39 g. "State agency" means the Executive, Legislative or Judicial
40 branch of the State Government or any officer, department, board,
41 commission, bureau, division, public authority or corporation, agency
42 or instrumentality of the State.

43 h. "Historic public building" means a building that is owned by a
44 governmental agency and that is on or eligible for State or National
45 Registers of Historic Places.

46 i. "District" means a local or regional school district established
47 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey

1 Statutes, a county special services school district established pursuant
2 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
3 county vocational school district established pursuant to article 3 of
4 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
5 operated school district established pursuant to P.L.1987, c.399
6 (C.18A:7A-34).

7 j. "Local unit" means a county, municipality, board of education or
8 any other political entity authorized to construct, operate and maintain
9 a school facilities project and to borrow money for those purposes
10 pursuant to Title 18A of the New Jersey Statutes.

11 k. "School facilities project" means the acquisition, demolition,
12 construction, improvement, repair, alteration, modernization,
13 renovation, reconstruction or maintenance of all or any part of a
14 school facility or of any other personal property necessary for or
15 ancillary to a school facility, and shall include fixtures, furnishings and
16 equipment, and shall include, but is not limited to, site acquisition, site
17 development, the services of design professionals such as engineers
18 and architects, construction management, legal services and financing
19 and administrative costs incurred in connection with the school
20 facilities project.

21 l. "School facility" means and includes any structure, building or
22 facility used wholly or in part for academic purposes by a district, but
23 shall exclude athletic stadiums, grandstands, and any structure,
24 building or facility used solely for school administration.

25 m. "Refunding bonds" means bonds, notes, or other obligations
26 issued to refinance bonds previously issued by the authority pursuant
27 to P.L.1981, c.120 (C.52:18A-78.1 et seq.).²
28 (cf: P.L.1992, c.174, s.1)

29
30 ²50. Section 3 of P.L.1981, c.120 (C.52:18A-78.3) is amended to
31 read as follows:

32 3. The Legislature finds and declares the following:

33 a. That for many years the functions of the State Government have
34 grown and that during this period of rapid expansion no definite
35 program has been adopted for the housing and carrying out of the
36 operations of the many State agencies.

37 b. That many State agencies have their offices in privately owned
38 or inadequate State owned buildings and that these buildings are
39 inadequate to meet the needs of these State agencies and the needs of
40 the people of the State.

41 c. That it is to the economic benefit and general welfare of the
42 citizens of the State to provide sufficient office space and related
43 facilities for these State agencies and thus provide for a more efficient
44 and economic operation of State Government.

45 d. That projects for the construction of correctional facilities are
46 required because of a critical public need and a legal constraint.

47 e. That in order to provide for office space and related facilities at

1 a cost that these State agencies can afford, it is necessary to create and
2 establish a building authority for the purposes of constructing,
3 operating, selling and leasing office buildings and related facilities to
4 meet the needs of State agencies.

5 f. It is necessary and in the public interest that this building
6 authority have the necessary funds to provide for predevelopment
7 cost, temporary financing, land development expenses, construction
8 and operation of office buildings and related facilities for the use of,
9 and sale or rental to, State agencies.

10 g. That the renovation and preservation of historic public buildings
11 contribute to the preservation of the State's heritage, the promotion of
12 the cultural life of our people, and the development and redevelopment
13 of our municipalities.

14 h. For these purposes, there should be created a corporate
15 governmental agency to be known as the "New Jersey Building
16 Authority" which, through issuance of bonds and notes to the private,
17 investing public may provide or obtain the capital resources necessary
18 to acquire, construct, reconstruct, rehabilitate, renovate, preserve or
19 improve these office buildings and related facilities necessary or
20 convenient to the operation of any State agency, or historic public
21 buildings, as the case may be.

22 i. That the acquisition, construction, reconstruction, rehabilitation,
23 renovation, preservation or improvement of these office buildings and
24 related facilities necessary or convenient to the operation of any State
25 agency, and historic public buildings are public uses and public
26 purposes for which public money may be loaned and private property
27 may be acquired and tax exemptions granted, and that the powers and
28 duties of the New Jersey Building Authority as set forth in this act are
29 necessary and proper for the purpose of achieving the ends here
30 recited.

31 j. That the construction, reconstruction, rehabilitation, renovation,
32 preservation and improvement activities of the authority will provide
33 a much needed stimulus for the construction industry, and related
34 industries and professions, particularly in urban areas.

35 k. That the highest priority for the New Jersey Building shall be the
36 renovation and preservation of the following facilities in the State
37 Capital: the State House, the Old Barracks, the War Memorial, the
38 Kelsey Building, and the townhouses adjacent to the Kelsey Building.

39 The Legislature further finds and declares that:

40 l. It is essential that this and future generations of young people
41 be given the fullest opportunity to learn and develop their intellectual
42 capacities; that institutions of public elementary and secondary
43 education within the State be provided with the appropriate additional
44 means required to assist these young citizens in achieving the required
45 levels of learning and the complete development of their intellectual
46 abilities; and that the resources of the State be employed to meet the
47 tremendous demand for public elementary and secondary educational

1 opportunities.

2 m. Public elementary and secondary educational facilities are an
3 integral part of the effort in this State to provide educational
4 opportunities; it is the purpose of P.L. , c. (C.) (now pending
5 before the Legislature as this bill) to provide a measure of assistance
6 and an alternative method of financing to enable school districts to
7 provide the facilities which are so critically needed; the inventory of
8 public elementary and secondary school buildings and the equipment
9 and capital resources currently available are aging, both
10 chronologically and technologically; and the current funding at the
11 federal, State, and local levels and the current mechanisms for
12 construction of these capital projects is inadequate to meet the
13 demonstrated need for school facilities and these inadequacies
14 necessitate additional sources of funding and the coordination of
15 construction activities at the State level to meet those needs.

16 n. While the credit status of New Jersey's school districts is sound,
17 it can be economically more reasonable to finance the costs of
18 developing the educational infrastructure of the State's public
19 elementary and secondary schools, by providing for the funding of
20 capital projects through the issuance of bonds, notes or other
21 obligations by the New Jersey Educational Facilities Authority, to be
22 retired through annual payments made by the State subject to
23 appropriation by the State Legislature, and to provide for the use of
24 the proceeds of those bonds, notes or other obligations to pay for
25 educational infrastructure projects; and such a structure would
26 substantially reduce the costs of financing and provide for a more
27 efficient use of the funds available for the development of the
28 educational infrastructure.

29 o. The New Jersey Building Authority has substantial and
30 significant experience in undertaking major capital construction
31 projects, has a system of internal controls and procedures to ensure the
32 integrity of construction activities, and is therefore the appropriate
33 entity to undertake the planning, design, construction, and operation
34 of educational infrastructure projects; and by authorizing the New
35 Jersey Building Authority and the New Jersey Educational Facilities
36 Authority to undertake these activities, there will be achieved
37 economies of scale, better coordination of resources, effective
38 financial management and control and increased monitoring and quality
39 control of school district construction.²

40 (cf: P.L.1992, c.174, s.2)

41

42 ²51. Section 4 of P.L.1981, c.120 (C.52:18A-78.4) is amended to
43 read as follows:

44 4. a. There is established in the Department of the Treasury a
45 public body corporate and politic, with corporate succession, to be
46 known as the "New Jersey Building Authority." The authority is
47 constituted an instrumentality of the State exercising public and

1 essential governmental functions, and the exercise by the authority
2 thereof of the powers conferred by this act shall be deemed and held
3 to be an essential governmental function of the State.

4 b. The membership of the authority shall consist of [12] 15
5 directors as follows: the State Treasurer, [the Comptroller of the
6 Treasury,] the Chairman of the Commission on Capital Budgeting
7 and Planning and the Commissioner of Education who shall be
8 members ex officio; [two] three persons appointed by the Governor
9 upon the recommendation of the President of the Senate and [two]
10 three persons appointed by the Governor upon the recommendation
11 of the Speaker of the General Assembly, of whom no more than [one]
12 two of each group of [two] three shall be of the same political party,
13 and who shall serve during the [2-] two- year legislative term in
14 which they are appointed and until their successors shall have been
15 appointed and qualified; and [five] six directors appointed by the
16 Governor [with the advice and consent of the Senate] for terms of 4
17 years no more than [three] four of whom shall be of the same political
18 party. [The directors of the authority first appointed by the Governor
19 shall serve for terms of 1 year, 2 years, 3 years and two for 4 years,
20 respectively, and thereafter directors shall be appointed by the
21 Governor for terms of 4 years.] Each such director shall hold office
22 for the term of his appointment and until his successor shall have been
23 appointed and qualified. A director shall be eligible for
24 reappointment. Any vacancy on the board of directors occurring other
25 than by expiration of term shall be filled in the same manner as the
26 original appointment but for the unexpired term only. At least six of
27 the directors appointed by the Governor shall have as part of their
28 vocational, professional, or civic background some experience in the
29 field of public education or in the construction of a public school
30 facility or in the financing of a public school facility.

31 The terms of office of the directors of the authority appointed by
32 the Governor who are serving on the effective date of P.L. , c.
33 (C.) (now pending before the Legislature as this bill) shall expire
34 upon the appointment by the Governor of ten directors pursuant to
35 this section . The 12 directors appointed by the Governor pursuant to
36 the provisions of this section shall be as follows: three persons upon
37 the recommendation of the President of the Senate and three persons
38 upon the recommendation of the Speaker of the General Assembly,
39 who shall serve during the two- year legislative term in which they are
40 appointed; and six persons, one of whom shall serve for a term of one
41 year, two for terms of two years, two for terms of three years, and
42 one for a term on four years.

43 c. Each director appointed by the Governor, except those
44 appointed upon recommendation of the President of the Senate and
45 Speaker of the General Assembly, may be removed from office by the
46 Governor for cause, after a public hearing, and may be suspended by

1 the Governor pending the completion of the hearing. Each director
2 before entering upon his duties shall take and subscribe an oath to
3 perform the duties of his office faithfully, impartially and justly to the
4 best of his ability. A record of the oaths shall be filed in the office of
5 the Secretary of State.

6 d. The authority shall not be deemed to be constituted and shall not
7 take action or adopt motions or resolutions until all original authorized
8 members shall have been appointed and qualified in the manner
9 provided in this section. A chairman shall be appointed by the
10 Governor with the advice and consent of the Senate from the
11 directors of the authority other than the ex officio directors, and the
12 directors of the authority shall annually elect one of their number as
13 vice chairman thereof. The directors shall elect a secretary and a
14 treasurer who need not be directors, and the same person may be
15 elected to serve both as secretary and treasurer. The powers of the
16 authority shall be vested in the directors thereof in office from time to
17 time and seven directors of the authority shall constitute a quorum at
18 any meeting thereof. Action may be taken and motions and
19 resolutions adopted by the authority at any meeting thereof by the
20 affirmative vote of at least [seven] eight directors of the authority.
21 No vacancy on the board of directors of the authority shall impair the
22 right of a quorum of the directors to exercise all the powers and
23 perform all the duties of the authority.

24 e. Each director and the treasurer of the authority shall execute a
25 bond to be conditioned upon the faithful performance of the duties of
26 the director or treasurer, as the case may be, in such form and amount
27 as may be prescribed by the Comptroller of the Treasury. Bonds shall
28 be filed in the office of the Secretary of State. At all times thereafter,
29 the directors and treasurer of the authority shall maintain these bonds
30 in full effect. All costs of the bonds shall be borne by the authority.

31 f. The directors of the authority shall serve without compensation,
32 but the authority shall reimburse its directors for actual expenses
33 necessarily incurred in the discharge of their duties. Notwithstanding
34 the provisions of any other law, no officer or employee of the State
35 shall be deemed to have forfeited or shall forfeit his office or
36 employment or any benefits or emoluments thereof by reason of his
37 acceptance of the office of ex officio director of the authority or his
38 services therein.

39 g. The State Treasurer [and the Comptroller of the Treasury of the
40 State], as an ex officio [directors] director of the authority, may
41 [each] designate an officer or employee of the Department of the
42 Treasury to represent him at meetings of the authority, and the
43 Chairman of the Commission on Capital Budgeting and Planning, as
44 ex officio director of the authority, may designate a member or the
45 executive director of the Commission on Capital Budgeting and
46 Planning to represent him at meetings of the authority and the
47 Commissioner of Education, as an ex officio director of the authority,

1 may designate an officer or employee of the Department of Education
2 to represent him at meetings of the authority. Each designee may
3 lawfully vote and otherwise act on behalf of the director for whom he
4 constitutes the designee. The designation shall be in writing delivered
5 to the authority and shall continue in effect until revoked or amended
6 in writing delivered to the authority.

7 h. The authority may be dissolved by act of the Legislature on
8 condition that the authority has no debts or obligations outstanding or
9 that provision has been made for the payment or retirement of these
10 debts or obligations. Upon any dissolution of the authority all
11 property, funds and assets thereof shall be vested in the State. In
12 addition, subject to any property rights of a person, firm, partnership
13 [or], corporation or local unit resulting from the sale or leasing of a
14 project or a school facilities project by the authority to the person,
15 firm, partnership [or], corporation or local unit, any project or school
16 facilities project shall be vested in the State upon the payment or
17 retirement of all debts or obligations for the project or school
18 facilities project or upon the assumption by the State of liability for
19 any outstanding debts or obligations for the project or school facilities
20 project.

21 i. A true copy of the minutes of every meeting of the authority shall
22 be forthwith delivered by and under the certification of the secretary
23 thereof to the Governor and the presiding officers of both houses of
24 the Legislature. No action taken at any meeting by the authority shall
25 have effect until 15 days after a copy of the minutes has been so
26 delivered unless during the 15-day period the Governor shall approve
27 the same in which case the action shall become effective upon the
28 approval. If, in the 15-day period, the Governor returns the copy of
29 the minutes with veto of any action taken by the authority or any
30 member thereof at that meeting, the action shall be of no effect. The
31 powers conferred in this subsection upon the Governor shall be
32 exercised with due regard for the rights of the holders of bonds and
33 notes of the authority at any time outstanding; and nothing in, or
34 done pursuant to, this subsection shall in any way limit, restrict or
35 alter the obligation or powers of the authority or any representative
36 or officer of the authority to carry out and perform in every detail
37 each and every covenant, agreement or contract at any time made or
38 entered into by or on behalf of the authority with respect to its bonds
39 or notes or for the benefit, protection or security of the holders
40 thereof.²

41 (cf: P.L.1983, c.138, s.3)

42

43 ²52. Section 5 of P.L.1981, c.120 (C.52:18A-78.5) is amended to
44 read as follows:

45 5. Except as otherwise limited by this act, the authority shall have
46 power:

47 a. To make and alter bylaws for its organization and internal

- 1 management and, subject to agreements with noteholders and
2 bondholders, to make rules and regulations with respect to its projects,
3 its school facilities projects, operations, properties and facilities.
- 4 b. To adopt an official seal and alter the same at pleasure.
- 5 c. To sue and be sued.
- 6 d. To make and enter into all contracts and agreements necessary
7 or incidental to the performance of its duties and the exercise of its
8 powers under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and
9 P.L. , c. (C.)(now pending before the Legislature as this bill).
- 10 e. To enter into agreements or other transactions with and accept
11 grants and the cooperation of the United States or any agency thereof
12 or any State agency in furtherance of the purposes of this act,
13 including but not limited to the development, maintenance, operation
14 and financing of any project or school facilities project, and to do any
15 and all things necessary in order to avail itself of this aid and
16 cooperation.
- 17 f. To receive and accept aid or contributions from any source of
18 money, property, labor or other things of value, to be held, used and
19 applied to carry out the purposes of [this act] P.L.1981, c.120
20 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
21 the Legislature as this bill) subject to such conditions upon which this
22 aid and these contributions may be made, including but not limited to,
23 gifts or grants from any department or agency of the United States or
24 any State agency for any purpose consistent with [this act] P.L.1981,
25 c.120 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending
26 before the Legislature as this bill) .
- 27 g. To acquire, own, hold, sell, assign, exchange, lease, mortgage
28 or otherwise dispose of real and personal property or any interest
29 therein in the exercise of its powers and the performance of its duties
30 under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and P.L. ,
31 c. (C.)(now pending before the Legislature as this bill).
- 32 h. To appoint an executive director and such other officers,
33 employees and agents as it may require for the performance of its
34 duties, and to fix their compensation, promote and discharge them, all
35 without regard to the provisions of Title 11 of the Revised Statutes.
- 36 i. To acquire, construct, reconstruct, rehabilitate, renovate,
37 preserve, improve, alter or repair or provide for the demolition,
38 construction, reconstruction, improvement, alteration or repair of any
39 project or school facilities project and let, award and enter into
40 construction contracts, purchase orders and other contracts with
41 respect thereto in such manner as the authority shall determine.
- 42 j. To arrange or contract with a county or municipality and any
43 relevant utility for the planning, replanning, opening, grading or
44 closing of streets, roads, roadways, alleys or other places, or for the
45 furnishing of facilities or for the acquisition by a county or
46 municipality of property or property rights or for the furnishing of
47 property or services, in connection with a project or school facilities

1 project.

2 k. To sell, lease, assign, transfer, convey, exchange, mortgage or
3 otherwise dispose of or encumber any project or school facilities
4 project or other property no longer needed to carry out the public
5 purposes of the authority and, in the case of the sale of any project or
6 school facilities project or property, to accept a purchase money
7 mortgage in connection therewith; and to lease, repurchase or
8 otherwise acquire and hold any project or school facilities project or
9 property which the authority has theretofore sold, leased or otherwise
10 conveyed, transferred or disposed of.

11 l. To grant options to purchase any project or school facilities
12 project or to renew any leases entered into by it in connection with any
13 of its projects or school facilities project, on such terms and conditions
14 as it deems advisable.

15 m. To acquire by purchase, lease or otherwise, on such terms and
16 conditions and in such manner as it may deem proper, or by the
17 exercise of the power of eminent domain, except with respect to lands
18 owned by the State or any public lands reserved for recreation and
19 conservation purposes, any land and other property, including railroad
20 lands and land under water, which it may determine is reasonably
21 necessary for any of its projects or school facilities project or for the
22 relocation or reconstruction of any highway by the authority and any
23 and all rights, title and interest in that land and other property,
24 including public lands, highways or parkways, owned by or in which
25 a State agency or local governmental agency has any right, title or
26 interest, or parts thereof or rights therein and any fee simple absolute
27 or any lesser interest in private property, and any fee simple absolute
28 in, easements upon or the benefit of restrictions upon, abutting
29 property to preserve and protect any project or school facilities
30 project.

31 n. To prepare or cause to be prepared plans, specifications,
32 designs and estimates of costs for the construction, reconstruction,
33 rehabilitation, improvement, alteration or repair of any project or
34 school facilities project, and from time to time to modify these plans,
35 specifications, designs or estimates.

36 o. To sell, lease, rent, sublease or otherwise dispose of any project
37 or any space embraced in any project to any State agency or to any
38 person, firm, partnership or corporation for sale, leasing, rental or
39 subleasing to any State agency, and, where applicable, to establish and
40 revise the purchase price, rents or other charges therefor; provided,
41 however, that the incurrence of any liabilities by a State agency under
42 any agreement entered into with the authority pursuant to the
43 aforesaid authorization, including, without limitation, the payment of
44 any and all rentals or other amounts required to be paid by the agency
45 thereunder, shall be subject to and dependent upon appropriations
46 being made from time to time by the Legislature for that purpose and
47 approval by the presiding officers, or such other officers as may be

- 1 provided by law, of both houses of any such lease.
- 2 p. To sell, lease, rent, sublease or otherwise dispose of, to any
3 person, firm, partnership or corporation, any surplus space in any
4 project over and above that sold, leased, rented, subleased or
5 otherwise disposed of to State agencies and to establish and revise the
6 purchase price, rents or charges therefor.
- 7 q. To approve of the selection of any tenant not a State agency
8 under a lease or sublease agreement for the use or occupation of any
9 portion of a building in which a project is located.
- 10 r. To manage or operate any project or school facilities project or
11 real or personal property related thereto whether owned or leased by
12 the authority or any State agency or any person, firm, partnership or
13 corporation, and to enter into agreements with any State agency, or
14 any local governmental agency, or local unit or with any person, firm,
15 association, partnership or corporation, either public or private, for the
16 purpose of causing any project or school facilities project or related
17 property to be managed.
- 18 s. To provide advisory, consultative, training and educational
19 services, technical assistance and advice to any person, firm,
20 association, partnership or corporation, either public or private, in
21 order to carry out the purposes of [this act] P.L.1981, c.120
22 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
23 the Legislature as this bill).
- 24 t. Subject to the provisions of any contract with noteholders or
25 bondholders to consent to any modification, amendment or revision of
26 any kind of any contract, lease or agreement of any kind to which the
27 authority is a party.
- 28 u. To determine, after holding a public hearing in the municipality
29 in which the project is to be located, except as otherwise provided in
30 section 6 of [this act] P.L.1981, c.120 (C.52:18A-78.6), and at any
31 time, with respect to a school facilities project, the location, type and
32 character of the project or school facilities project or any part thereof
33 and all other matters in connection with all or any part of the project
34 or school facilities project notwithstanding any land use plan, zoning
35 regulation, [building code] or similar regulation heretofore or
36 hereafter adopted by any municipality, county, public body corporate
37 and politic, or any other political subdivision of the State.
- 38 v. To borrow money and to issue its bonds and notes and to
39 secure the same and provide for the rights of the holders thereof as
40 provided in this act.
- 41 w. Subject to any agreement with bondholders or noteholders, to
42 invest moneys of the authority not required for immediate use,
43 including proceeds from the sale of any bonds or notes, in those
44 obligations, securities and other investments as the authority shall
45 deem prudent.
- 46 x. To procure insurance against any loss in connection with its
47 property and other assets and operations in such amounts and from

1 such insurers as it deems desirable.

2 y. To engage the services of architects, engineers, attorneys,
3 accountants, building contractors, urban planners, landscape architects
4 and financial experts and such other advisors, consultants and agents
5 as may be necessary in its judgment and to fix their compensation.

6 z. To enter into agreements or contracts, execute instruments, and
7 do and perform all acts or things necessary, convenient or desirable for
8 the purposes of the authority or to carry out any power expressly
9 provided pursuant to P.L.1981, c.120 (C.52:18A-78.1 et. seq.) and
10 P.L. , c. (C.)(now pending before the Legislature as this bill).

11 aa. To enter into agreements with the State Treasurer, the
12 Commissioner of Education, districts, the New Jersey Educational
13 Facilities Authority and any other entity which may be required in
14 order to carry out the provisions of P.L. , c. (C.)(now pending
15 before the Legislature as this bill).

16 bb. To do any act necessary or convenient to the exercise of the
17 foregoing powers or reasonably implied therefrom.²
18 (cf: P.L.1992, c.174, s.10)

19

20 ²53. Section 10 of P.L.1981, c.120 (C.52:18A-78.10) is amended
21 to read as follows:

22 10. a. No municipality shall modify or change the drawings, plans
23 or specifications for the construction, reconstruction, rehabilitation,
24 alteration or improvement of any project or school facilities project
25 of the authority, or the construction, plumbing, heating, lighting or
26 other mechanical branch of work necessary to complete the work in
27 question, nor to require that any person, firm or corporation employed
28 on any such work shall perform the work in any other or different
29 manner than that provided by the drawings, plans and specifications,
30 nor to require that any person, firm or corporation obtain any other
31 or additional authority, approval, permit or certificate from the
32 municipality in relation to the work being done, and the doing of the
33 work by any person, firm or corporation in accordance with the terms
34 of the drawings, plans, specifications or contracts shall not subject the
35 person, firm or corporation to any liability or penalty, civil or
36 criminal, other than as may be stated in the contracts or incidental to
37 the proper enforcement thereof; nor shall any municipality require the
38 authority or any State agency which leases or purchases the project,
39 or any person, firm, partnership or corporation which leases or
40 purchases the project for lease or purchase to a State agency, to
41 obtain any other or additional authority, approval, permit, certificate
42 or certificate of occupancy from the municipality as a condition of
43 owning, using, maintaining, operating or occupying any project
44 acquired, constructed, reconstructed, rehabilitated, altered or
45 improved by the authority or by any subsidiary thereof. The
46 foregoing provisions shall not preclude any municipality from
47 exercising the right of inspection for the purpose of requiring

1 compliance by any project with local requirements for operation and
2 maintenance, affecting the health, safety and welfare of the occupants
3 thereof, provided that the compliance does not require changes,
4 modifications or additions to the original construction of the project.

5 b. Each municipality in which any project or school facilities
6 project of the authority is located shall provide for the project or
7 school facilities project, whether then owned by the authority, any
8 subsidiary, any State agency or any person, firm, partnership or
9 corporation, police, fire, sanitation, health protection and other
10 municipal services of the same character and to the same extent as
11 those provided for other residents of the municipality.

12 c. In carrying out any project or school facilities project, the
13 authority may enter into contractual agreements with local
14 governmental agencies with respect to the furnishing of any
15 community, municipal or public facilities or services necessary or
16 desirable for the project or school facilities project , and any local
17 governmental agency may enter into these contractual agreements with
18 the authority and do all things necessary to carry out its obligations
19 under the same.²

20 (cf: P.L.1983, c.138, s.7)

21

22 ²54. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is amended
23 to read as follows:

24 11. a. The authority, in the exercise of its authority to make and
25 enter into contracts and agreements necessary or incidental to the
26 performance of its duties and the execution of its powers, shall adopt
27 standing rules and procedures providing that no contract on behalf of
28 the authority shall be entered into for the doing of any work, or for the
29 hiring of equipment or vehicles, where the sum to be expended
30 exceeds the sum of \$7,500.00 unless the authority shall first publicly
31 advertise for bids therefor, and shall award the contract to the lowest
32 responsible bidder. Advertising shall not be required where the
33 contract to be entered into is one for the furnishing or performing of
34 services of a professional nature or for the supplying of any product
35 or the rendering of any service by a public utility subject to the
36 jurisdiction of the Board of Public Utilities and tariffs and schedules
37 of the charges made, charged, or exacted by the public utility for any
38 products to be supplied or services to be rendered are filed with the
39 board. This section shall not prevent the authority from having any
40 work done by its own employees, nor shall it apply to repairs, or to the
41 furnishing of materials, supplies or labor, or the hiring of equipment or
42 vehicles, when the safety or protection of its or other public property
43 or the public convenience requires, or the exigency of the
44 accomplishment of the projects or school facilities projects will not
45 allow advertisement. In that case, the board of directors of the
46 authority shall, by resolution, declare the exigency or emergency to
47 exist, and set forth in the resolution the nature thereof and the

1 approximate amount to be so expended.

2 b. (1) In undertaking any project or school facilities project where
3 the cost of construction, reconstruction, rehabilitation or improvement
4 will exceed \$25,000.00, the authority shall be subject to the rules and
5 regulations of the Division of **[Building] Property Management** and
6 Construction concerning procedural requirements for the making,
7 negotiating or awarding of purchases, contracts or agreements
8 except as otherwise provided in P.L. , c. (C.)(now pending before
9 the Legislature as this bill) ; and the authority, with the assistance of
10 the division, may prepare, or cause to be prepared, separate plans and
11 specifications for:

12 (a) The plumbing and gas fitting and all work and materials kindred
13 thereto,

14 (b) The steam and hot water heating and ventilating apparatus,
15 steam power plants and all work and materials kindred thereto,

16 (c) The electrical work,

17 (d) Structural steel and ornamental iron work and materials, and

18 (e) General construction, which shall include all other work and
19 materials required to complete the building.

20 (2) The authority shall receive (a) separate bids for each of the
21 branches of work specified in paragraph (1) of this subsection; or (b)
22 bids for all the work and materials required to complete the project
23 or school facilities project to be included in a single overall contract,
24 in which case there shall be set forth in the bid the name or names of
25 all subcontractors to whom the bidder will subcontract for the
26 furnishing of any of the work and materials specified in branches (a)
27 through (d) in paragraph (1) of this subsection; or (c) both.

28 (3) Contracts shall be awarded to the lowest responsible bidder in
29 each branch of work in the case of separate bids and to the single
30 lowest responsible bidder in the case of single bids. In the event that
31 a contract is advertised in accordance with subparagraph (c) of
32 paragraph (2) of this subsection, the contract shall be awarded in the
33 following manner: If the sum total of the amounts bid by the lowest
34 responsible bidder for each branch is less than the amount bid by the
35 lowest responsible bidder for all of the work and materials, the
36 authority shall award separate contracts for each of the branches to the
37 lowest responsible bidder therefor, but if the sum total of the amount
38 bid by the lowest responsible bidder for each branch is not less than
39 the amount bid by the lowest responsible bidder for all the work and
40 materials, the authority shall award a single over-all contract to the
41 lowest responsible bidder for all of the work and materials.

42 Whenever a contract is awarded under subparagraph (b) or (c) of
43 paragraph (2) of this subsection, all payments required to be made by
44 the authority under the contract for work and materials supplied by a
45 subcontractor may, upon the certification of the contractor of the
46 amount due to the subcontractor, be paid directly to the subcontractor.
47 Payments to a subcontractor for work and materials supplied in

1 connection with the contract shall be made within 10 calendar days of
2 the receipt of payment for that work or the delivery of those materials
3 by the subcontractor in accordance with the provisions of P.L.1991,
4 c.133 (C.2A:30A-1 et seq.), and any regulations promulgated
5 thereunder.

6 (4) All construction, reconstruction, rehabilitation or improvement
7 undertaken by the authority pursuant to this act shall be subject during
8 such undertaking to the supervision of the Division of
9 [Building]Property Management and Construction to the same extent
10 as any project undertaken by the State.

11 c. With respect to the lease or sale of any project or portion
12 thereof to any person, firm, partnership or corporation, for subsequent
13 lease to or purchase by a State agency, no agreement for that lease or
14 sale shall be entered into, unless the authority shall first publicly
15 advertise for bids therefor. The authority shall employ a person, firm,
16 partnership or corporation, independent from any other aspect or
17 component of the financing of or any ownership or leasehold interest
18 in that project, to assist in the bid procedure and evaluation.²

19 (cf: P.L.1999, c.280, s.2)

20

21 ²55. Section 12 of P.L.1981, c.120 (C.52:18A-78.12) is amended
22 to read as follows:

23 12. a. If the authority shall find it necessary in connection with the
24 undertaking of any of its projects or school facilities projects to
25 change the location of any portion of any public highway, or road, it
26 may contract with any government agency, or public or private
27 corporation which may have jurisdiction over the public highway or
28 road to cause the public highway or road to be constructed at such
29 location as the authority shall deem most favorable. The cost of the
30 reconstruction and any damage incurred in changing the location of
31 the highway shall be ascertained and paid by the authority as a part of
32 the cost of the project or school facilities project. Any public highway
33 affected by the construction of any project or school facilities project
34 may be vacated or relocated by the authority in the manner now
35 provided by law for the vacation or relocation of public roads, and
36 any damages awarded on account thereof shall be paid by the
37 authority as a part of the cost of the project or school facilities project.
38 In all undertakings authorized by the subsection, the authority shall
39 consult and obtain the approval of the Commissioner of
40 Transportation.

41 b. In addition to the foregoing powers, the authority and its
42 authorized agents and employees may enter upon any lands, waters
43 and premises for the purpose of making surveys, soundings, drillings
44 and examinations as it may deem necessary or convenient for the
45 purposes of this act, all in accordance with due process of law, and
46 this entry shall not be deemed a trespass nor shall an entry for this
47 purpose be deemed an entry under any condemnation proceedings

1 which may be then pending. The authority shall make reimbursement
2 for any actual damages resulting to the lands, waters and premises as
3 a result of these activities.

4 c. The authority shall also have power to make reasonable
5 regulations for the installation, construction, maintenance, repair,
6 renewal, relocation and removal of tracks, pipes, mains, conduits,
7 cables, wires, towers, poles and other equipment and appliances,
8 herein called "public utility facilities" , or any public utility as defined
9 in R.S.48:2-13, in, on, along, over or under any project or school
10 facilities project. Whenever the authority shall determine that it is
11 necessary that any public utility facilities which now are, or hereafter
12 may be, located in, on, along, over or under any project or school
13 facilities project shall be relocated in the project or school facilities
14 project, or should be removed from the project or school facilities
15 project, the public utility owning or operating the facilities shall
16 relocate or remove the same in accordance with the order of the
17 authority. The cost and expenses of the relocation or removal,
18 including the cost of installing the facilities in a new location, or new
19 locations, and the cost of any lands, or any rights or interests in lands,
20 and any other rights, acquired to accomplish the relocation or
21 removal, shall be ascertained and paid by the authority as a part of the
22 cost of the project or school facilities project. In case of any
23 relocation or removal of facilities, as aforesaid, the public utility
24 owning or operating the same, its successors or assigns, may maintain
25 and operate the facilities, with the necessary appurtenances, in the
26 new location or new locations, for as long a period, and upon the
27 same terms and conditions, as it had the right to maintain and operate
28 the facilities in their former location or locations. In all undertakings
29 authorized by this subsection the authority shall consult and obtain the
30 approval of the Board of Public Utilities.²

31 (cf: P.L.1981, c.120, s.12)

32
33 ²56. Section 28 of P.L.1981, c.120 (C.52:18A-78.28) is amended
34 to read as follows:

35 28. a. The authority shall adopt rules and regulations to establish
36 an affirmative action program for the hiring of minority workers
37 employed in the performance of construction contracts undertaken in
38 connection with any of its projects and school facilities projects, and
39 to expand the business opportunities of socially and economically
40 disadvantaged contractors and vendors seeking to provide materials
41 and services for those contracts, consistent with the provisions of the
42 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
43 The authority shall provide for the proper enforcement and
44 administration of these rules and regulations.

45 b. Within 180 days of the effective date of this act, but before
46 adoption of its rules and regulations concerning its affirmative action
47 program, the authority shall submit the proposed rules and regulations

1 to the presiding officers and the standing committees on state
2 government of both houses of the Legislature for their review.²
3 (cf: P.L.1981, c.120, s.28)

4

5 ²57. Section 29 of P.L.1981, c.120 (C.52:18A-78.29) is amended
6 to read as follows:

7 29. The authority shall adopt rules and regulations requiring that
8 not less than the prevailing wage rate be paid to workers employed in
9 the performance of construction contracts undertaken in connection
10 with any of its projects or school facilities projects. The prevailing
11 wage rate shall be the rate determined by the Commissioner of Labor
12 and Industry pursuant to the provisions of P.L.1963, c.150
13 (C.34:11-56.25 et seq.).²
14 (cf: P.L.1981, c.120, s.29)

15

16 ²[56.]58.² Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is
17 amended to read as follows:

18 4. Notwithstanding the provisions of any other law to the contrary,
19 commencing July 1, 1998: after the deposit required pursuant to
20 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
21 of revenue collected annually from the cigarette tax imposed pursuant
22 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
23 revenue collected annually from the "Tobacco Products Wholesale
24 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
25 deposited in to the Health Care Subsidy Fund established pursuant to
26 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
27 \$50,000,000 of revenue collected annually from the cigarette tax
28 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
29 [deposited in the School Construction and Renovation Fund as shall
30 be established by law] appropriated annually to the New Jersey
31 ²[Economic Development] Educational Facilities² Authority for
32 payment of debt service incurred by the authority for school facilities
33 projects.

34 (cf: P.L.1997, c.264, s.4)

35

36 ²[57. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
37 as follows:

38 4. Tax bracket schedule. a. For the purpose of adding and
39 collecting the tax imposed by this act, or an amount equal as nearly as
40 possible or practicable to the average equivalent thereof, to be
41 reimbursed to the vendor by the purchaser, the following formula shall
42 be in force and effect:

1	Amount of Sale	Amount of Tax
2	\$0.01 to \$0.10	No Tax
3	0.11 to 0.22	\$0.01
4	0.23 to 0.38	0.02
5	0.39 to 0.56	0.03
6	0.57 to 0.72	0.04
7	0.73 to 0.88	0.05
8	0.89 to 1.10	0.06

9

10 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 11 collected on each part of a dollar in excess of a full dollar, in
 12 accordance with the above formula.

13 b. For charges paid by inserting coins into a coin operated
 14 telecommunications device available to the public the tax shall be
 15 computed to the nearest multiple of five cents of the tax otherwise due
 16 pursuant to subsection a. of this section, except that, if the amount of
 17 the tax is midway between multiples of five cents, the next higher
 18 multiple shall apply.

19 c. For the purpose of adding and collecting the sales and use tax at
 20 the rate imposed pursuant to section 59 of P.L. , c. (C.)
 21 (now pending before the Legislature as this bill) on and after August
 22 1 of a fiscal year in which a certification is made to the Director of the
 23 Division of Taxation pursuant to subsection b. of that section 59 of
 24 P.L. , c. (C.) (now pending before the Legislature as this
 25 bill), or an amount equal as nearly as possible or practicable to the
 26 average equivalent thereof, the director shall promulgate tax collection
 27 formulas for the purpose of collecting the tax for the rate established
 28 pursuant to that section 59 of P.L. , c. (C.) (now pending
 29 before the Legislature as this bill).

30 (cf: P.L.1993, c.10, s.2)]²

31

32 ²[58. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended
 33 to read as follows:

34 31. Receipts from sales of tangible personal property and services
 35 taxable under any municipal ordinance which was adopted pursuant to
 36 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
 37 1966 are exempt from the tax imposed under the Sales and Use Tax
 38 Act, subject to the following conditions:

39 a. To the extent that the tax that is or would be imposed under
 40 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
 41 imposed by such ordinance, such sales shall not be exempt under this
 42 section; and

43 b. Irrespective of the rate of tax imposed by such ordinance, such
 44 sales shall be exempt only to the extent that the rate of taxation

1 imposed by the ordinance exceeds 6%, except that the combined rate
2 of taxation imposed under the ordinance and under this section shall
3 not exceed [~~12%~~] 11% on and after August 1 and through June 30 of
4 a fiscal year in which a certification is made to the Director of the
5 Division of Taxation pursuant to subsection b. of section 59 of P.L. ,
6 c. (C.) (now pending before the Legislature as this bill).
7 (cf: P.L.1992, c.11, s.5)]²

8
9 ²[59. (New section) a. The annual appropriations act for each
10 State fiscal year commencing with fiscal year 2001 shall appropriate
11 and distribute during the fiscal year the amount determined by the
12 Department of Education to be the amount of State debt service aid
13 determined pursuant to sections 9 and 10 of P.L. , c. (C.)
14 (now pending before the Legislature as this bill) for the purposes of
15 those sections.

16 b. If the provisions of subsection a. of this section are not met on
17 the effective date of an annual appropriations act for the State fiscal
18 year, or if an amendment or supplement to an annual appropriations
19 act for the State fiscal year should violate the provisions of subsection
20 a. of this section, the Director of the Division of Budget and
21 Accounting in the Department of the Treasury shall, not later than five
22 days after the enactment of the annual appropriations act, or an
23 amendment or supplement thereto, that violates the provisions of
24 subsection a. of this section, certify to the Director of the Division of
25 Taxation that the requirements of subsection a. of this section have not
26 been met.

27 c. Upon certification to the Director of the Division of Taxation
28 pursuant to subsection b. of this section, then, notwithstanding the rate
29 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
30 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
31 law to the contrary, the rate of tax imposed or paid on receipts from
32 sales or use within this State on or after August 1 of that fiscal year
33 through June 30 of that fiscal year shall be 5%.

34 d. The Director of the Division of Taxation, within 5 days of
35 receipt of a certification made pursuant to subsection b. of this section,
36 shall take such action as is necessary to notify all vendors of the rate
37 of tax on or after August 1 of that fiscal year through June 30 of that
38 fiscal year.

39 e. Any sales and use tax erroneously collected or paid at a rate of
40 6% instead of at a rate of 5% on receipts from sales or use within this
41 State on or after August 1 of that fiscal year through June 30 of that
42 fiscal year shall be subject to refund in the manner provided in section
43 20 of P.L.1966, c.30 (C.54:32B-20).]²

44
45 ²[60. (New section) The Director of the Division of Taxation shall
46 promulgate regulations on or before August 1 of a fiscal year in which
47 a certification is made to the Director of the Division of Taxation

1 pursuant to subsection b. of that section 59 of P.L. , c. (C.)
2 (now pending before the Legislature as this bill) to provide tax rate
3 transitional provisions for the imposition of the appropriate rate of tax
4 for: sales made and property delivered or services performed,
5 occupancies pursuant to prior contracts, leases or other arrangements,
6 admission charges made for admissions, certain sales made pursuant
7 to certain contracts either of a fixed price not subject to change or
8 modification, or entered into pursuant to the obligation of a formal
9 written bid which cannot be altered or withdrawn; which involve dates
10 over periods both before and after August 1 of such a fiscal year.]²
11

12 ²59. (New section) a. Notwithstanding any provision of this act
13 or any other law or regulation to the contrary, within 90 days of the
14 effective date of this act, a board of education or a board of school
15 estimate, as appropriate, may, through the adoption of a board
16 resolution, establish a capital reserve account. The account shall be
17 established and held in accordance with GAAP and shall be subject to
18 annual audit. The funds in the capital reserve account shall be used to
19 finance the district's long-range facilities plan required pursuant to
20 subsection a. of section 4 of this act and the amount in the account
21 shall not exceed the total amount of local funds required to implement
22 the plan as indicated on the annual QAAR report.

23 b. A board of education or a board of school estimate, as
24 appropriate, may appropriate funds in the district's annual budget for
25 the establishment of the capital reserve account pursuant to subsection
26 a. of this section or to supplement the funds in the account as required
27 to meet the needs of the long-range facilities plan. The district's
28 spending growth limitation as established pursuant to section 5 of
29 P.L.1996, c.138 (C.18A:7F-5) shall be adjusted by the amount of
30 funds appropriated in the budget year to the capital reserve account.

31 c. A board of education may, by resolution of the board: transfer
32 undesignated general fund balance or excess undesignated general fund
33 balance to the capital reserve account at any time during the budget
34 year; transfer funds from the capital reserve account to the appropriate
35 line item account for the funding of capital projects as contained in the
36 district's long-range facilities plan; and transfer funds from the capital
37 reserve account to the debt service account for the purpose of
38 offsetting principal and interest payments for bonded projects which
39 are included in the district's long-range facilities plan.²
40

41 ²60. (New section) a. There is hereby created a special fund in the
42 Department of Education which shall be entitled the "County
43 Vocational School District Facilities Rehabilitation Fund." The fund
44 shall be maintained in a separate account and administered by the
45 commissioner to carry out the provisions of this section. The fund
46 shall consist of all moneys appropriated by the State for the purposes
47 of the fund and all interest and investment earnings received on

1 moneys in the fund.

2 b. A county vocational school district may apply to the
3 commissioner for a grant in the maximum amount of \$500,000 to be
4 matched by the district for the purposes of funding health and safety
5 school facilities rehabilitation projects. The grant and matching
6 district funds shall be maintained by the district in a special revenue
7 fund as certified by the district's board of education and its chief
8 financial officer and shall be subject to annual audit. A project funded
9 through the grant fund shall not require the approval of the
10 commissioner pursuant to section 5 of this act.

11 c. Any county vocational school district which receives grant
12 funding pursuant to subsection b. of this section shall not be eligible
13 to receive school facilities aid pursuant to any other provision of this
14 act for a period of five years from the district's receipt of the grant,
15 except that the district may receive debt service aid pursuant to section
16 10 of this act; and any county vocational school district which receives
17 aid under any provision of this act other than section 10, shall not
18 receive a grant pursuant to subsection b. of this section for five years
19 after approval of a project which is otherwise funded under this act.²

20
21 ²61. (New section) a. The New Jersey Building Authority shall
22 establish a process for the prequalification of persons as bidders on
23 school facilities projects. A person shall not be permitted to bid on
24 a school facilities project unless the person has been prequalified
25 pursuant to P.L. , c. (C.)(now pending before the Legislature as
26 this bill).

27 The prequalification process shall apply to general contractors,
28 construction managers, and subcontractors in the following areas:

29 (1) plumbing and gas fitting and all work and materials kindred
30 thereto;

31 (2) steam and hot water heating and ventilating apparatus, steam
32 power plants and all work and materials kindred thereto;

33 (3) electrical work; and

34 (4) structural steel and ornamental iron work and materials.

35 b. The building authority shall provide personnel trained and
36 experienced in construction procurement to conduct the
37 prequalification of bidders.²

38
39 ²62. (New section) a. The prequalification process shall include a
40 requirement that the person proposing to submit bids on a school
41 facilities project submit a statement under oath on a form designated
42 by the building authority. The form shall fully describe and establish
43 the financial ability, responsibility, plant and equipment, organization,
44 ownership, relationships and prior experience of the prospective
45 bidder and any other pertinent and material facts as may be deemed
46 necessary by the building authority. The submission shall include:

47 (1) A certified, audited financial statement or compilation of

- 1 financial statements;
- 2 (2) Proof of all applicable licenses, certifications and registrations
- 3 as required by law;
- 4 (3) Verification of all applicable insurance, including general
- 5 liability, workers' compensation and unemployment compensation;
- 6 (4) A statement as to bonding capacity, which shall be from a
- 7 surety authorized to issue bid, performance and payment bonds in the
- 8 State of New Jersey in accordance with N.J.S.2A:44-143 through
- 9 N.J.S.2A:44-147 to the prospective bidder, and shall indicate
- 10 aggregate bonding limits;
- 11 (5) Disclosure of any judgements, convictions or criminal
- 12 indictments for any conduct constituting a crime under local, State or
- 13 federal law;
- 14 (6) Disclosure of any unsatisfied judgments, injunctions or liens
- 15 obtained by a governmental agency including, but not limited to,
- 16 judgements based on taxes owed and fines and penalties assessed by
- 17 any government agency;
- 18 (7) Disclosure of any determination for violations of federal, State
- 19 or local laws, rules or regulations, including health laws,
- 20 unemployment insurance or workers' compensation coverage or claim
- 21 requirements, the "Employee Retirement Income Security Act of
- 22 1974" (Pub.L.93-406, 29 U.S.C. s. 1001 et seq.), security laws,
- 23 environmental laws, safety laws, licensing laws, tax laws and antitrust
- 24 laws;
- 25 (8) Disclosure of any federal, State or local debarments, non-
- 26 responsibility findings or denials of prequalification;
- 27 (9) Disclosure of any bankruptcy filings or proceedings;
- 28 (10) A statement as to past performance, which shall give an
- 29 accurate and complete record of work completed in the past five years
- 30 by the contractor giving the names of the projects, type of work,
- 31 location, contract price and the names of the owner and of the
- 32 architect or engineer in charge for the owner. This statement shall
- 33 also disclose any labor problems experienced, any failure to complete
- 34 a contract on schedule, and any penalties, judgments, orders or liens
- 35 imposed by reason of any contract undertaken within the five-year
- 36 period. This statement shall also indicate the status of any litigation
- 37 pending against the potential bidder. The contractor shall be required
- 38 to attach to this statement all performance evaluations in his
- 39 possession for any work performed by the contractor on any public or
- 40 private projects;
- 41 (11) A statement as to organization, which shall demonstrate the
- 42 adequacy of such organization to undertake a school facilities project.
- 43 This statement shall include the resumes of the management and
- 44 professional staff;
- 45 (12) Information concerning quality control and quality assurance
- 46 programs;
- 47 (13) A statement setting forth the written safety and health plan

1 along with documentation that the plan is adhered to and implemented
2 on a project by project basis. Documentation shall also be provided
3 that employee safety training is provided:

4 (14) A statement setting forth the prospective bidder's equipment
5 inventory and technical resources; and

6 (15) A statement on staffing capabilities, including labor sources,
7 staffing plans, turnover rates, and the use of registered apprenticeship
8 programs and journeyman training programs. The statement shall
9 include assurances that all apprentices are registered with the federal
10 Bureau of Apprenticeship and Training in the United States
11 Department of Labor.

12 b. After the receipt of the submission provided for in subsection a.
13 of this section, the building authority shall verify information provided
14 in the prospective bidder's submission, including applicable license
15 and certificate requirements, federal or State debarments and
16 violations of law. The building authority shall also, to the extent
17 possible, conduct random inquiries or surveys of the prospective
18 bidder's prior customers.

19 c. Based upon the submission provided for in subsection a. of this
20 section and the performance evaluations conducted pursuant to section
21 65 of P.L. , c. (C.) (now pending before the Legislature as this bill),
22 the building authority shall assign a prospective bidder the following
23 ratings and limits for the purpose of determining the types of projects
24 for which a prospective bidder is entitled to bid:

25 (1) a performance rating;

26 (2) a trade classification; and

27 (3) an aggregate rating limit.

28 To effectuate these requirements of the prequalification process, the
29 building authority, in consultation with the New Jersey Division of
30 Property Management and Construction, shall develop rules and
31 regulations for assigning performance ratings, trade classifications and
32 aggregate rating limits. These rules and regulations shall be consistent
33 with the provisions set forth in N.J.A.C.17:19-2.6 through
34 N.J.A.C.17:19-2.12 and N.J.A.C.17:19-2.1(b)(1).

35 d. The classification shall be made and an immediate notice thereof
36 shall be sent to the prospective bidder by registered or certified mail
37 within a period of eight days after the date of receipt of the
38 submission.

39 e. The building authority shall establish procedures to permit
40 prospective bidders to challenge a classification made pursuant to this
41 section.

42 f. The prequalification process shall include a requirement that a
43 contractor meet with the county apprenticeship coordinator or the
44 federal Bureau of Apprenticeship and Training representative to
45 review appropriate apprenticeship laws and regulations. An affidavit
46 which acknowledges receipt of information regarding the appropriate
47 federal Bureau of Apprenticeship and Training apprenticeship laws and

1 regulations as adopted by the State shall be submitted with the form
2 required pursuant to subsection a. of this section. The affidavit shall
3 be signed by the contractor or his official agent, the county
4 apprenticeship coordinator, the federal Bureau of Apprenticeship and
5 Training representative for the State and a Department of Education
6 representative.

7 g. The building authority shall maintain a registry of all persons
8 prequalified to bid on school facilities projects. The registry shall
9 include the classification of the bidder.

10 h. For the purposes of this section "responsibility" refers to the
11 apparent ability of the bidder to complete the contract in accordance
12 with its requirements, including but not limited to, requirements
13 pertaining to experience, moral integrity, operating capacity, financial
14 capacity, credit, and workforce, equipment, and facilities availability.²

15
16 ²63. (New section) a. A person's prequalification classification
17 shall be valid for 18 months. A person shall be reclassified after the
18 18-month period in order to remain eligible to bid on school facilities
19 projects.

20 b. A person denied prequalification may re-apply after six months.

21 c. Any material changes in a person's operations relevant to the
22 prequalification process shall be reported to the building authority in
23 writing within 45 days. Based on the information provided, the
24 building authority may change the classification or revoke
25 prequalification for cause.²

26
27 ²64. (New section) a. A mandatory uniform performance
28 evaluation shall be conducted on all school facilities projects. The
29 evaluation shall include cost, schedule adherence and quality data in
30 a final project report.

31 b. A mandatory uniform performance evaluation shall be conducted
32 on all contractors and subcontractors performing work in the areas set
33 forth in subsection a. of section 61 of P.L. , c. (C.)(now pending
34 before the Legislature as this bill) on school facilities projects. The
35 evaluation shall include cost, schedule adherence, quality data and
36 compliance with the law in a final contractor report.

37 c. A contractor shall be notified of a performance evaluation which
38 would adversely affect the contractor's classification. The contractor
39 shall be afforded an opportunity to respond to an adverse evaluation.

40 d. The contractor performance evaluations shall be utilized in
41 reviewing prequalification renewal applications.²

42
43 ²65. (New section) a. A contractor seeking to bid school facilities
44 projects, and any subcontractors required to be named under
45 paragraph (2) of subsection d. of section 11 of P.L.1981, c.120
46 (C.52:18A-78.11) shall, as a condition of bidding, submit a sworn
47 contractor certification regarding qualifications and credentials.

1 b. In the contractor certification form, a principal owner or officer
2 of the company shall list the names and titles of all individuals who
3 own 10% or more of any class stock in the corporation or are a 10%
4 or more partner in the firm. If any of the aforementioned stockholders
5 or partners is itself a corporation, or a partnership, that entity shall
6 also provide the information specified herein.

7 c. In the contractor certification form, a principal owner or officer
8 of the company shall certify that the firm has the following
9 qualifications and credentials:

10 (1) A current, valid contractor classification, or any other form of
11 approval issued by and required by the New Jersey Building Authority,
12 a copy of which shall be attached to the certification form;

13 (2) A current, valid certificate of registration issued pursuant to
14 "The Public Works Contractor Registration Act," P.L. 1999, c.238
15 (C.34:11-56.48 et seq.), a copy of which shall be attached to the
16 certification form;

17 (3) A current, valid "Certificate of Authority to perform work in
18 New Jersey" issued by the Department of Treasury, a copy of which
19 shall be attached to the certification form;

20 (4) Any current, valid contractor or trade license required under
21 applicable New Jersey law for any trade or specialty area in which the
22 firm seeks to perform work, a copy of which shall be attached to the
23 certification.

24 d. The contractor certification form shall further require that a
25 principal owner or officer of the company certify the following
26 information regarding its qualifications and past performance:

27 (1) The firm has not been suspended or debarred by any federal,
28 State or local government agency in the past three years;

29 (2) The firm has not defaulted for cause on any project, public or
30 private, in the past three years, as determined by a final adjudicated
31 non-appealable decision;

32 (3) The firm has not had any contractor or trade license revoked in
33 the past three years;

34 (4) The firm and its officers, owners and managers have not been
35 convicted of a criminal offense in the past three years.

36 e. The contractor certification form shall further require that a
37 principal owner or officer of the company certify that, at the time that
38 the firm is bidding a project, the amount of its bid proposal and the
39 value of all of its outstanding incomplete contracts does not exceed the
40 firm's existing pre-qualification dollar limit, as determined by the
41 Division of Property Management and Construction.

42 f. The contractor certification form required under this section shall
43 be prepared by the Division of Property Management and Construction
44 in consultation with the New Jersey Building Authority.²

45
46 ²66. (New section) a. The Commissioner of Education, in
47 conjunction with the Commissioner of Labor, shall establish a program

1 to provide additional funding for apprenticeship programs registered
2 by the federal Bureau of Apprenticeship and Training in the United
3 States Department of Labor. There shall be appropriated annually in
4 fiscal year 2001 through fiscal year 2005 the sum of \$3,000,000 to
5 accomplish this purpose.

6 b. The Apprenticeship Committee shall be established in the
7 Department of Education to assist in administering the program. The
8 committee shall be comprised of the following members appointed by
9 the Governor: one public member appointed upon the recommendation
10 of the Speaker of the General Assembly; one public member appointed
11 upon the recommendation of the President of the Senate; a
12 representative from the Department of Labor; a representative from
13 the Department of Education; a county apprenticeship coordinator; a
14 union representative; and a representative from management. The
15 Commissioner of Education shall request the participation of a
16 representative of the federal Bureau of Apprenticeship and Training in
17 the United States Department of Labor as a member of the committee.

18 The committee shall establish guidelines for the distribution of
19 funds under the program, including a provision that requires a majority
20 of the funding to assist apprenticeship programs in urban areas. The
21 guidelines shall also include a list of those types of entities eligible for
22 funding including, but not limited to, county colleges, county
23 vocational schools, unions and other sponsors of apprenticeship
24 programs deemed appropriate. Eligible entities shall be permitted to
25 use the funding provided pursuant to the program to fund student
26 grants. Pursuant to established guidelines, the committee shall be
27 responsible for the distribution of funds under the program.²

28
29 ²67. (New section) Any decision by the building authority or
30 district that constitutes a denial of a request for prequalification or a
31 finding that a prospective bidder is not a responsible contractor or is
32 not qualified for a specific project, shall not be reversed by any review
33 court unless the determination is found to be arbitrary and capricious.²

34
35 ²68. (New section) Any person who willfully makes, or causes
36 to be made, a false, deceptive or fraudulent statement in the
37 submissions required pursuant to section 62 of P.L. , c. (C.)(now
38 pending before the Legislature as this bill), on the contractor
39 certification form required pursuant to section 65 of P.L. , c. (C.
40)(now pending before the Legislature as this bill) or in the course of
41 any hearing held concerning the prequalification process, shall be
42 guilty of a crime of the fourth degree and shall be permanently
43 disqualified from bidding on all school facilities projects; or, in the
44 case of an individual or the officer or employee charged with the duty
45 of making the submission for a person, firm, copartnership, association
46 or corporation, he shall be guilty of a disorderly persons offense.²

1 ²69. (New section) A contractor who submits a bid for a school
2 facilities contract pursuant to this act shall maintain a bona fide office
3 in the State.²

4
5 ²70. (New section) A contractor who has been prequalified as a
6 bidder on school facilities projects in accordance with the process
7 established by the building authority pursuant to section 61 of this act
8 shall not be required to undergo any other prequalification process to
9 bid on a school facilities project.²

10
11 ²71. (New section) With respect to any contract or agreement
12 entered into by the building authority pursuant to P.L. , c. (C.)(now
13 pending before the Legislature as this bill), 5% of the amount due on
14 each partial payment shall be withheld by the building authority
15 pending the completion of the contract or agreement if the contractor
16 does not have a performance bond. If the contractor does have a
17 performance bond, 2% of the amount due on each partial payment
18 shall be withheld by the building authority when the outstanding
19 balance of the contract exceeds \$500,000 and 5% of the amount due
20 on each partial payment shall be withheld by the building authority
21 when the outstanding balance of the contract is \$500,000 or less.²

22
23 ²72. (New section) There is appropriated \$3,000,000 from the
24 General Fund to the Department of Education to effectuate the
25 apprentice training program established pursuant to section 66 of this
26 act.²

27
28 ² 73. (New section) If a contractor on the effective date of this act
29 has a current, valid classification from the Division of Property
30 Management and Construction, it may obtain prequalified status under
31 this act by submitting a short-form application developed by the
32 building authority. A short-form application submitted under this
33 section must include verification of the contractor's current
34 classification by the Division of Property Management and
35 Construction.

36 Upon such application, the building authority shall prequalify the
37 contractor for the same trade classification and same aggregate rating
38 limit issued by the Division of Property Management and
39 Construction, provided the building authority does not obtain or
40 receive information indicating the contractor has experienced recent
41 performance deficiencies, or otherwise fails to meet the qualification
42 and responsibility standards established by this act.

43 A contractor denied prequalification under this subsection shall be
44 entitled to reapply after six months and should, upon such re-
45 application, submit sufficient evidence that any performance
46 deficiencies, or other factors supporting a denial of prequalification
47 have been corrected.²

1 ²74. All apprentices shall be registered through the approved
2 federal Bureau of Apprenticeship and Training program.²

3
4 ²[61.] 75.² (New section) There is established in the Office of the
5 Attorney General the Unit of Fiscal Integrity in School Construction.
6 The Attorney General or his representative may investigate, examine,
7 and inspect the activities of the authority and districts related to the
8 financing and construction of school facilities and the implementation
9 of the provisions of P.L. , c. (C.) (now pending before the
10 Legislature as this bill). The Attorney General may require the
11 submission of duly verified reports from the authority and districts,
12 which include such information in such form as the Attorney General
13 may require. The Attorney General or his representative may also
14 consult with the authority on issues and procedures related to the
15 exercise of its duties and responsibilities under P.L. , c. (C.) (now
16 pending before the Legislature as this bill). The Legislature shall
17 annually appropriate such funds as may be necessary to finance the
18 operations of the unit.

19
20 ²76. (New section) a. In the case of any school facilities project
21 which has a State share of 100%, the building authority may require
22 the use of wrap-up insurance coverage for the project. The building
23 authority shall administer a wrap-up insurance program to provide
24 coverage for school facilities projects and shall establish the terms and
25 requirements for the coverage.

26 b. For any school facilities project which has a State share of less
27 than 100%, the building authority, in the case of a project being
28 constructed by the building authority, may require the use of, or the
29 district, in the case of a project being constructed by the district, may
30 elect to purchase, wrap-up insurance coverage for the school facilities
31 project. A district may purchase the coverage on its own or may enter
32 into a joint purchasing agreement with one or more other districts to
33 purchase coverage.

34 c. As used in this section, "wrap-up insurance coverage" means a
35 single insurance and loss control program for all parties involved in the
36 school facilities project, including the owners, administrators,
37 contractors and all tiers of subcontractors, which is controlled and
38 authorized by the owner or financing administrator and applicable to
39 defined construction work sites. Wrap-up insurance coverage shall
40 include, but not be limited to, workers' compensation and employers'
41 liability, commercial general liability, umbrella/excess liability, builder's
42 risk, architects' and engineers' errors and omissions, liability,
43 environmental liability, and force majeure.²

44
45 ²[62.] 77.² This act shall take effect immediately.

LEGISLATIVE FISCAL ESTIMATE
[Second Reprint]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JUNE 5, 2000

SUMMARY

Synopsis: The "Educational Facilities Construction and Financing Act"
Type of Impact: Expenditure increase from the General Fund, from tobacco settlement funds, and possibly from the Property Tax Relief Fund
Agencies Affected: Department of Education, Department of the Treasury, New Jersey State Building Authority, New Jersey Educational Facilities Authority.

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	This bill will create substantial State costs over the next several decades, with the annual costs likely to peak in the range of \$700 to \$800 million during years 10-20. The maximum State authority debt permitted under this bill is \$8.6 billion. Projections of the actual cost are complicated by the large number of unknowns and the significant time horizon. Actual costs may vary significantly from projections.
Local Cost	In order to receive the \$2.6 billion in State grants available to non-Abbott districts under this bill, local districts would need to borrow approximately \$3.1 billion

- ! The bill creates a major entitlement program for the construction of education facilities in local school districts. It is estimated that approximately \$12 billion of construction may occur under this bill during the first ten years. The bill authorizes \$8.6 billion of State authority debt to finance the State share of these costs.
- ! The bill contains a series of complex funding alternatives under which the construction costs will be shared between the State and local boards of education.
- ! Costs in the early years will increase about \$75 million per year until a level of about \$770 million is reached in years 10-20, after which costs may decline.

! Costs will be partially offset by the dedication of \$217 million per year from existing State revenue sources and by additional savings associated with the discontinuance of the current school debt service aid mechanism.

! Costs in out years would be reduced modestly by any pay-as-you-go financing in early years.

BILL DESCRIPTION

Senate Committee Substitute (2R) for Senate, Bill No. 200 of 2000 establishes a new system of State support for public school facility construction and renovation. Once the eligible project costs have been determined by procedures established in the bill, State support will be offered through various mechanisms that are summarized in the following table.

FUNDING PROCEDURES AND OPTIONS UNDER SCS (2R) for S200		
Districts	Constructed By	Funding
Abbott	Building Authority	State pays 100% of Eligible costs
Non-Abbott with District Aid Percentage of 60% or more, or level II monitoring	Building Authority	For eligible costs State pays District Aid Percentage times 1.15 Local funding for remainder (Certain DFG A or B districts may be eligible for 100% State financing)
Non-Abbott with District Aid Percentage below 60%	Building Authority	For eligible costs State pays District Aid Percentage times 1.15, but not less than 40% Local funding for remainder
	District builds	District bonds for full cost; receives annual debt service aid for eligible costs equal to District Aid Percentage times 1.15 or 40%, whichever is greater
		State pays a grant equal to product of eligible costs and District Aid Percentage times 1.15, but not less than 40% Local funding for remainder

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received

OFFICE OF LEGISLATIVE SERVICES

A cost estimate for this bill is difficult to produce because the annual and long run costs are dependent on actual annual eligible costs of school facilities constructed statewide and the mixture of State support and local support for the particular construction projects. These annual costs cannot be determined prior to the approval of the specific projects.

The bill caps State authority debt issuance to meet the State's share of school facilities project costs at \$8.6 billion. Of this amount \$6 billion would be available for projects in Abbott districts, \$2.5 billion would be available for projects in the non-Abbott districts and \$100 million would be set aside for projects in county vocational schools. When combined with the local contributions, the non-Abbott funds would cover nearly \$5.7 billion in school projects. Assuming that the full bonding capacity is utilized in equal proportions over the first ten years of the program, potential annual cost estimates can be made under certain assumptions. Initial costs in the first year should be about \$75 million and increasing each year by this amount until a peak of about \$770 million is realized in fiscal year 2010. Annual total State debt service costs should then remain steady before beginning to decline in fiscal year 2021. The estimate assumes a 6.5 percent interest rate and 20 year bonds. During the peak years between fiscal years 2010 and 2020, about 70 percent of the annual State cost will be attributable to financing school construction in the Abbott districts.

It is important to note that the actual costs of this program will vary from the estimate if the actual level of approved construction is more or less than the assumption, if construction costs vary from the amount in the bill, if the amount of school construction is more concentrated in districts that receive higher or lower levels of State support, if borrowing costs vary from the assumed rate of 6.5 percent and if funds are available for pay-as-you-go financing of school payments in FY 2001 and 2002. However, the bonding caps in the bill limit the State's debt service liability to a maximum of about \$770 million in the highest years.

The effects of this bill are partially offset by the replacement of the existing funding mechanism for school facilities. Under current State practice, annual debt service and facilities aid costs for school construction may be estimated to grow to over \$200 million annually by fiscal year 2010. Current State school facilities costs equal approximately \$156 million. Since certain debt service aid costs would be incurred by the State without the passage of this bill and would be replaced under this bill by a new facilities funding mechanism, the *net* cost to the State under this bill would be less than the *total* cost by the amount of future debt service and facilities aid under current funding mechanism.

The potential annual costs of the bill are partially funded by a maximum dedication of \$100 million from the State's tobacco settlement fund and about \$117 million in funds from lottery proceeds (\$62 million), the State tobacco tax dedication (\$50 million) and the Fund for Free Public Schools (\$5 million).

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[Third Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 200

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 11, 2000

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

Co-Sponsored by:

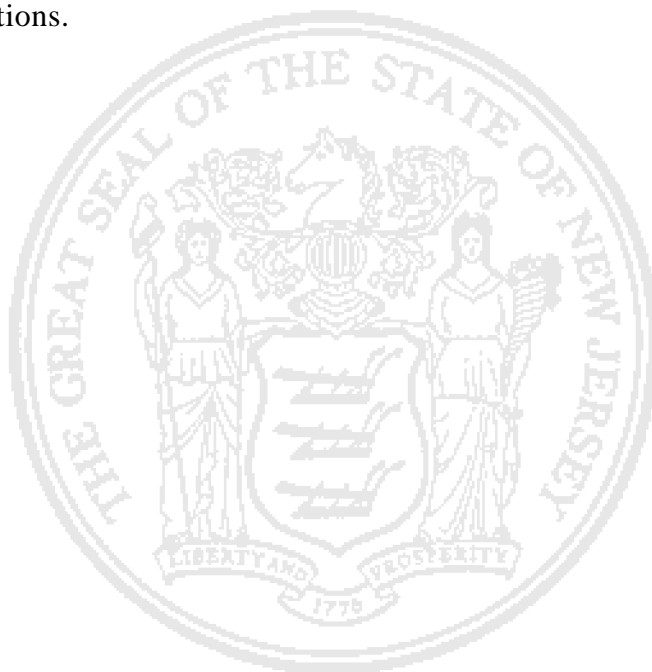
Assemblymen Collins, Malone, Zecker, LeFevre, Holzapfel and Augustine

SYNOPSIS

The "Educational Facilities Construction and Financing Act."

CURRENT VERSION OF TEXT

As amended on June 29, 2000 by the Senate pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 6/6/2000)

1 AN ACT concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.

4

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

7

8 1. (New section) Sections 1 through 30 ²and ³[59 through 76²]
9 57 through 71³ of this act shall be known and may be cited as the
10 “Educational Facilities Construction and Financing Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning ²[and located as
18 far as possible in economically and socially viable communities]².

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the
28 Abbott districts where maintenance has been deferred and new
29 construction has not been initiated due to concerns about cost. To
30 remedy the facilities inadequacies of the Abbott districts, the State
31 must promptly engage in a facilities needs assessment and fund the
32 entire cost of repairing, renovating, and constructing the new school
33 facilities determined by the Commissioner of Education to be required
34 to meet the school facilities efficiency standards in the Abbott districts.
35 In other districts, the State must also identify need in view of
36 anticipated growth in school population, and must contribute to the
37 cost of the renovation and construction of new facilities to ensure the
38 provision of a thorough and efficient education in those districts.

39 d. While providing that the educational infrastructure meets the

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:

¹ Senate floor amendments adopted May 18, 2000.

² Assembly AAP committee amendments adopted June 1, 2000.

³ Senate amendments adopted in accordance with Governor's recommendations June 29, 2000.

1 requirements of a thorough and efficient education, the State must also
2 protect the interests of taxpayers who will bear the burden of this
3 obligation. Design of school facilities should incorporate maximum
4 operating efficiencies and new technologies to advance the energy
5 efficiency of school facilities and the efficiency of other school
6 building systems, construction should be achieved in as efficient a
7 manner as possible, and a mechanism to assure proper maintenance of
8 new facilities should be established and implemented, in order to
9 reduce the overall cost of the program and to preserve this
10 infrastructure investment.

11 ²[e. At the same time, the location of school facilities in the
12 context of the communities which they serve is important to both the
13 educational success of the schools and the development of those
14 communities. It is highly desirable, particularly in urban communities
15 where the State has indicated a particular concern respecting local
16 development efforts, that the planning and construction of schools be
17 integrated where possible into the economic and community
18 development efforts of local governments and community
19 redevelopment entities in order to promote more effective and efficient
20 use of land, resources and expertise and to better assure the future
21 viability of local neighborhoods and communities.]²

22

23 3. (New section) As used in sections 1 through 30 ²and ³[59
24 through 76²] 57 through 71³ of this act, unless the context clearly
25 requires a different meaning:

26 "Abbott district" means an Abbott district as defined in section 3
27 of P.L.1996, c.138 (C.18A:7F-3);

28 "Area cost allowance" means ³[\$131] \$138³ per square foot for
29 the school year ³[1999-2000] 2000-2001³ and shall be inflated by an
30 appropriate cost index for the ³[2000-2001] 2001-2002³ school year.
31 For ³the 2001-2002-2003 school year and³ subsequent school years,
32 the area cost allowance shall be as established in the biennial Report
33 on the Cost of Providing a Thorough and Efficient Education and
34 inflated by an appropriate cost index for the second year to which the
35 report applies. The area cost allowance used in determining
36 preliminary eligible costs of school facilities projects shall be that of
37 the year of application for approval of the project;

38 ²[“Authority” means the New Jersey Economic Development
39 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.)]

40 ³[“Building authority” means the New Jersey Building Authority
41 established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.)²]

42 “Authority means the New Jersey Economic Development
43 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et
44 seq.)³ ;

45 ³“Community provider” means a private entity which has

1 contracted to provide early childhood education programs for an
2 ECPA district and which (a) is licensed by the Department of Human
3 Services to provide day care services pursuant to P.L.1983, c.492
4 (C.30:5B-1 et seq.); and (b) is a tax exempt nonprofit organization;

5 "Community early childhood education facilities project" means a
6 school facilities project consisting of facilities in which early childhood
7 education programs are provided to 3 or 4-year old children under
8 contract with the ECPA district but which are owned and operated by
9 a community provider;³

10 "Commissioner" means the Commissioner of Education;

11 "Core curriculum content standards" means the standards
12 established pursuant to the provisions of subsection a. of section 4 of
13 P.L.1996, c.138 (C.18A:7F-4);

14 "Cost index" means the average annual increase, expressed as a
15 decimal, in actual construction cost factors for the New York City and
16 Philadelphia areas during the second fiscal year preceding the budget
17 year as determined pursuant to regulations promulgated by the
18 ³[²building²]³ authority pursuant to section 26 of this act;

19 "Debt service" means and includes payments of principal and
20 interest upon school bonds issued to finance the acquisition of school
21 sites and the purchase or construction of school facilities, additions to
22 school facilities, or the reconstruction, remodeling, alteration,
23 modernization, renovation or repair of school facilities, including
24 furnishings, equipment, architect fees and the costs of issuance of such
25 obligations and shall include payments of principal and interest upon
26 school bonds heretofore issued to fund or refund such obligations, and
27 upon municipal bonds and other obligations which the commissioner
28 approves as having been issued for such purposes. Debt service
29 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
30 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
31 (C.18A:58-33.2 et seq.) is excluded;

32 ²["Demonstration project" means a school facilities project
33 selected by the State Treasurer for construction by a redevelopment
34 entity pursuant to section 6 of this act;]²

35 ³"Demonstration project" means a school facilities project selected
36 by the State Treasurer for construction by a redevelopment entity
37 pursuant to section 6 of this act;³

38 "District" means a local or regional school district established
39 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
40 Statutes, a county special services school district established pursuant
41 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
42 county vocational school district established pursuant to article 3 of
43 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
44 operated school district established pursuant to P.L.1987, c.399
45 (C.18A:7A-34 et seq.);

46 "District aid percentage" means the number expressed as a

1 percentage derived from dividing the district's core curriculum
2 standards aid calculated pursuant to section 15 of P.L.1996, c.138
3 (C.18A:7F-15) as of the date of the commissioner's determination of
4 preliminary eligible costs by the district's T & E budget calculated
5 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
6 13) as of the date of the commissioner's determination of preliminary
7 eligible costs;

8 ³"ECPA district" means a district that qualifies for early childhood
9 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-
10 16).³

11 "Excess costs" means the additional costs, if any, which shall be
12 borne by the district, of a school facilities project which result from
13 design factors that are not required to meet the facilities efficiency
14 standards and not approved pursuant to paragraph (1) of subsection
15 g. of section 5 of this act ²[or are not authorized as community design
16 features included in final eligible costs pursuant to subsection c. of
17 section 6 of this act]² ³or are not authorized as community design
18 features included in final eligible costs pursuant to subsection c. of
19 section 6 of this act³;

20 ³[²Facilities authority" means the New Jersey Educational
21 Facilities Authority created pursuant to N.J.S.18A:72A-1 et seq.:²]³

22 "Facilities efficiency standards" means the standards developed by
23 the commissioner pursuant to ²[subsection h. of]² ³subsection h. of³
24 section ²[4] ³[⁶] ⁴ of this act;

25 "Final eligible costs" means for school facilities projects to be
26 constructed by the ³[²building²]³ authority, the final eligible costs of
27 the school facilities project as determined by the commissioner, in
28 consultation with the ³[²building²]³ authority, pursuant to section 5
29 of this act; ²[for demonstration projects, the final eligible costs of the
30 project as determined by the commissioner and reviewed by the
31 authority which may include the cost of community design features
32 determined by the commissioner to be an integral part of the school
33 facility and which were reviewed by the authority and approved by the
34 State Treasurer pursuant to section 6 of this act;]² ³for
35 demonstration projects, the final eligible costs of the project as
36 determined by the commissioner and reviewed by the authority which
37 may include the cost of community design features determined by the
38 commissioner to be an integral part of the school facility and which do
39 not exceed the facilities efficiency standards, and which were reviewed
40 by the authority and approved by the State Treasurer pursuant to
41 section 6 of this act;³ and for districts whose district aid percentage
42 is less than ³[60%] 55%³ and which elect not to have the
43 ³[²building²]³ authority construct a school facilities project, final
44 eligible costs as determined pursuant to paragraph (1) of subsection h.
45 of section 5 of this act;

1 "FTE" means a full-time equivalent student which shall be
2 calculated as follows: in districts that qualify for early childhood
3 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
4 each student in grades kindergarten through 12 shall be counted at
5 100% of the actual count of students, and each preschool student
6 approved by the commissioner to be served in the district shall be
7 counted at 50% or 100% of the actual count of preschool students for
8 an approved half-day or full-day program, respectively; in districts that
9 do not qualify for early childhood program aid pursuant to section 16
10 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
11 12 shall be counted at 100% of the actual count of students, in the
12 case of districts which operate a half-day kindergarten program each
13 kindergarten student shall be counted at 50% of the actual count of
14 kindergarten students, in the case of districts which operate a full-day
15 kindergarten program or which currently operate a half-day
16 kindergarten program but propose to build facilities to house a full-
17 day kindergarten program each kindergarten student shall be counted
18 at 100% of the actual count of kindergarten students, and preschool
19 students shall not be counted. In addition, each preschool
20 handicapped child who is entitled to receive a full-time program
21 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
22 count of these students in the district;

23 "Functional capacity" means the number of students that can be
24 housed in a building in order to have sufficient space for it to be
25 educationally adequate for the delivery of programs and services
26 necessary for student achievement of the core curriculum content
27 standards. Functional capacity is determined by dividing the existing
28 gross square footage of a school building by the minimum area
29 allowance per FTE student pursuant to subsection b. of section 8 of
30 this act for the grade level students contained therein. The difference
31 between the projected enrollment determined pursuant to subsection
32 a. of section 8 of this act and the functional capacity is the unhoused
33 students that are the basis upon which the additional costs of space to
34 provide educationally adequate facilities for the entire projected
35 enrollment are determined. The existing gross square footage for the
36 purposes of defining functional capacity is exclusive of existing spaces
37 that are not contained in the facilities efficiency standards but which
38 are used to deliver programs and services aligned to the core
39 curriculum content standards, used to provide support services directly
40 to students, or other existing spaces that the district can demonstrate
41 would be structurally or fiscally impractical to convert to other uses
42 contained in the facilities efficiency standards;

43 "Lease purchase payment" means and includes payment of
44 principal and interest for lease purchase agreements in excess of five
45 years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to
46 the effective date of P.L. , c. (C.) (now pending before the

1 Legislature as this bill) to finance the purchase or construction of
2 school facilities, additions to school facilities, or the reconstruction,
3 remodeling, alteration, modernization, renovation or repair of school
4 facilities, including furnishings, equipment, architect fees and issuance
5 costs. Approved lease purchase agreements in excess of five years
6 shall be accorded the same accounting treatment as school bonds;

7 "Level II district" means a district which is directed by the
8 commissioner to enter level II monitoring pursuant to the provisions
9 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

10 "Local share" means, in the case of a school facilities project to be
11 constructed by the ³[²building²]³ authority, the total costs less the
12 State share as determined pursuant to section 5 of this act; ²[in the
13 case of a demonstration project, the total costs less the State share as
14 determined pursuant to section 6 of this act;]² ³in the case of a
15 demonstration project, the total costs less the State share as
16 determined pursuant to sections 5 and 6 of this act;³ and in the case
17 of a school facilities project ³[to] not to be constructed by the
18 authority, but which shall ³ be financed pursuant to section 15 of this
19 act, the total costs less the State share as determined pursuant to that
20 section;

21 "Local unit" means a county, municipality, board of education or
22 any other political subdivision or instrumentality authorized to
23 construct, operate and maintain a school facilities project and to
24 borrow money for those purposes pursuant to law;

25 "Local unit obligations" means bonds, notes, refunding bonds,
26 refunding notes, lease obligations and all other obligations of a local
27 unit which are issued or entered into for the purpose of paying for all
28 or a portion of the costs of a school facilities project, including
29 moneys payable to the authority;

30 "Long-range facilities plan" means the plan required to be
31 submitted to the commissioner by a district pursuant to section 4 of
32 this act;

33 "Maintenance" means expenditures which are approved for repairs
34 and replacements for the purpose of keeping a school facility open and
35 safe for use or in its original condition, including repairs and
36 replacements to a school facility's heating, lighting, ventilation,
37 security and other fixtures to keep the facility or fixtures in effective
38 working condition. Maintenance shall not include contracted custodial
39 or janitorial services, expenditures for the cleaning of a school facility
40 or its fixtures, the care and upkeep of grounds or parking lots, and the
41 cleaning of, or repairs and replacements to, movable furnishings or
42 equipment, or other expenditures which are not required to maintain
43 the original condition over the school facility's useful life. Approved
44 maintenance expenditures shall be as determined by the commissioner
45 pursuant to regulations to be adopted by the commissioner pursuant
46 to section 26 of this act;

1 ³"Other allowable costs" means the costs of site development,
2 acquisition of land or other real property interests necessary to
3 effectuate the school facilities project, fees for the services of design
4 professionals, including architects, engineers, construction managers
5 and other design professionals, legal fees, financing costs and the
6 administrative costs of the authority or the district incurred in
7 connection with the school facilities project.³

8 "Preliminary eligible costs" means the initial eligible costs of a
9 school facilities project as calculated pursuant to the formulas set forth
10 in section 7 of this act ³which shall be deemed to include the costs of
11 construction and other allowable costs³;

12 ²["Redevelopment entity" means a redevelopment entity
13 authorized by a municipal governing body to implement plans and
14 carry out redevelopment projects in the municipality pursuant to the
15 "Local Redevelopment and Housing Law," P.L.1992, c.79
16 (C.40A:12A-1 et seq);]² ³"Redevelopment entity" means a
17 redevelopment entity authorized by a municipal governing body to
18 implement plans and carry out redevelopment projects in the
19 municipality pursuant to the "Local Redevelopment and Housing
20 Law," P.L.1992, c.79 (C.40A:12A-1 et seq);³

21 "Report on the Cost of Providing a Thorough and Efficient
22 Education" or "Report" means the report issued by the commissioner
23 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

24 "School bonds" means, in the case of a school facilities project
25 which is to be constructed by the ³[²building²]³ authority ²[, a
26 redevelopment entity,]² ³. a redevelopment entity,³ or a district
27 under section 15 of this act, bonds, notes or other obligations issued
28 by a district to finance the local share; and, in the case of a school
29 facilities project which is not to be constructed by the ³[²building²]³
30 authority ²[, a redevelopment entity,]² ³or a redevelopment entity,³
31 or ³[a district] financed³ under section 15 of this act, bonds, notes or
32 other obligations issued by a district to finance the total costs;

33 "School enrollment" means the number of FTE students other than
34 evening school students, including post-graduate students and post-
35 secondary vocational students, who, on the last school day prior to
36 October 16 of the current school year, are recorded in the registers of
37 the school;

38 "School facility" means and includes any structure, building or
39 facility used wholly or in part for academic purposes by a district, but
40 shall exclude athletic stadiums, grandstands, and any structure,
41 building or facility used solely for school administration;

42 "School facilities project" means the acquisition, demolition,
43 construction, improvement, repair, alteration, modernization,
44 renovation, reconstruction or maintenance of all or any part of a
45 school facility or of any other personal property necessary for, or
46 ancillary to, any school facility, and shall include fixtures, furnishings

1 and equipment, and shall also include, but is not limited to, site
2 acquisition, site development, the services of design professionals,
3 such as engineers and architects, construction management, legal
4 services, financing costs and administrative costs and expenses
5 incurred in connection with the project;

6 "Special education services pupil" means a pupil receiving specific
7 services pursuant to chapter 46 of Title 18A of the New Jersey
8 Statutes;

9 "State aid" means State municipal aid and State school aid;

10 "State debt service aid" means for school bonds issued for school
11 facilities projects approved by the commissioner after the effective
12 date of P.L. , c. (C.) (now pending before the Legislature as this
13 bill) of districts which elect not to have the ³[²building²]³ authority
14 ²[or a redevelopment entity]² ³or a redevelopment entity³ construct
15 the project or which elect not to finance the project under section 15
16 of this act, the amount of State aid determined pursuant to section 9
17 of this act; and for school bonds or certificates of participation issued
18 for school facilities projects approved by the commissioner prior to the
19 effective date of P.L. , c. (C.) (now pending before the
20 Legislature as this bill) the amount of State aid determined pursuant
21 to section 10 of this act;

22 "State municipal aid" means business personal property tax
23 replacement revenues, State urban aid and State revenue sharing, as
24 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
25 other similar forms of State aid payable to the local unit and to the
26 extent permitted by federal law, federal moneys appropriated or
27 apportioned to the municipality or county by the State;

28 "State school aid" means the funds made available to school
29 districts pursuant to sections 15 and 17 of P.L.1996, c.138
30 (C.18A:7F-15 and 17);

31 "State share" means the State's proportionate share of the final
32 eligible costs of a school facilities project to be constructed by the
33 ³[²building²]³ authority as determined pursuant to section 5 of this
34 act; ²[in the case of a demonstration project, the State's proportionate
35 share of the final eligible costs of the project as determined pursuant
36 to sections 5 and 6 of this act;]² ³in the case of a demonstration
37 project, the State's proportionate share of the final eligible costs of the
38 project as determined pursuant to sections 5 and 6 of this act.³ and in
39 the case of a school facilities project to be financed pursuant to section
40 15 of this act, the State share as determined pursuant to that section;

41 "Total costs" means, in the case of a school facilities project which
42 is to be constructed by the ³[building] ²authority [² or
43 redevelopment entity]² ³or a redevelopment entity³ or financed
44 pursuant to section 15 of this act, the final eligible costs plus excess
45 costs if any; and in the case of a school facilities project which is not
46 to be constructed by the ³[²building²]³ authority ²[or a

1 redevelopment entity]² ³or a redevelopment entity³ or financed
2 pursuant to section 15 of this act, the total cost of the project as
3 determined by the district ²[;].²

4

5 4. (New section) a. Beginning in the 1999-2000 school year and
6 in every school year thereafter ending with a "0" or a "5", each district
7 shall prepare and submit to the commissioner a long-range facilities
8 plan that details the district's school facilities needs and the district's
9 plan to address those needs for the ensuing five years. The long-range
10 facilities plan shall incorporate the facilities efficiency standards and
11 shall be filed with the commissioner no later than ³[October 1]
12 December 15³, 2000 and no later than October 1 of the other filing
13 years for approval in accordance with those standards. For those
14 Abbott districts that have submitted long-range facilities plans to the
15 commissioner prior to the effective date of P.L. , c. (C) (now
16 pending before the Legislature as this bill), this subsection shall not be
17 read to require an additional filing by October 1, 2000.

18 b. Notwithstanding any other law or regulation to the contrary, an
19 application for a school facilities project pursuant to section 5 of this
20 act shall not be approved unless the district has filed a long-range
21 facilities plan that is consistent with the application and the plan has
22 been approved by the commissioner; except that prior to October 1,
23 2000, the commissioner may approve an application if the project is
24 necessary to protect the health or safety of occupants of the school
25 facility, or is related to required early childhood education programs,
26 or is related to a school facility in which the functional capacity is less
27 than 90% of the facilities efficiency standards based on current school
28 enrollment, or the district received bids on the school facilities project
29 prior to the effective date of P.L. , c. (C.) (now pending before
30 the Legislature as this bill) and the district demonstrates that further
31 delay will negatively affect the cost of the project.

32 c. An amendment to a long-range facilities plan may be submitted
33 at any time to the commissioner for review and approval.

34 d. Each long-range facilities plan shall include a cohort survival
35 methodology or other methodology approved by the commissioner,
36 accompanied by a certification by a qualified demographer retained by
37 the district that serves as the basis for identifying the capacity and
38 program needs detailed in the long-range facilities plan.

39 e. The long-range facilities plan shall include an educational
40 adequacy inventory of all existing school facilities in the district, the
41 identification of all deficiencies in the district's current inventory of
42 school facilities, which includes the identification of those deficiencies
43 that involve emergent health and safety concerns, and the district's
44 proposed plan for future construction and renovation. The long-range
45 facilities plan submissions shall conform to the guidelines, criteria and
46 format prescribed by the commissioner.

1 f. Each district shall determine the number of "unhoused students"
2 for the ensuing five-year period calculated pursuant to the provisions
3 of section 8 of this act.

4 g. Each district shall submit the long-range facilities plan to the
5 planning board of the municipality or municipalities in which the
6 district is situate for the planning board's review and findings
7 ²[pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31)]².

8 ²[h. The commissioner shall develop, for the March 2002 Report
9 on the Cost of Providing a Thorough and Efficient Education and for
10 subsequent reports, facilities efficiency standards for elementary,
11 middle, and high schools consistent with the core curriculum school
12 delivery assumptions in the report and sufficient for the achievement
13 of the core curriculum content standards, and for the provision of
14 required programs in Abbott districts and early childhood education
15 programs in the districts in which these programs are required by the
16 State. The area allowances per FTE student in each class of the
17 district shall be derived from these facilities efficiency standards.

18 The facilities efficiency standards developed by the commissioner
19 shall not be construction design standards but rather shall represent the
20 instructional spaces, specialized instructional areas, and administrative
21 spaces that are determined by the commissioner to be educationally
22 adequate to support the achievement of the core curriculum content
23 standards and for the provision of required programs in Abbott
24 districts and early childhood education programs in the districts in
25 which these programs are required. A district may design, at its
26 discretion, the educational and other spaces to be included within the
27 school facilities project. The design of the project may eliminate
28 spaces in the facilities efficiency standards, include spaces not in the
29 facilities efficiency standards, or size spaces differently than in the
30 facilities efficiency standards upon a demonstration of the adequacy of
31 the school facilities project to deliver the core curriculum content
32 standards pursuant to paragraph (2) of subsection g. of section 5 of
33 this act.

34 Within a reasonable period of time after the effective date of P.L.,
35 c. (C.) (now pending before the Legislature as this bill), the
36 commissioner shall publish the facilities efficiency standards developed
37 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
38 New Jersey Register. Within a reasonable period of time after 30 days
39 after publication in the New Jersey Register, the commissioner shall
40 file the facilities efficiency standards with the Office of Administrative
41 Law and those standards shall become effective immediately upon
42 filing with the Office of Administrative Law. During the 30-day
43 period the commissioner shall provide an opportunity for public
44 comment on the proposed facilities efficiency standards.

45 i. Within 90 days of the commissioner's receipt of a long-range
46 facilities plan for review, the commissioner shall determine whether the

1 plan is fully and accurately completed and whether all information
2 necessary for a decision on the plan has been filed by the district. If
3 the commissioner determines that the plan is complete, the
4 commissioner shall promptly notify the district in writing and shall
5 have 60 days from the date of that notification to determine whether
6 to approve the plan or not. If the commissioner determines that the
7 plan is not complete, the commissioner shall notify the district in
8 writing. The district shall provide to the commissioner whatever
9 information the commissioner determines is necessary to make the plan
10 accurate and complete. The district shall submit that information to
11 the commissioner, and the commissioner shall have 60 days from the
12 date of receipt of accurate and complete information to determine
13 whether to approve the plan or not.

14 j. Notwithstanding any provision of subsection i. of this section,
15 if at any time the number of long-range facilities plans filed by school
16 districts with the commissioner and pending review exceeds 20% of
17 the number of school districts in New Jersey, the commissioner may
18 extend by 60 days the deadline for reviewing each plan pending at that
19 time.

20 k. By July 1, 2001, the commissioner shall provide the Legislature
21 with recommendations to address the circumstances of districts which
22 are contiguous with two or more Abbott districts. The
23 recommendations shall address the issues of the financing of school
24 facilities projects and the funding of the educational and other
25 programs required within these districts as a result of their unique
26 demographic situation.]²

27 ³h. The commissioner shall develop, for the March 2002 Report
28 on the Cost of Providing a Thorough and Efficient Education and for
29 subsequent reports, facilities efficiency standards for elementary,
30 middle, and high schools consistent with the core curriculum school
31 delivery assumptions in the report and sufficient for the achievement
32 of the core curriculum content standards, including the provision of
33 required programs in Abbott districts and early childhood education
34 programs in the districts in which these programs are required by the
35 State. The area allowances per FTE student in each class of the
36 district shall be derived from these facilities efficiency standards.

37 The facilities efficiency standards developed by the commissioner
38 shall not be construction design standards but rather shall represent the
39 instructional spaces, specialized instructional areas, and administrative
40 spaces that are determined by the commissioner to be educationally
41 adequate to support the achievement of the core curriculum content
42 standards including the provision of required programs in Abbott
43 districts and early childhood education programs in the districts in
44 which these programs are required by the State. A district may design,
45 at its discretion, the educational and other spaces to be included within
46 the school facilities project. The design of the project may eliminate

1 spaces in the facilities efficiency standards, include spaces not in the
2 facilities efficiency standards, or size spaces differently than in the
3 facilities efficiency standards upon a demonstration of the adequacy of
4 the school facilities project to deliver the core curriculum content
5 standards pursuant to paragraph (2) of subsection g. of section 5 of
6 this act.

7 Within a reasonable period of time after the effective date of
8 P.L. , c. (C.) (now pending before the Legislature as this bill), the
9 commissioner shall publish the facilities efficiency standards developed
10 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
11 New Jersey Register. Within a reasonable period of time after 30 days
12 after publication in the New Jersey Register, the commissioner shall
13 file the facilities efficiency standards with the Office of Administrative
14 Law and those standards shall become effective immediately upon
15 filing with the Office of Administrative Law. During the 30-day
16 period the commissioner shall provide an opportunity for public
17 comment on the proposed facilities efficiency standards.

18 i. Within 90 days of the commissioner's receipt of a long-range
19 facilities plan for review, the commissioner shall determine whether the
20 plan is fully and accurately completed and whether all information
21 necessary for a decision on the plan has been filed by the district. If
22 the commissioner determines that the plan is complete, the
23 commissioner shall promptly notify the district in writing and shall
24 have 60 days from the date of that notification to determine whether
25 to approve the plan or not. If the commissioner determines that the
26 plan is not complete, the commissioner shall notify the district in
27 writing. The district shall provide to the commissioner whatever
28 information the commissioner determines is necessary to make the plan
29 accurate and complete. The district shall submit that information to
30 the commissioner, and the commissioner shall have 60 days from the
31 date of receipt of accurate and complete information to determine
32 whether to approve the plan or not.

33 j. Notwithstanding any provision in subsection i. of this section,
34 if at any time the number of long-range facilities plans filed by school
35 districts with the commissioner and pending review exceeds 20% of
36 the number of school districts in New Jersey, the commissioner may
37 extend by 60 days the deadline for reviewing each plan pending at that
38 time.

39 k. By March 1, 2002 and every five years thereafter, the
40 commissioner shall recommend to the Legislature criteria to be used
41 in the designation of districts as Abbott districts. The criteria may
42 include, but not be limited to: the number of residents per 1,000 within
43 the municipality or municipalities in which the district is situate who
44 receive TANF; the district's equalized valuation per resident pupil as
45 equalized valuation is defined in section 3 of P.L.1996, c.138
46 (C.18A:7F-3); the district's income per resident pupil as district

1 income is defined in section 3 of P.L.1996, c.138 (C.18A:7F-3); the
2 population per square mile of the municipality or municipalities in
3 which the district is situate; and the municipal overburden of the
4 municipality or municipalities in which the district is situate as that
5 term is defined by the New Jersey Supreme Court in Abbott v. Burke.

6 l. By July 1, 2001, the commissioner shall provide the Legislature
7 with recommendations to address the circumstances of districts which
8 are contiguous with two or more Abbott districts. The
9 recommendations shall address the issues of the financing of school
10 facilities projects and the funding of the educational and other
11 programs required within these districts as a result of their unique
12 demographic situation.

13 m. By July 1, 2001, the commissioner shall study the Safe Schools
14 Design Guidelines, prepared by the Florida Center for Community
15 Design and Research, which address the issues of school safety and
16 security through the design of school facilities. Based upon the
17 commissioner's study, the commissioner shall issue recommendations
18 to districts on the appropriateness of including the Safe Schools
19 Design Guidelines in the design and construction of school facilities
20 projects.³

21
22 5. (New section) a. The ³[²building²]³ authority shall construct
23 and ³[²the facilities authority shall²]³ finance the school facilities
24 projects of Abbott districts, level II districts, and districts with a
25 district aid percentage equal to or greater than ³[60%] ³55%³.

26 b. Any district whose district aid percentage is less than ³[60%]
27 55%³ may elect to have the ³[²facilities²]³ authority undertake the
28 ³[²financing and the building authority undertake the²]³ construction
29 of a school facilities project in the district and the State share shall be
30 determined pursuant to this section. In the event that the district
31 elects not to have the ³[²building²]³ authority undertake the
32 construction of the project, State support for the project shall be
33 determined pursuant to section 9 or section 15 of this act, as
34 applicable.

35 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the
36 contrary, the procedures for obtaining approval of a school facilities
37 project shall be as set forth in this act; provided that any district
38 whose district aid percentage is less than ³[60%] ³55%³, which elects
39 not to have the ³[²building²]³ authority ²[or a redevelopment
40 entity]² ³or a redevelopment entity³ undertake the construction of the
41 project, shall also be required to comply with the provisions of
42 N.J.S.18A:18A-16.

43 d. Any district seeking to initiate a school facilities project shall
44 apply to the commissioner for approval of the project. The application
45 shall, at a minimum, contain the following information: a description

1 of the school facilities project; a schematic drawing of the project or,
2 at the option of the district, preliminary plans and specifications; a
3 delineation and description of each of the functional components of the
4 project; the number of unhoused students to be housed in the project;
5 the area allowances per FTE student as calculated pursuant to section
6 8 of this act; and the estimated cost to complete the project as
7 determined by the district.

8 e. The commissioner shall review each proposed school facilities
9 project to determine whether it is consistent with the district's long-
10 range facilities plan and whether it complies with the facilities
11 efficiency standards and the area allowances per FTE student derived
12 from those standards. The commissioner shall make a decision on a
13 district's application within 90 days from the date he determines that
14 the application is fully and accurately completed and that all
15 information necessary for a decision has been filed by the district, or
16 from the date of the last revision made by the district. If the
17 commissioner is not able to make a decision within 90 days, he shall
18 notify the district in writing explaining the reason for the delay and
19 indicating the date on which a decision on the project will be made,
20 provided that the date shall not be later than 60 days from the
21 expiration of the original 90 days set forth in this subsection. If the
22 decision is not made by the subsequent date indicated by the
23 commissioner, then the project shall be deemed approved and the
24 preliminary eligible costs ³[shall equal the proposed cost of the
25 project] for new construction shall be calculated by using the
26 proposed square footage of the building as the approved area for
27 unhoused students³.

28 f. If the commissioner determines that the school facilities project
29 complies with the facilities efficiency standards and the district's long-
30 range facilities plan and does not exceed the area allowance per FTE
31 student derived from those standards, the commissioner shall calculate
32 the preliminary eligible costs of the project pursuant to the formulas
33 set forth in section 7 of this act; except that in the case of a county
34 special services school district or a county vocational school district,
35 the commissioner shall calculate the preliminary eligible costs to equal
36 the amount determined by the board of school estimate and approved
37 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
38 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

39 g. If the commissioner determines that the school facilities project
40 is inconsistent with the facilities efficiency standards or exceeds the
41 area allowances per FTE student derived from those standards, the
42 commissioner shall notify the district.

43 (1) The commissioner shall approve area allowances in excess of
44 the area allowances per FTE student derived from the facilities
45 efficiency standards if the board of education or State district
46 superintendent, as appropriate, demonstrates that school facilities

1 needs related to required programs cannot be addressed within the
2 facilities efficiency standards and that all other proposed spaces are
3 consistent with those standards. The commissioner shall approve area
4 allowances in excess of the area allowances per FTE student derived
5 from the facilities efficiency standards if the additional area allowances
6 are necessary to accommodate centralized facilities to be shared
7 among two or more school buildings within the district and the
8 centralized facilities represent a more cost effective alternative.

9 (2) The commissioner may waive a facilities efficiency standard if
10 the board of education or State district superintendent, as appropriate,
11 demonstrates to the commissioner's satisfaction that the waiver will
12 not adversely affect the educational adequacy of the school facility,
13 including the ability to deliver the programs and services necessary to
14 enable all students to achieve the core curriculum content standards.

15 (3) To house the district's central administration, a district may
16 request an adjustment to the approved areas for unhoused students of
17 2.17 square feet for each FTE student in the projected total district
18 school enrollment if the proposed administrative offices will be housed
19 in a school facility and the district demonstrates either that the existing
20 central administrative offices are obsolete or that it is more practical
21 to convert those offices to instructional space. To the extent that
22 existing administrative space will continue to be used for
23 administrative purposes, the space shall be included in the formulas set
24 forth in section 7 of this act.

25 If the commissioner approves excess facilities efficiency standards
26 or additional area allowances pursuant to paragraphs (1), (2), or (3)
27 of this subsection, the commissioner shall calculate the preliminary
28 eligible costs based upon the additional area allowances or excess
29 facilities efficiency standards pursuant to the formulas set forth in
30 section 7 of this act. In the event that the commissioner does not
31 approve the excess facilities efficiency standards or additional area
32 allowances, the district may either: modify its submission so that the
33 school facilities project meets the facilities efficiency standards; or pay
34 for the excess costs.

35 (4) The commissioner shall approve spaces in excess of, or
36 inconsistent with, the facilities efficiency standards, hereinafter
37 referred to as nonconforming spaces, upon a determination by the
38 district that the spaces are necessary to comply with State or federal
39 law concerning individuals with disabilities. A district may apply for
40 additional State aid for nonconforming spaces that will permit pupils
41 with disabilities to be educated to the greatest extent possible in the
42 same buildings or classes with their nondisabled peers. The
43 nonconforming spaces may: (a) allow for the return of pupils with
44 disabilities from private facilities; (b) permit the retention of pupils
45 with disabilities who would otherwise be placed in private facilities; (c)
46 provide space for regional programs in a host school building that

1 houses both disabled and nondisabled pupils; and (d) provide space for
2 the coordination of regional programs by a county special services
3 school district, educational services commission, jointure commission,
4 or other agency authorized by law to provide regional educational
5 services in a school building that houses both disabled and nondisabled
6 pupils. A district's State support ratio shall be adjusted to equal the
7 lesser of the sum of its district aid percentage as defined in section 3
8 of this act plus 0.25, or 100% for any nonconforming spaces approved
9 by the commissioner pursuant to this paragraph.

10 h. Upon approval of a school facilities project and determination
11 of the preliminary eligible costs:

12 (1) In the case of a district whose district aid percentage is
13 less than ³[60%] 55%³ and which has elected not to have the
14 ³[²building²]³ authority undertake the construction of the school
15 facilities project, the commissioner shall notify the district whether the
16 school facilities project is approved and, if so approved, the
17 preliminary eligible costs and the excess costs, if any. Following the
18 determination of preliminary eligible costs and the notification of
19 project approval, the district may appeal to the commissioner for an
20 increase in those costs if the detailed plans and specifications
21 completed by a design professional for the school facilities project
22 indicate that the cost of constructing that portion of the project which
23 is consistent with the facilities efficiency standards and does not
24 exceed the area allowances per FTE student exceeds the preliminary
25 eligible costs as determined by the commissioner for the project by
26 10% or more. The district shall file its appeal within 30 days of the
27 preparation of the plans and specifications. If the district chooses not
28 to file an appeal, then the final eligible costs shall equal the preliminary
29 eligible costs.

30 The appeal shall outline the reasons why the preliminary eligible
31 costs calculated for the project are inadequate and estimate the amount
32 of the adjustment which needs to be made to the preliminary eligible
33 costs. The commissioner shall forward the appeal information to the
34 ³[²building²]³ authority for its review and recommendation. If the
35 additional costs are the result of factors that are within the control of
36 the district or are the result of design factors that are not required to
37 meet the facilities efficiency standards, the ³[²building²]³ authority
38 shall recommend to the commissioner that the preliminary eligible
39 costs be accepted as the final eligible costs. If the ³[²building²]³
40 authority determines the additional costs are not within the control of
41 the district or are the result of design factors required to meet the
42 facilities efficiency standards, the ³[²building²]³ authority shall
43 recommend to the commissioner a final eligible cost based on its
44 experience for districts with similar characteristics ³, provided that,
45 notwithstanding anything to the contrary, the commissioner shall not
46 approve an adjustment to the preliminary eligible costs which exceeds

1 10% of the preliminary eligible costs³. The commissioner shall make
2 a determination on the appeal within 30 days of its receipt. If the
3 commissioner does not approve an adjustment to the school facilities
4 project's preliminary eligible costs, the commissioner shall issue his
5 findings in writing on the reasons for the denial and on why the
6 preliminary eligible costs as originally calculated are sufficient.

7 (2) In all other cases, the commissioner shall promptly prepare and
8 submit to the ³[²building²]³ authority a preliminary project report
9 which shall consist, at a minimum, of the following information: a
10 complete description of the school facilities project; the actual
11 location of the project; the total square footage of the project
12 together with a breakdown of total square footage by functional
13 component; the preliminary eligible costs of the project; the project's
14 priority ranking determined pursuant to subsection m. of this section;
15 any other factors to be considered by the ³[²building²]³ authority in
16 undertaking the project; and the name and address of the person from
17 the district to contact in regard to the project.

18 i. Upon receipt by the ³[²building²]³ authority of the preliminary
19 project report, the ³[²building²]³ authority, upon consultation with
20 the district, shall prepare detailed plans ³[, schedules]³ and
21 specifications ³and schedules³ which contain the ³[³building³]³
22 authority's estimated cost and schedule to complete the school
23 facilities project. The ³[²building²]³ authority shall transmit to the
24 commissioner the ³[²building²]³ authority's recommendations in
25 regard to the project which shall, at a minimum, contain the detailed
26 plans and specifications; whether the school facilities project can be
27 completed within the preliminary eligible costs; and any other factors
28 which the ³[²building²]³ authority determines should be considered
29 by the commissioner.

30 (1) In the event that the ³[²building²]³ authority determines that
31 the school facilities project can be completed within the preliminary
32 eligible costs: the final eligible costs shall be deemed to equal the
33 preliminary eligible costs; the commissioner shall be deemed to have
34 given final approval to the project; and the preliminary project report
35 shall be deemed to be the final project report delivered to the
36 ³[²building²]³ authority pursuant to subsection j. of this section.

37 (2) In the event that the ³[²building²]³ authority determines that
38 the school facilities project cannot be completed within the preliminary
39 eligible costs, prior to the submission of the ³[²building²]³ authority's
40 recommendations to the commissioner, the ³[²building²]³ authority
41 shall, in consultation with the district and the commissioner, determine
42 whether changes can be made in the project which will result in a
43 reduction in costs while at the same time meeting the facilities
44 efficiency standards approved by the commissioner.

45 (a) If the ³[²building²]³ authority determines that changes in the

1 school facilities project are possible so that the project can be
2 accomplished within the scope of the preliminary eligible costs while
3 still meeting the facilities efficiency standards, the ³[²building²]³
4 authority shall so advise the commissioner, whereupon the
5 commissioner shall: calculate the final eligible costs to equal the
6 preliminary eligible costs; give final approval to the project with the
7 changes noted; and issue a final project report to the ³[²building²]³
8 authority pursuant to subsection j. of this section.

9 (b) If the ³[²building²]³ authority determines that it is not
10 possible to make changes in the school facilities project so that it can
11 be completed within the preliminary eligible costs either because the
12 additional costs are the result of factors outside the control of the
13 district or the additional costs are required to meet the facilities
14 efficiency standards, the ³[²building²]³ authority shall recommend
15 to the commissioner that the preliminary eligible costs be increased
16 accordingly, whereupon the commissioner shall: calculate the final
17 eligible costs to equal the sum of the preliminary eligible costs plus the
18 increase recommended by the ³[²building²]³ authority; give final
19 approval to the project; and issue a final project report to the
20 ³[²building²]³ authority pursuant to subsection j. of this section.

21 (c) If the additional costs are the result of factors that are within
22 the control of the district or are the result of design factors that are
23 not required to meet the facilities efficiency standards or approved
24 pursuant to paragraph (1) of subsection g. of this section, the
25 ³[²building²]³ authority shall recommend to the commissioner that
26 the preliminary eligible costs be accepted, whereupon the
27 commissioner shall: calculate the final eligible costs to equal the
28 preliminary eligible costs and specify the excess costs which are to be
29 borne by the district; give final approval to the school facilities project;
30 and issue a final project report to the ³[building]³ authority
31 pursuant to subsection j. of this section; provided that the
32 commissioner may approve final eligible costs which are in excess of
33 the preliminary eligible costs if, in his judgment, the action is
34 necessary to meet the educational needs of the district.

35 (d) For a school facilities project constructed by the
36 ³[²building²]³ authority, the ³[²building²]³ authority shall be
37 responsible for any costs of construction, but only from the proceeds
38 of bonds issued by the ³[²facilities²]³ authority pursuant to this act,
39 which exceed the amount originally projected by the ³[²building²]³
40 authority and approved for financing by the ³[²facilities²]³ authority,
41 provided that the excess is the result of an underestimate of labor or
42 materials costs by the ³[²building²]³ authority. After receipt by the
43 ³[²building²]³ authority of the final project report, the district shall be
44 responsible only for the costs associated with changes, if any, made
45 at the request of the district to the scope of the school facilities

1 project.

2 j. The ³[²building²]³ authority shall not commence the
3 acquisition or construction of a school facilities project unless the
4 commissioner transmits to the ³[²building²]³ authority a final project
5 report and the district complies with the approval requirements for the
6 local share, if any, pursuant to section 11 of this act. The final project
7 report shall contain all of the information contained in the preliminary
8 project report and, in addition, shall contain: the final eligible costs;
9 the excess costs, if any; the total costs which equals the final eligible
10 costs plus excess costs, if any; the State share; and the local share.

11 k. For the Abbott districts, the State share shall be 100% of the
12 final eligible costs. For all other districts, the State share shall be an
13 amount equal to 115% of the district aid percentage; except that the
14 State share shall not be less than 40% of the final eligible costs.

15 ²If any district which is included in district factor group A or B,
16 other than an Abbott district, is having difficulty financing the local
17 share of a school facilities project, the district may apply to the
18 commissioner to receive 100% State support for the project and the
19 commissioner may request the approval of the Legislature to increase
20 the State share of the project to 100%.²

21 l. The local share for school facilities projects constructed by the
22 ³[²building²]³ authority ²[or a redevelopment entity]² ³or a
23 redevelopment entity³ shall equal the final eligible costs plus any
24 excess costs less the State share.

25 m. The commissioner shall establish, in consultation with the
26 Abbott districts, a priority ranking of all school facilities projects in the
27 Abbott districts based upon his determination of critical need, and shall
28 establish priority categories for all school facilities projects in non-
29 Abbott districts. The commissioner shall rank projects from Tier I to
30 Tier IV in terms of critical need according to the follow prioritization:

31 Tier I: health and safety, including electrical system upgrades;
32 required early childhood education programs; unhoused students/class
33 size reduction as required to meet the standards of the
34 "Comprehensive Educational Improvement and Financing Act of
35 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

36 Tier II: educational adequacy - specialized instructional spaces,
37 media centers, cafeteriums, and other non-general classroom spaces
38 contained in the facilities efficiency standards; special education spaces
39 to achieve the least restrictive environment;

40 Tier III: technology projects; regionalization or consolidation
41 projects;

42 Tier IV: other local objectives.

43 n. The provisions of the "Public School Contracts Law,"
44 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
45 project constructed by a district but shall not be applicable to projects
46 constructed by the ³[²building²]³ authority ²[or a redevelopment

1 entity]² ³or a redevelopment entity³ pursuant to the provisions of this
2 act.

3 o. In the event that a district whose district aid percentage is less
4 than ³[60%] 55%³ elects not to have the ³[²building²]³ authority
5 undertake construction of a school facilities project, any proceeds of
6 school bonds issued by the district for the purpose of funding the
7 project which remain unspent upon completion of the project shall be
8 used by the district to reduce the outstanding principal amount of the
9 school bonds.

10 p. Upon completion by the ³[²building²]³ authority of a school
11 facilities project, if the cost of construction and completion of the
12 project is less than the total costs, the district shall be entitled to
13 receive a portion of the local share based on a pro rata share of the
14 difference based on the ratio of the State share to the local share.

15 q. The ³[²building²]³ authority shall determine the cause of any
16 costs of construction which exceed the amount originally projected by
17 the ³[²building²]³ authority and approved for financing by the
18 ³[²facilities²]³ authority.

19 r. In the event that a district has engaged architectural services
20 ³[that have been prequalified by the ²building² authority]³ to prepare
21 the documents required for initial proposal of a school facilities
22 project, the district shall, if permitted by the terms of the district's
23 contract for architectural services, ³and at the option of the authority³
24 assign the contract for architectural services to the ³[²building²]³
25 authority ³[, provided that the fees for the architectural services shall
26 not exceed the fees normally paid by the ²building² authority for such
27 services] if the authority determines that the assignment would be in
28 the best interest of the school facilities project³.

29 s. ²[The commissioner may authorize the authority to provide
30 funds to Abbott districts prior to the approval of a school facilities
31 project to enable an Abbott district to finance site acquisition and
32 preliminary design work.] ³[Beginning on July 1, 2002, the
33 commissioner shall periodically submit to the Legislature a list which
34 includes any school facilities project which has a State share of 100%
35 and the final eligible costs of the project. If the Legislature does not
36 disapprove the school facilities project by the adoption of a concurrent
37 resolution within 45 days, the project shall be deemed authorized.²]
38 Notwithstanding anything to the contrary contained in P.L. , c.
39 (C.)(now pending before the Legislature as this bill), an ECPA
40 district, at its option, may provide in its long-range facilities plan
41 submitted pursuant to section 4 of this act, for one or more community
42 early childhood education facilities projects. If the district has
43 requested designation of a demonstration project pursuant to section
44 6 of this act and is eligible to submit a plan for a community early
45 childhood education facilities project pursuant to this section, the

1 district shall be permitted to include the community early childhood
2 education facilities project as part of the demonstration project.

3 (1) An ECPA district seeking to initiate a community early
4 childhood education facilities project shall apply to the commissioner
5 for approval of the project. The application shall, at a minimum,
6 contain the following information: the name of the community
7 provider; evidence that the community provider is licensed by the
8 Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-
9 1 et seq.) and is a tax exempt nonprofit organization; evidence that the
10 community provider is or shall provide early childhood education
11 programs for the district; a description of the community early
12 childhood education facilities project; a schematic drawing of the
13 project, or at the option of the district, preliminary plans and
14 specification; a delineation and description of each of the functional
15 components of the project; identification of those portions of the
16 proposed project which shall be devoted in whole or in part to the
17 provision of early childhood education programs to 3 or 4-year old
18 children from the ECPA district; the estimated cost to complete the
19 project as determined by the district in consultation with the
20 community provider; and whether the facility provides services other
21 than early childhood education programs for 3 and 4-year old children,
22 pursuant to a contract with the ECPA district.

23 (2) The commissioner shall review the proposed early childhood
24 education facilities project to determine whether it is consistent with
25 the district's long-range facilities plan, whether it will provide a facility
26 which is structurally adequate and safe and capable of providing a
27 program which will enable preschool children being served pursuant
28 to the ECPA district's approved early childhood education operational
29 plan to meet the standards for early childhood education programs
30 established by the department and whether there is a need for
31 increased capacity or to rehabilitate existing space to meet these
32 standards. Only those facilities which are used for 3 or 4-year old
33 children pursuant to a contract with the ECPA district shall be eligible
34 for approval, provided that facilities which are jointly used by 3 or 4-
35 year old children from the ECPA district and from other districts shall
36 also be eligible for approval.

37 (3) If the commissioner approves the project, the commissioner
38 shall determine, in consultation with the authority, the cost to
39 complete the approved project, which shall be the reasonable,
40 estimated cost of the renovation or new construction necessary to
41 provide a facility which is structurally adequate and safe and capable
42 of providing a program which will enable preschool children being
43 served pursuant to the ECPA district's approved early childhood
44 education operation plan to meet the standards for early childhood
45 education programs established by the department. For projects
46 initiated by an Abbott district, the State support shall be 100% of

1 such reasonable, estimated cost. For projects initiated by an ECPA
2 district that is not an Abbott district, the State support shall be an
3 amount equal to 115% of the district aid percentage of that ECPA
4 district, of such reasonable, estimated cost. for except that the State
5 support shall not be less than 40% of such reasonable, estimated cost.
6 The commissioner shall issue a final project report to the authority
7 which shall contain a complete description of the project, the actual
8 location of the project, the total square footage of the project together
9 with a breakdown of total square footage by functional component;
10 any other factors to be considered by the authority in undertaking the
11 project; the names and addresses of the people to contact from the
12 district and the community provider; the amount of State support for
13 the project; and the amount of local support required from the
14 community provider to pay for costs, if any, of the project which have
15 not been approved by the commissioner for State support.

16 (4) Upon submission to the authority of a final project report, the
17 authority shall undertake the financing, acquisition, construction and
18 all other appropriate actions necessary to complete the community
19 early childhood education facilities project, provided, that if there is
20 local support required for the project, such actions shall not commence
21 until the authority receives the local support from the community
22 provider. The authority may, in its discretion, and upon consultation
23 with the commissioner, authorize a community provider to undertake
24 the acquisition, construction and all other appropriate action necessary
25 to complete the project, in which case the authority shall not provide
26 State support until the community provider provides the local support,
27 if any.

28 (5) In order to implement the arrangements established for
29 community early childhood education facilities projects, the authority
30 shall enter into an agreement with the district, the commissioner and
31 the community provider containing the terms and conditions
32 determined by the parties to be necessary to effectuate the project.

33 (6) The authority shall require as a condition of providing State
34 support for any community early childhood education facilities project
35 that the State support must be repaid by the community provider in the
36 event that (a) the commissioner determines that the project is no
37 longer being used for the purposes for which it was intended; or (b)
38 the project is sold, leased or otherwise conveyed to an individual or
39 organization that does not have tax exempt nonprofit or government
40 status.³

41

42 ²[6. (New section) The provisions of section 5 of P.L. , c. (C.)
43 (now pending before the Legislature as this bill) shall pertain to school
44 facilities projects designated to be demonstration projects except as
45 otherwise provided in this section.

46 a. For the initial three full fiscal years following the effective date

1 of this act, the State Treasurer may designate up to six school facilities
2 projects which the State Treasurer determines to be in the best
3 interests of the State and of the districts to be demonstration projects
4 pursuant to the provisions of this section.

5 b. A district and municipality may apply to the authority for the
6 designation of a school facilities project contained in a long-range
7 facilities plan submitted to the commissioner pursuant to section 4 of
8 P.L. , c. (C.) (now pending before the Legislature as this bill)
9 to be a demonstration project to provide for the coordination of local
10 economic development, redevelopment or community development
11 with a school facilities project. The application shall be accompanied
12 by substantively, parallel resolutions requesting the designation
13 adopted by the board of education of the district and the governing
14 body of the municipality. The application shall set forth: (1) a plan
15 for carrying out the redevelopment project as a whole, including the
16 construction of the school facilities project; (2) the name of the
17 redevelopment entity to undertake the project under the "Local
18 Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et
19 seq.); (3) a description of how the project fits into a redevelopment
20 plan adopted or to be adopted by the municipal governing body
21 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a
22 description of the community design features to be included in the
23 school facilities project.

24 c. The authority shall evaluate the request to determine whether
25 the school facilities project is suitable for designation as a
26 demonstration project and whether the proposed redevelopment entity
27 is suitable for designation as the entity to construct the demonstration
28 project based upon consideration of the following factors:

29 (1) whether the demonstration project furthers definite local
30 objectives as to appropriate land uses, density of population, and
31 improved traffic and public transportation, public utilities, recreational
32 and community facilities and other public improvements;

33 (2) whether the demonstration project provides significant social
34 and economic benefits to the municipality, its neighborhoods and
35 residents;

36 (3) whether the development of the school facilities project is
37 consistent with the local development plan;

38 (4) the extent to which the school facilities project contains
39 community design features which can be used by the community;

40 (5) whether the redevelopment entity has the current capacity to
41 construct the demonstration project;

42 (6) whether the redevelopment entity has the appropriate prior
43 experience in developing similar types of projects; and

44 (7) whether there exist donations from private entities for the
45 purpose of the demonstration project.

46 d. The authority's review of the proposed school facilities project

1 for designation as a demonstration project under this section shall
2 commence upon approval by the commissioner of the school facilities
3 project pursuant to section 5 of P.L. , c. (C.) (now pending
4 before the Legislature as this bill). Upon approval by the
5 commissioner of the school facilities project, and recommendation by
6 the authority that the school facilities project be a demonstration
7 project, the recommendation of the authority shall be forwarded to the
8 State Treasurer who shall determine whether the school facilities
9 project should be designated as a demonstration project. At the same
10 time as the authority forwards its recommendation to the State
11 Treasurer, the authority shall forward its recommendation to the
12 Urban Coordinating Council for review pursuant to subsection i. of
13 this section.

14 e. In addition to the requirements set forth in section 5 of this
15 act, a demonstration project may request inclusion in the final eligible
16 costs of the school facilities project, of all or any portion of the cost
17 of any community design features including any area, rooms,
18 equipment, recreational area or playground included in the school
19 facilities project which are to be used in common by students of the
20 district and by residents of the community, but there shall not be
21 included in the final eligible costs any portion of the cost of any
22 features which are not an integral part of the school building and
23 grounds and are not related to the advancement of the educational
24 success of district students. The commissioner shall approve the
25 inclusion of the community design features as part of the school
26 facilities project if he finds that the inclusion of the community design
27 features as part of the school facilities project would be conducive to
28 the usefulness and success of the project for both the students of the
29 district and the residents of the community. The commissioner may
30 condition his approval upon the adoption by the district of policies
31 suitable for assuring continuing community or educational access to
32 the community design features.

33 f. The cost of the community design features approved by the
34 commissioner shall be reviewed by the authority. The district shall
35 submit the documentation required by the authority for the authority
36 to make its determination. The authority shall, in its recommendation
37 to the commissioner pursuant to section 5 of this act, include its
38 recommendation with respect to the cost of the community design
39 features. The commissioner shall make the final determination with
40 respect to the inclusion of the cost of community design features in the
41 final eligible costs.

42 g. The authority shall provide funding for the State's share of the
43 final eligible costs of a school facilities project to be constructed as
44 part of a demonstration project pursuant to an agreement among the
45 authority, the redevelopment entity and the district which shall, in
46 addition to any other terms and conditions, set forth the terms for

1 disbursement of the State share and provide for the monitoring of
2 construction by the authority.

3 h. Upon completion of a demonstration project by a
4 redevelopment entity, the district shall submit to the commissioner a
5 plan to provide for the maintenance of the project and shall enter into
6 a contract which provides for that maintenance.

7 i. The Urban Coordinating Council shall review the
8 recommendations of the authority with respect to the demonstration
9 projects and shall advise the authority, redevelopment entity and the
10 district regarding the potential availability of funding for the
11 demonstration project, including, but not limited to, sources of funds
12 for acquisition, clearance, site remediation, and assemblage of land and
13 the development, redevelopment, construction or rehabilitation of any
14 structure or improvement included in the project.]²

15

16 ³[²6. (New section) a. The commissioner shall develop, for the
17 March 2002 Report on the Cost of Providing a Thorough and Efficient
18 Education and for subsequent reports, facilities efficiency standards for
19 elementary, middle, and high schools consistent with the core
20 curriculum school delivery assumptions in the report and sufficient for
21 the achievement of the core curriculum content standards, and for the
22 provision of required programs in Abbott districts and early childhood
23 education programs in the districts in which these programs are
24 required by the State. The area allowances per FTE student in each
25 class of the district shall be derived from these facilities efficiency
26 standards.

27 The facilities efficiency standards developed by the commissioner
28 shall not be construction design standards but rather shall represent the
29 instructional spaces, specialized instructional areas, and administrative
30 spaces that are determined by the commissioner to be educationally
31 adequate to support the achievement of the core curriculum content
32 standards and for the provision of required programs in Abbott
33 districts and early childhood education programs in the districts in
34 which these programs are required. A district may design, at its
35 discretion, the educational and other spaces to be included within the
36 school facilities project. The design of the project may eliminate
37 spaces in the facilities efficiency standards, include spaces not in the
38 facilities efficiency standards, or size spaces differently than in the
39 facilities efficiency standards upon a demonstration of the adequacy of
40 the school facilities project to deliver the core curriculum content
41 standards pursuant to paragraph (2) of subsection g. of section 5 of
42 this act.

43 Within a reasonable period of time after the effective date of P.L.,
44 c. (C.) (now pending before the Legislature as this bill), the
45 commissioner shall publish the facilities efficiency standards developed
46 for the 2000-2001, 2001-2002, and 2002-2003 school years in the

1 New Jersey Register. Within a reasonable period of time after 30 days
2 after publication in the New Jersey Register, the commissioner shall
3 file the facilities efficiency standards with the Office of Administrative
4 Law and those standards shall become effective immediately upon
5 filing with the Office of Administrative Law. During the 30-day
6 period the commissioner shall provide an opportunity for public
7 comment on the proposed facilities efficiency standards.

8 b. Within 90 days of the commissioner's receipt of a long-range
9 facilities plan for review, the commissioner shall determine whether the
10 plan is fully and accurately completed and whether all information
11 necessary for a decision on the plan has been filed by the district. If
12 the commissioner determines that the plan is complete, the
13 commissioner shall promptly notify the district in writing and shall
14 have 60 days from the date of that notification to determine whether
15 to approve the plan or not. If the commissioner determines that the
16 plan is not complete, the commissioner shall notify the district in
17 writing. The district shall provide to the commissioner whatever
18 information the commissioner determines is necessary to make the plan
19 accurate and complete. The district shall submit that information to
20 the commissioner, and the commissioner shall have 60 days from the
21 date of receipt of accurate and complete information to determine
22 whether to approve the plan or not.

23 c. Notwithstanding any provision in subsection b. of this section,
24 if at any time the number of long-range facilities plans filed by school
25 districts with the commissioner and pending review exceeds 20 % of
26 the number of school districts in New Jersey, the commissioner may
27 extend by 60 days the deadline for reviewing each plan pending at that
28 time.

29 d. By July 1, 2001 and every five years thereafter, the
30 Commissioner of Education shall recommend to the Legislature
31 criteria to be used in the designation of districts as Abbott districts.
32 The criteria may include, but not be limited to: the number of residents
33 per 1,000 within the municipality or municipalities in which the district
34 is situate who receive TANF; the district's equalized valuation per
35 resident pupil as equalized valuation is defined in section 3 of
36 P.L.1996, c.136 (C.18A:7F-3); the district's income per resident pupil
37 as district income is defined in section 3 of P.L.1996, c.138
38 (C.18A:7F-3); the population per square mile of the municipality or
39 municipalities in which the district is situate; and the municipal
40 overburden of the municipality or municipalities in which the district
41 is situate as that term is defined by the New Jersey Supreme Court in
42 Abbott v. Burke.

43 e. By July 1, 2001, the commissioner shall provide the Legislature
44 with recommendations to address the circumstances of districts which
45 are contiguous with two or more Abbott districts. The
46 recommendations shall address the issues of the financing of school

1 facilities projects and the funding of the educational and other
2 programs required within these districts as a result of their unique
3 demographic situation.

4 f. By July 1, 2001, the commissioner shall study the Safe Schools
5 Design Guidelines, prepared by the Florida Center for Community
6 Design and Research, which address the issues of school safety and
7 security through the design of school facilities. Based upon his study,
8 the commissioner shall issue recommendations to districts on the
9 appropriateness of including the Safe Schools Design Guidelines in the
10 design and construction of school facilities projects.^{2]}³

11

12 ³6. (New section) The provisions of section 5 of P.L. , c. (C.)
13 (now pending before the Legislature as this bill) shall pertain to school
14 facilities projects designated to be demonstration projects except as
15 otherwise provided in this section.

16 a. For the initial three full fiscal years following the effective date
17 of this act, the State Treasurer may designate up to six school facilities
18 projects which the State Treasurer determines to be in the best
19 interests of the State and of the districts to be demonstration projects
20 pursuant to the provisions of this section.

21 b. A district and municipality may apply to the authority for the
22 designation of a school facilities project contained in a long-range
23 facilities plan submitted to the commissioner pursuant to section 4 of
24 P.L. , c. (C.) (now pending before the Legislature as this bill)
25 to be a demonstration project to provide for the coordination of local
26 economic development, redevelopment or community development
27 with a school facilities project. The application shall be accompanied
28 by resolutions requesting the designation adopted by the board of
29 education of the district and the governing body of the municipality.
30 The application shall set forth: (1) a plan for carrying out the
31 redevelopment project as a whole, including the construction of the
32 school facilities project; (2) the name of the redevelopment entity to
33 undertake the project under the "Local Redevelopment and Housing
34 Law" P.L.1992, c.79 (C.40A:12A-1 et seq.); (3) a description of how
35 the project fits into a redevelopment plan adopted or to be adopted by
36 the municipal governing body pursuant to section 7 of P.L.1992, c.79
37 (C.40A:12A-7); and (4) a description of the community design
38 features to be included in the school facilities project.

39 c. The authority shall evaluate the request to determine whether
40 the school facilities project is suitable for designation as a
41 demonstration project and whether the proposed redevelopment entity
42 is suitable for designation as the entity to construct the demonstration
43 project based upon consideration of the following factors:

44 (1) whether the demonstration project furthers definite local
45 objectives as to appropriate land uses, density of population, and
46 improved traffic and public transportation, public utilities, recreational

1 and community facilities and other public improvements;
2 (2) whether the demonstration project provides significant social
3 and economic benefits to the municipality, its neighborhoods and
4 residents;
5 (3) whether the development of the school facilities project is
6 consistent with the local development plan;
7 (4) the extent to which the school facilities project contains
8 community design features which can be used by the community;
9 (5) whether the redevelopment entity has the current capacity to
10 construct the demonstration project;
11 (6) whether the redevelopment entity has the appropriate prior
12 experience in developing similar types of projects; and
13 (7) whether there exist donations from private entities for the
14 purpose of the demonstration project.
15 d. The authority's review of the proposed school facilities project
16 for designation as a demonstration project under this section shall
17 commence upon approval by the commissioner of the school facilities
18 project pursuant to section 5 of P.L. , c. (C.) (now pending
19 before the Legislature as this bill). Upon approval by the
20 commissioner of the school facilities project, and recommendation by
21 the authority that the school facilities project be a demonstration
22 project, the recommendation of the authority shall be forwarded to the
23 State Treasurer who shall determine whether the school facilities
24 project should be designated as a demonstration project. At the same
25 time as the authority forwards its recommendation to the State
26 Treasurer, the authority shall forward its recommendation to the
27 Urban Coordinating Council for review pursuant to subsection i. of
28 this section.
29 e. In addition to the requirements set forth in section 5 of this act,
30 a demonstration project may request inclusion in the final eligible costs
31 of the school facilities project, of all or any portion of the cost of any
32 community design features including any area, rooms, equipment,
33 recreational area or playground included in the school facilities project
34 which are to be used in common by students of the district and by
35 residents of the community, but there shall not be included in the final
36 eligible costs any portion of the cost of any features which are not an
37 integral part of the school building and grounds or exceed the facilities
38 efficiency standards. The commissioner shall approve the inclusion of
39 the community design features as part of the school facilities project
40 if he finds that the inclusion of the community design features as part
41 of the school facilities project would be conducive to the usefulness
42 and success of the project for both the students of the district and the
43 residents of the community. The commissioner may condition his
44 approval upon the adoption by the district of policies suitable for
45 assuring continuing community or educational access to the
46 community design features.

1 f. The cost of the community design features approved by the
2 commissioner shall be reviewed by the authority. The district shall
3 submit the documentation required by the authority for the authority
4 to make its determination. The authority shall, in its recommendation
5 to the commissioner pursuant to section 5 of this act, include its
6 recommendation with respect to the cost of the community design
7 features. The commissioner shall make the final determination with
8 respect to the inclusion of the cost of community design features in the
9 final eligible costs.

10 g. The authority shall provide funding for the State's share of the
11 final eligible costs of a school facilities project to be constructed as
12 part of a demonstration project pursuant to an agreement among the
13 authority, the redevelopment entity and the district which shall, in
14 addition to any other terms and conditions, set forth the terms for
15 disbursement of the State share and provide for the monitoring of
16 construction by the authority.

17 h. Upon completion of a demonstration project by a
18 redevelopment entity, the district shall submit to the commissioner a
19 plan to provide for the maintenance of the project and shall enter into
20 a contract which provides for that maintenance.

21 i. The Urban Coordinating Council shall review the
22 recommendations of the authority with respect to the demonstration
23 projects and shall advise the authority, redevelopment entity and the
24 district regarding the potential availability of funding for the
25 demonstration project, including, but not limited to, sources of funds
26 for acquisition, clearance, site remediation, and assemblage of land and
27 the development, redevelopment, construction or rehabilitation of any
28 structure or improvement included in the project.

29 j. Any district may consult with the Urban Coordinating Council
30 with respect to the potential availability of funding for aspects of the
31 school facilities project, including, but not limited to, sources of funds
32 for acquisition, clearance, site remediation, and assemblage of land and
33 the development, redevelopment, construction or rehabilitation of any
34 structure or improvement included in the project.³

35
36 7. (New section) a. Preliminary eligible costs for construction of
37 new school facilities and additions to school facilities, characterized by
38 an increase in the square footage of the school facility, shall be
39 approved only if necessary for reasons of unhoused students.
40 Unhoused students are the number of students to be housed in a
41 school building, but which cannot be housed in an existing building
42 without additional space or a new building in order to maintain
43 educational adequacy; or which are temporarily being housed in space
44 that was originally designed or intended for instruction in specialized
45 areas including, but not limited to, science, art, music, other hands-on
46 ²learning² experiences and comprehensive health and physical

1 education. Unhoused students are calculated by subtracting the
2 projected enrollment for a school building from its functional capacity.

3 Preliminary eligible costs for construction of new school facilities
4 and additions to school facilities pursuant to this subsection shall be
5 calculated as follows:

6 Preliminary eligible costs = AU x C ³[plus other allowable costs]³

7 where

8 AU is the approved area for unhoused students; and

9 C is the area cost allowance.

10 b. Preliminary eligible costs shall be approved for a rehabilitation
11 project which means the reconstruction, remodeling, alteration,
12 modernization, renovation or repair of school facilities but only for the
13 purpose of keeping the school building functional for its original
14 purpose or for new purposes that can be accomplished without
15 increasing the gross square footage of the original facility.

16 Preliminary eligible costs for rehabilitation projects pursuant to this
17 subsection shall be calculated as follows:

18 Preliminary eligible costs = estimated actual costs.

19 All school facilities shall be deemed suitable for rehabilitation
20 unless a pre-construction evaluation undertaken by the district
21 demonstrates to the satisfaction of the commissioner that the structure
22 might pose a risk to the safety of the occupants even after
23 rehabilitation, or that rehabilitation is not cost-effective. Whenever a
24 district determines to undertake new construction rather than a
25 rehabilitation project, the district shall undertake a preconstruction
26 evaluation to determine whether, because of health and safety or
27 efficiency, it would be more feasible to replace rather than renovate
28 the school facility. When the district demonstrates to the satisfaction
29 of the commissioner that replacement is more feasible, the district shall
30 be authorized to have the school facility replaced rather than renovated
31 and the preliminary eligible costs shall be determined pursuant to
32 subsection a. of this section. The estimated costs of a rehabilitation
33 project shall contain only those costs necessary for compliance with
34 the Uniform Construction Code, health and safety, and educational
35 adequacy as determined pursuant to the facilities efficiency standards
36 and paragraph (1) of subsection g. of section 5 of this act.

37 c. When construction done in lieu of rehabilitation projects
38 qualifies as new construction, the approved area for unhoused students
39 shall be determined by the commissioner, with consideration of the
40 existing school facilities in the district.

41 d. Preliminary eligible costs for ³new³ construction done in lieu of
42 rehabilitation projects which does not meet the requirements of
43 subsection b. of this section shall be determined in accordance with the
44 methodology for aiding rehabilitation projects, with the preliminary
45 eligible costs determined pursuant to subsection b. of this section.

46 e. Preliminary eligible costs for purchase of an existing facility to

1 be used as a school facility shall be determined in accordance with the
2 methodology for new construction, with preliminary eligible costs
3 determined pursuant to subsection a. of this section.

4 f. Notwithstanding the provisions of subsections a. and b. of this
5 section, preliminary eligible costs for any addition or reconstruction,
6 remodeling, alteration, modernization, renovation or repair made to a
7 purchased facility within five years of purchase shall be determined as
8 follows:

9 Preliminary eligible costs = (ACP-PC) x (C/CP) ³ [plus other
10 allowable costs]³

11 where

12 ACP is the preliminary eligible costs for the facilities purchase
13 pursuant to subsection e. of this section;

14 PC is the purchase cost for the facility;

15 C is the area cost allowance at the time of application for the
16 renovation; and

17 CP is the area cost allowance at the time of purchase of the
18 facility.

19 Preliminary eligible costs so calculated shall not be less than
20 zero.

21 ³[g. Other allowable costs shall include the costs of site
22 development, acquisition of land or other real property interests
23 necessary to effectuate the school facilities project, fees for the
24 services of design professionals, including architects, engineers,
25 construction managers and other design professionals, legal fees, and
26 the costs associated with financing the school facilities project. Other
27 allowable costs for school facilities projects to be undertaken by the
28 authority shall be determined by the authority. Other allowable costs
29 for school facilities projects to be undertaken by a district ²[or, in the
30 case of a demonstration project, by a redevelopment entity]² shall be
31 equal to the actual costs unless the commissioner, in consultation with
32 the authority, determines these costs to be unreasonable in light of the
33 experience of similarly situated districts.]³

34
35 8. (New section) a. The number of unhoused students shall be
36 calculated as the number of FTE students who are projected to be
37 enrolled in preschool handicapped, preschool, kindergarten, grades 1
38 through 12, and special education services pupil educational programs
39 provided in a district within five years, which are in excess of the
40 functional capacity of the district's current school facilities or the
41 functional capacity of the school facilities which will be available
42 within five years other than the school facilities for which the
43 preliminary eligible costs are determined, based upon the district's
44 long-range facilities plan. The determination of unhoused capacity
45 shall separately consider projected enrollments and functional
46 capacities at the early childhood and elementary (preschool through

1 grade 5), middle (grades 6 through 8), and high school (grades 9
2 through 12) levels. For the purpose of calculating the district's
3 unhoused students, special education services students shall be
4 considered part of the grade level to which the students' chronological
5 age corresponds. In the event that the commissioner approves a
6 school facilities project which involves the construction of a new
7 school facility to replace an existing school facility, which shall
8 accommodate both the unhoused students and the students in the
9 existing school facility, the calculation of the number of unhoused
10 students shall include the number of students currently attending the
11 existing facility which is to be replaced.

12 b. Approved area for unhoused students (AU) shall be determined
13 according to the following formula:

14 $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$
15 where

16 UEC, UE, UM, UH are the numbers of unhoused students in the
17 early childhood, elementary, middle, and high school enrollment
18 categories, respectively; and

19 SEC, SE, SM, SH are the area allowances per FTE student in
20 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
21 and grades 9 through 12, respectively. Area allowances shall be
22 determined based on the grade level of a student regardless of the
23 grade configurations used in the school buildings of the district.

24 The minimum area allowance per FTE student shall be as follows:

25 Preschool through grade 5	125 sq. ft.
26 Grades 6 through 8	³ [136] <u>134</u> ³
27 sq. ft.	
28 Grades 9 through 12	151 sq. ft.

29
30 The commissioner, in consultation with the State Treasurer and the
31 Commissioner of the Department of Community Affairs, shall adopt
32 regulations that establish a process for the consideration of special
33 circumstances, in addition to those provided in section 5 of this act, in
34 which the area allowances per FTE student established pursuant to this
35 subsection may be adjusted. Any decision made by the commissioner
36 pursuant to those regulations shall be made in consultation with the
37 State Treasurer and the Commissioner of the Department of
38 Community Affairs.

39
40 9. (New section) a. State debt service aid for capital
41 investment in school facilities for a district whose district aid
42 percentage is less than ³[60%] 55%³ and which elects not to have the
43 ¹[building]¹ ³[²building²]³ authority construct a school facilities
44 project or to finance the project under section 15 of this act, shall be
45 distributed upon a determination of preliminary eligible costs by the
46 commissioner, according to the following formula:

1 Aid is the sum of A for each issuance of school bonds issued for a
2 school facilities project approved by the commissioner after the
3 effective date of P.L. , c. (C.) (now pending before the
4 Legislature as this bill)

5 where

6 $A = B \times AC/P \times (DAP \times 1.15) \times M$, with $AC/P = 1$

7 whenever AC/P would otherwise yield a number greater than one,

8 and where:

9 B is the district's debt service for the individual issuance for the
10 fiscal year;

11 AC is the preliminary eligible costs determined pursuant to section
12 7 of this act;

13 P is the principal of the individual issuance plus any other funding
14 sources approved for the school facilities project;

15 DAP is the district's district aid percentage as defined pursuant to
16 section 3 of this act; and

17 M is a factor representing the degree to which a district has
18 fulfilled maintenance requirements for a school facilities project
19 determined pursuant to subsection b. of this section.

20 For county special services school districts, DAP shall be that of
21 the county vocational school district in the same county.
22 Notwithstanding any provision of this subsection to the contrary, State
23 debt service aid shall not be less than 40% of the preliminary eligible
24 ²[cost] costs².

25 b. The maintenance factor (M) shall be 1.0 except when one of the
26 following conditions applies, in which case the maintenance factor
27 shall be as specified:

28 (1) Effective ten years from the date of the enactment of P.L. ,
29 c. (C.) (now pending before the Legislature as this bill), the
30 maintenance factor for aid for reconstruction, remodeling, alteration,
31 modernization, renovation or repair, or for an addition to a school
32 facility, shall be zero for all school facilities projects for which the
33 district fails to demonstrate over the ten years preceding issuance a net
34 investment in maintenance of the related school facility of at least 2%
35 of the replacement cost of the school facility, determined pursuant to
36 subsection b. of section 7 of this act using the area cost allowance of
37 the year ten years preceding the year in which the school bonds are
38 issued.

39 (2) For new construction, additions, and school facilities aided
40 under subsection b. of section 7 of this act supported by financing
41 issued for projects approved by the commissioner after the effective
42 date of P.L. , c. (C.) (now pending before the Legislature as
43 this bill), beginning in the fourth year after occupancy of the school
44 facility, the maintenance factor shall be reduced according to the
45 following schedule for all school facilities projects for which the
46 district fails to demonstrate in the prior fiscal year an investment in

1 maintenance of the related school facility of at least two-tenths of 1 %
 2 of the replacement cost of the school facility, determined pursuant to
 3 subsection b. of section 7 of this act.

4

5 Maintenance Percentage	6 Maintenance Factor (M)
7 .199% - .151%	75%
8 .150% - .100%	50%
9 Less than .100%	Zero

9

10 (3) Within one year of the enactment of P.L. , c. (C.) (now
 11 pending before the Legislature as this bill), the commissioner shall
 12 promulgate rules requiring districts to develop a long-range
 13 maintenance plan and specifying the expenditures that qualify as an
 14 appropriate investment in maintenance for the purposes of this
 15 subsection.

16 c. Any district which obtained approval from the commissioner
 17 since September 1, 1998 and prior to the effective date of P.L. , c.
 18 (C.) (now pending before the Legislature as this bill) of the
 19 educational specifications for a school facilities project or obtained
 20 approval from the Department of Community Affairs or the
 21 appropriately licensed municipal code official since September 1, 1998
 22 of the final construction plans and specifications, and the district has
 23 issued debt, may elect to have the final eligible costs of the project
 24 determined pursuant to section 5 of this act and to receive debt service
 25 aid under this section or under section 10 of this act.

26 Any district which received approval from the commissioner for a
 27 school facilities project at any time prior to the effective date of P.L.,
 28 c. (C.) (now pending before the Legislature as this bill), and has
 29 not issued debt, other than short term notes, may submit an
 30 application pursuant to section 5 of this act to have the final eligible
 31 costs of the project determined pursuant to that section and to have
 32 the authority construct the project; or, at its discretion, the district
 33 may choose to receive debt service aid under this section or under
 34 section 10 of this act or to receive a grant under section 15 of this act.

35 ¹For the purposes of this subsection, the "issuance of debt" shall
 36 include lease purchase agreements in excess of five years.¹

37

38 10. (New section) For each issuance of school bonds or
 39 certificates of participation issued for a school facilities project
 40 approved by the commissioner prior to the effective date of P.L. , c.
 41 (C.) (now pending before the Legislature as this bill):

42 Aid is the sum of A

43 where

44 $A = B \times \text{CCSAID/TEBUD}$

45 and where

46 B is the district's total debt service or lease purchase payment for

1 the individual issuance for the fiscal year ²[, provided that for the
2 purpose of determining debt service or lease purchase payment under
3 this section the cost of site acquisition may be included]²;

4 CCSAID is the district's core curriculum standards aid amount
5 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
6 and

7 TEBUD is the district's T&E budget determined pursuant to
8 section 13 of P.L.1996, c.138(C.18A:7F-13).

9 For county special services school districts, CCSAID/TEBUD shall
10 be that of the county vocational school district in the same county.

11

12 11. (New section) A school facilities project shall not be
13 constructed unless the local share of the project, if any, is approved
14 in accordance with the provisions for the approval of capital projects
15 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
16 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

17

18 12. (New section) A district, other than a State-operated school
19 district, that sought approval pursuant to section 11 of this act of a
20 school facilities project without excess costs but failed to receive that
21 approval, and within the three years prior to that, sought and failed to
22 receive approval of that school facilities project with or without excess
23 costs, may submit the project to the commissioner and request that the
24 commissioner approve the project and authorize the issuance of school
25 bonds for the local share of the project. Upon receipt of the request,
26 the commissioner shall review the school facilities project and
27 determine whether the project is necessary for the provision of a
28 thorough and efficient system of education in the district. If the
29 commissioner concludes that the project is necessary, the
30 commissioner may approve the project without excess costs and
31 authorize the issuance of school bonds to fund the local share. In
32 addition to the amount of taxes determined by the legal voters of the
33 district at the annual school election, the secretary of the board of
34 education shall certify the amount required for the repayment of the
35 interest and principal of the bonds required to fund the local share
36 amount approved by the commissioner in the same manner required
37 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
38 and the amount so certified shall be included in the taxes assessed,
39 levied and collected in the municipality or municipalities comprising
40 the school district for those purposes.

41 Any school facilities project authorized pursuant to this section
42 shall be constructed by the ³[²building²]³ authority. Nothing in this
43 section shall preclude a State-operated school district from using the
44 process established pursuant to section 2 of P.L.1991, c.139
45 (C.18A:7A-46.2) to obtain the approval of the commissioner to
46 undertake a school facilities project.

1 13. (New section) a. The ³[²facilities²]³ authority shall be
2 responsible for the financing ²[, planning, design, construction
3 management, acquisition, construction, and completion]² ³, planning,
4 design, construction management, acquisition, construction, and
5 completion³ of school facilities projects ³ ² and the building authority
6 shall be responsible for the planning, design, construction
7 management, acquisition, construction, and completion of school
8 facilities projects²]³. Upon submission to the ³[²building²]³ authority
9 of a final project report, the ³[²building²]³ authority shall undertake
10 the acquisition, construction, and all other appropriate actions
11 necessary to complete the project. When the final eligible costs of a
12 school facilities project are less than or equal to \$500,000, the
13 ³[²building²]³ authority may, in its discretion, authorize a district to
14 undertake the acquisition, construction and all other appropriate
15 actions necessary to complete the project and enter into a grant
16 agreement with the district for the payment of the State share.

17 b. The ³[²facilities²]³ authority shall undertake the financing of
18 school facilities projects pursuant to the provisions of this act. The
19 ³[²facilities²]³ authority may, in its discretion and upon consultation
20 with the district, finance only the State share of the school facilities
21 project or the State share and the local share of the project. In the
22 event that the ³[²facilities²]³ authority finances only the State share
23 of a project, the ³[²building²]³ authority shall not commence
24 acquisition or construction of the project until the ³[²building²]³
25 authority receives the local share from the district.

26 c. In order to implement the ³[²construction and finance²]³
27 arrangements established for school facilities projects which are to be
28 constructed by the ³[²building²]³ authority and financed ³[²by the
29 facilities authority²]³ pursuant to this section, a district shall enter into
30 an agreement with the ³[²building²]³ authority ³[², the facilities
31 authority,²]³ and the commissioner containing the terms and
32 conditions determined by the parties to be necessary to effectuate the
33 project.

34 d. Upon completion by the ³[²building²]³ authority of a school
35 facilities project, the district shall enter into an agreement with the
36 ³[²building²]³ authority to provide for the maintenance of the project
37 by the district. In the event that the school facilities project is
38 constructed by a district, upon the completion of the project, the
39 district shall submit to the commissioner a plan to provide for the
40 maintenance of the project by the district. Any agreement or plan shall
41 contain, in addition to any other terms and provisions, a requirement
42 for the establishment of a maintenance reserve fund, the funding levels
43 of which shall be as set forth in regulations adopted by the
44 commissioner pursuant to section 26 of this act.

1 ³[²e. There is hereby established a separate fund entitled the
2 "School Facilities Construction Fund." This fund shall be maintained
3 by the building authority separate and apart from any other funds of
4 the building authority and may be held in depositaries as may be
5 selected by the building authority and invested and reinvested as other
6 funds in the custody of the building authority, subject to the approval
7 of the State Treasurer. All interest or other income or earnings
8 derived from the investment or reinvestment of moneys in the fund
9 shall be credited to the fund. Any grants, contributions, donations and
10 reimbursements \from federal aid programs and from other public or
11 private sources as may be used lawfully for the purposes of this act
12 shall also be held in the fund, but shall be expended in accordance with
13 any conditions or requirements attached thereto. The moneys in the
14 fund are specifically dedicated and shall be applied to the cost of
15 school facilities projects undertaken by the building authority pursuant
16 to this act. The fund shall be credited with the proceeds of bonds
17 issued pursuant to section 14 of this act; any moneys appropriated or
18 otherwise made available to it by the Legislature; net earnings received
19 from the investment or deposit of monies in the fund, and any other
20 moneys which the building authority determines to deposit therein.

21 f. Upon the issuance by the facilities authority of bonds pursuant
22 to section 14 of this act, the proceeds of the bonds less costs of
23 issuance shall be transferred to the building authority for deposit into
24 the School Facilities Construction Fund.

25 g. In order to implement the arrangements provided for in this act,
26 the State Treasurer, the facilities authority, the building authority and
27 the commissioner are hereby authorized to enter into one or more
28 contracts. The contracts shall provide, in addition to other terms and
29 conditions, for the payment by the facilities authority to the building
30 authority pursuant to subsection f. of this section in order for the
31 building authority to carry out its responsibilities as set forth in this
32 act. The contract or contracts shall be on terms and conditions as
33 determined by the parties, provided that the incurrence of any
34 obligations of the State under the contract or contracts, if any, shall be
35 subject to and dependent upon appropriations being made from time
36 to time by the Legislature for the purposes of this act.²³

37

38 14. (New section) Notwithstanding any other provisions of law
39 to the contrary:

40 a. The ³[²facilities²]³ authority shall have the power, pursuant to
41 the provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
42 ³[N.J.S.18A:72A-1 et seq.²] P.L.1974, c.80 (C.34:1B-1 et seq.)³, to
43 issue bonds and refunding bonds, incur indebtedness and borrow
44 money secured, in whole or in part, by monies received pursuant to
45 sections 17, 18 and 19 of this act for the purposes of: financing all or
46 a portion of the costs of school facilities projects and any costs

1 related to the issuance thereof, including, but not limited to, the
2 administrative, insurance, operating and other expenses of the
3 ³[²facilities²]³ authority to undertake the financing ¹, design,
4 construction and maintenance]² ³, design, construction and
5 maintenance³ of school facilities projects ³[²and the administrative,
6 insurance and operating expenses of the building authority to
7 undertake the design, construction and maintenance of school facilities
8 projects]²]³; lending moneys to local units to pay the costs of all or a
9 portion of school facilities projects and any costs related to the
10 issuance thereof; funding the grants to be made pursuant to section 15
11 of this act; and financing the acquisition of school facilities projects to
12 permit the refinancing of debt by the district pursuant to section 16 of
13 this act. ²The aggregate principal amount of the bonds, notes or other
14 obligations issued by the facilities authority shall not exceed:
15 \$100,000,000 for the State share of costs for county vocational
16 school district school facilities projects; \$6,000,000,000 for the State
17 share of costs for Abbott district school facilities projects; and
18 \$2,500,000,000 for the State share of costs for school facilities
19 projects in all other districts. This limitation shall not include any
20 bonds, notes or other obligations issued for refunding purposes.²

21 The ³[²facilities²]³ authority may establish reserve funds to further
22 secure bonds and refunding bonds issued pursuant to this section and
23 may issue bonds to pay for the administrative, insurance and operating
24 costs of the ³[²facilities²]³ authority ³[²and the building authority²]³
25 in carrying out the provisions of this act. In addition to its bonds and
26 refunding bonds, the ³[²facilities²]³ authority shall have the power to
27 issue subordinated indebtedness, which shall be subordinate in lien to
28 the lien of any or all of its bonds or refunding bonds as the
29 ³[²facilities²]³ authority may determine.

30 b. The ³[²facilities²]³ authority shall issue the bonds or refunding
31 bonds in such manner as it shall determine in accordance with the
32 provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
33 ³[N.J.S.18A:72A-1 et seq.²] P.L.1974, c.80 (C.34:1B-1 et seq.)³;
34 provided that notwithstanding any other law to the contrary, no
35 resolution adopted by the ³[²facilities²]³ authority authorizing the
36 issuance of bonds or refunding bonds pursuant to this section shall be
37 adopted or otherwise made effective without the approval in writing
38 of the State Treasurer; and refunding bonds issued to refund bonds
39 issued pursuant to this section shall be issued on such terms and
40 conditions as may be determined by the ³[²facilities²]³ authority and
41 the State Treasurer. The ³[²facilities²]³ authority may, in any
42 resolution authorizing the issuance of bonds or refunding bonds issued
43 pursuant to this section, pledge the contract with the State Treasurer
44 provided for pursuant to section 18 of this act, or any part thereof, or
45 may pledge all or any part of the repayments of loans made to local

1 units pursuant to section 19 of this act for the payment or redemption
2 of the bonds or refunding bonds, and covenant as to the use and
3 disposition of money available to the authority for payment of the
4 bonds and refunding bonds. All costs associated with the issuance of
5 bonds and refunding bonds by the ³[²facilities²]³ authority for the
6 purposes set forth in this act may be paid by the ³[²facilities²]³
7 authority from amounts it receives from the proceeds of the bonds or
8 refunding bonds, and from amounts it receives pursuant to sections
9 17, 18, and 19 of this act. The costs may include, but shall not be
10 limited to, any costs relating to the issuance of the bonds or refunding
11 bonds, administrative costs of the ³[²facilities²]³ authority attributable
12 to the making and administering of loans and grants to fund school
13 facilities projects, and costs attributable to the agreements entered into
14 pursuant to subsection d. of this section.

15 c. Each issue of bonds or refunding bonds of the ³[²facilities²]³
16 authority shall be special obligations of the ³[²facilities²]³ authority
17 payable out of particular revenues, receipts or funds, subject only to
18 any agreements with the holders of bonds or refunding bonds, and may
19 be secured by other sources of revenue, including, but not limited to,
20 one or more of the following:

21 (1) Pledge of the revenues and other receipts to be derived from
22 the payment of local unit obligations and any other payment made to
23 the ³[²facilities²]³ authority pursuant to agreements with any local
24 unit, or a pledge or assignment of any local unit obligations, and the
25 rights and interest of the authority therein;

26 (2) Pledge of rentals, receipts and other revenues to be derived
27 from leases or other contractual arrangements with any person or
28 entity, public or private, including one or more local units, or a pledge
29 or assignment of those leases or other contractual arrangements and
30 the rights and interests of the ³[²facilities²]³ authority therein;

31 (3) Pledge of all moneys, funds, accounts, securities and other
32 funds, including the proceeds of the bonds;

33 (4) Pledge of the receipts to be derived from payments of State
34 aid to the ³[²facilities²]³ authority pursuant to section 21 of this act;

35 (5) Pledge of the contract or contracts with the State Treasurer
36 pursuant to section 18 of this act;

37 (6) Pledge of any sums remitted to the local unit by donation from
38 any person or entity, public or private, subject to the approval of the
39 State Treasurer;

40 (7) A mortgage on all or any part of the property, real or personal,
41 comprising a school facilities project then owned or thereafter to be
42 acquired, or a pledge or assignment of mortgages made to the
43 ³[²facilities²]³ authority by any person or entity, public or private,
44 including one or more local units and rights and interests of the
45 ³[²facilities²]³ authority therein; and

1 (8) The receipt of any grants, reimbursements or other payments
2 from the federal government.

3 d. The resolution authorizing the issuance of bonds or refunding
4 bonds pursuant to this section may also provide for the ³[²facilities²]³
5 authority to enter into any revolving credit agreement, agreement
6 establishing a line of credit or letter of credit, reimbursement
7 agreement, interest rate exchange agreement, currency exchange
8 agreement, interest rate floor or cap, options, puts or calls to hedge
9 payment, currency, rate, spread or similar exposure or similar
10 agreements, float agreements, forward agreements, insurance
11 contracts, surety bonds, commitments to purchase or sell bonds,
12 purchase or sale agreements, or commitments or other contracts or
13 agreements and other security agreements approved by the
14 ³[²facilities²]³ authority in connection with the issuance of the bonds
15 or refunding bonds pursuant to this section. In addition, the
16 ³[²facilities²]³ authority may, in anticipation of the issuance of the
17 bonds or the receipt of appropriations, grants, reimbursements or other
18 funds, including, without limitation, grants from the federal
19 government for school facilities projects, issue notes, the principal of
20 or interest on which, or both, shall be payable out of the proceeds of
21 notes, bonds or other obligations of the ³[²facilities²]³ authority or
22 appropriations, grants, reimbursements or other funds or revenues of
23 the ³[²facilities²]³ authority.

24 e. The ³[²facilities²]³ authority is authorized to engage, subject
25 to the approval of the State Treasurer and in such manner as the State
26 Treasurer shall determine, the services of financial advisors and
27 experts, placement agents, underwriters, appraisers, and other
28 advisors, consultants and agents as may be necessary to effectuate the
29 financing of school facilities projects.

30 f. Bonds and refunding bonds issued by the ³[²facilities²]³
31 authority pursuant to this section shall be special and limited
32 obligations of the ³[²facilities²]³ authority payable from, and secured
33 by, funds and moneys determined by the ³[²facilities²]³ authority in
34 accordance with this section. Notwithstanding any other provision of
35 law or agreement to the contrary, any bonds and refunding bonds
36 issued by the ³[²facilities²]³ authority pursuant to this section shall
37 not be secured by the same property as bonds and refunding bonds
38 issued by the ³[²facilities²]³ authority to finance projects other than
39 school facilities projects. Neither the members of the ³[²facilities²]³
40 authority nor any other person executing the bonds or refunding bonds
41 shall be personally liable with respect to payment of interest and
42 principal on these bonds or refunding bonds. Bonds or refunding
43 bonds issued pursuant to this section shall not be a debt or liability of
44 the State or any agency or instrumentality thereof, except as otherwise
45 provided by this subsection, either legal, moral or otherwise, and

1 nothing contained in this act shall be construed to authorize the
2 ³[²facilities²]³ authority to incur any indebtedness on behalf of or in
3 any way to obligate the State or any political subdivision thereof, and
4 all bonds and refunding bonds issued by the ³[²facilities²]³ authority
5 shall contain a statement to that effect on their face.

6 g. The State hereby pledges and covenants with the holders of any
7 bonds or refunding bonds issued pursuant to this act that it will not
8 limit or alter the rights or powers vested in the ³[²facilities²]³
9 authority by this act, nor limit or alter the rights or powers of the
10 State Treasurer in any manner which would jeopardize the interest of
11 the holders or any trustee of the holders, or inhibit or prevent
12 performance or fulfillment by the ³[²facilities²]³ authority or the State
13 Treasurer with respect to the terms of any agreement made with the
14 holders of the bonds or refunding bonds or agreements made pursuant
15 to subsection d. of this section; except that the failure of the
16 Legislature to appropriate moneys for any purpose of this act shall not
17 be deemed a violation of this section.

18 h. The ³[²facilities authority and the building²]³ authority may
19 charge to and collect from local units, districts, the State and any other
20 person, any fees and charges in connection with the ³[²facilities
21 authority's or building²]³ authority's actions undertaken with respect
22 to school facilities projects, including, but not limited to, fees and
23 charges for the ³[²facilities²]³ authority's administrative, organization,
24 insurance, operating and other expenses incident to the financing ²[,
25 planning, design, construction management, acquisition, construction,
26 completion and placing into service and maintenance]^{2 3}, planning,
27 design, construction management, acquisition, construction,
28 completion and placing into service and maintenance³ of school
29 facilities projects ³[²and the building authority's administrative,
30 organization, insurance, operating and other expenses incident to the
31 planning, design, construction management, acquisition, construction,
32 completion and placing into service and maintenance of school
33 facilities projects²]³. Notwithstanding any provision of this act to the
34 contrary, no Level II district or a district whose district aid percentage
35 is greater than or equal to ³[60%] 55%³ but less than 100% shall be
36 responsible for the payment of any fees and charges related to the
37 ³[²building²]³ authority's operating expenses.

38
39 15. (New section) In the case of a district whose district aid
40 percentage is less than ³[60%] 55%³ and which elects not to have the
41 ³[²building²]³ authority undertake the construction of the school
42 facilities project, for any project approved by the commissioner after
43 the effective date of this act, the district may elect to receive a one-
44 time grant for the State share of the project rather than annual debt
45 service aid under section 9 of this act. The State share payable to the

1 district shall equal the product of the project's final eligible costs and
2 115% of the district aid percentage or 40%, whichever is greater. The
3 ³[²facilities²]³ authority shall provide grant funding for the State's
4 share of the final eligible costs of a school facilities project pursuant
5 to an agreement between the district and the ³[²facilities²]³ authority
6 which shall, in addition to other terms and conditions, set forth the
7 terms of disbursement of the State share. The funding of the State
8 share shall not commence until the district secures financing for the
9 local share.

10
11 16. (New section) In addition to the other powers and duties
12 which have been granted to the ³[²facilities²]³ authority, whenever
13 any local unit finances the construction or acquisition of a school
14 facilities project which would otherwise qualify under this act except
15 that the debt was issued prior to the effective date of this act, the
16 ³[²facilities²]³ authority may refinance the debt issued by the local
17 unit through the issuance of bonds secured by repayments of loans
18 made to the local units and may purchase the work or improvement
19 and lease the same to the district, subject to the approval of the State
20 Treasurer; except that the amount of the purchase price for a school
21 facilities project shall not exceed the original cost. Each loan to a
22 local unit pursuant to this section shall be evidenced by local unit
23 obligations and shall be authorized and issued as provided by law.
24 Notwithstanding the provisions of any law to the contrary, the local
25 unit obligations may be sold at private sale to the ³[²facilities²]³
26 authority at any price, whether or not less than par value, and shall be
27 subject to redemption prior to maturity at any times and at any prices
28 as the ³[²facilities²]³ authority and the local unit may agree. All
29 powers, rights, obligations and duties granted to or imposed upon the
30 ³[²facilities²]³ authority, districts, State departments and agencies or
31 others by this act in respect to school facilities projects shall apply to
32 the same extent with respect to any refinance of debt pursuant to this
33 section; except that any action otherwise required to be taken at a
34 particular time in the implementation of a school facilities project may,
35 when the circumstances require in connection with a refinance of debt
36 pursuant to this section, be taken with the same effect as if taken at
37 that particular time. Upon repayment of the bonds or provision for
38 repayment of bonds issued by the ³[²facilities²]³ authority to refinance
39 the debt of the local unit, the school facilities project shall be
40 transferred to the district.

41
42 17. (New section) In each fiscal year the State Treasurer shall pay
43 from the General Fund to the ³[²facilities²]³ authority ³[²and the
44 building authority²]³, in accordance with a contract ~~between~~
45 ³[among²] between³ the State Treasurer ²[and] ³[,²] and³ the

1 ³[²facilities authority and the building²]³ authority as authorized
2 pursuant to section 18 of this act, an amount equal to the debt service
3 amount due to be paid in the State fiscal year on the bonds or
4 refunding bonds of the ³[²facilities²]³ authority issued or incurred
5 pursuant to section 14 of this act and any additional costs authorized
6 pursuant to that section; provided that all such payments from the
7 General Fund shall be subject to and dependent upon appropriations
8 being made from time to time by the Legislature for those purposes,
9 and provided further that all payments shall be used only to pay for the
10 costs of school facilities projects and the costs of financing those
11 projects.

12

13 18. (New section) The State Treasurer ²[and] ³[² and³ the
14 ³[²facilities²]³ authority ³[²and the building authority²]³ are
15 authorized to enter into one or more contracts to implement the
16 payment arrangement provided for in section 17 of this act. The
17 contract shall provide for payment by the State Treasurer of the
18 amounts required pursuant to section 17 of this act and shall set forth
19 the procedure for the transfer of monies for the purpose of that
20 payment. The contract shall contain terms and conditions as
21 determined by the parties and shall, where appropriate, contain terms
22 and conditions necessary and desirable to secure any bonds or
23 refunding bonds of the ³[²facilities²]³ authority issued or incurred
24 pursuant to this act; provided that notwithstanding any other provision
25 of law or regulation of the ³[²facilities²]³ authority to the contrary,
26 the ³[²facilities²]³ authority ³[²and the building authority²]³ shall be
27 paid only such funds as shall be determined by the contract, and the
28 incurrence of any obligation of the State under the contract, including
29 any payments to be made thereunder from the General Fund, shall be
30 subject to and dependent upon appropriations being made from time
31 to time by the Legislature for the purposes of this act.

32

33 19. (New section) a. The ³[²facilities²]³ authority may make and
34 contract to make loans to local units in accordance with and subject to
35 the provisions of this act to finance all or any portion of the cost of a
36 school facilities project which the local unit may lawfully undertake or
37 acquire and for which the local unit is authorized by law to borrow
38 money; or to refund obligations of the local unit which were issued to
39 provide funds to pay for the cost of a school facilities project. The
40 loans may be made subject to the terms and conditions the
41 ³[²facilities²]³ authority determines to be consistent with the purposes
42 of this act. Each loan by the ³[²facilities²]³ authority and the terms
43 and conditions thereof shall be subject to approval by the State
44 Treasurer.

45 b. Each loan to a local unit shall be evidenced by local unit

1 obligations and shall be authorized and issued as provided by law.
2 Notwithstanding the provisions of any other law to the contrary, the
3 local unit obligations may be sold at private sale to the ³[²facilities²]³
4 authority at any price, whether or not less than par value, and shall be
5 subject to redemption prior to maturity at any times and at any prices
6 as the ³[²facilities²]³ authority and the local unit may agree. Each
7 loan to a local unit and the local unit obligations issued to evidence the
8 loan shall bear interest at a rate or rates per annum, including zero
9 interest, and shall be repaid in whole or in part, as the ³[²facilities²]³
10 authority and the local unit may agree, with the approval of the State
11 Treasurer.

12

13 20. (New section) A local unit may purchase, lease, rent, sublease
14 or otherwise acquire any school facilities project or any space within
15 a project and pay the amounts as may be agreed upon between the
16 local unit and the ³[²facilities²]³ authority as the purchase price, rent
17 or other charge therefor; provided that the terms and conditions of the
18 agreement between the ³[²facilities²]³ authority and the local unit
19 relating to the purchase, lease, rental or sublease shall be subject to the
20 approval of the State Treasurer.

21

22 21. (New section) a. In the event that a local unit has failed or is
23 unable to pay to the ³[²facilities²]³ authority in full when due any
24 local unit obligations issued by the local unit to the ³[²facilities²]³
25 authority, including, but not limited to, any lease or sublease
26 obligations, or any other monies owed by the district to the
27 ³[²facilities²]³ authority, to assure the continued operation and
28 solvency of the ³[²facilities²]³ authority, the State Treasurer shall pay
29 directly to the ³[²facilities²]³ authority an amount sufficient to satisfy
30 the deficiency from State aid payable to the local unit; provided that
31 if the local unit is a school district, the State aid shall not include any
32 State aid which may otherwise be restricted pursuant to the provisions
33 of P.L.1996, c.138 (C.18A:7F-1 et seq.). As used in this section, local
34 unit obligations include the principal or interest on local unit
35 obligations or payment pursuant to a lease or sublease of a school
36 facilities project to a local unit, including the subrogation of the
37 ³[²facilities²]³ authority to the right of the holders of those
38 obligations, any fees or charges payable to the ³[²facilities²]³
39 authority, and any amounts payable by a local unit under a service
40 contract or other contractual arrangement the payments under which
41 are pledged to secure any local unit obligations issued to the
42 ³[²facilities²]³ authority by another local unit.

43 b. If the ³[²facilities²]³ authority requires, and if there has been
44 a failure or inability of a local unit to pay its local unit obligations to
45 the ³[²facilities²]³ authority for a period of 30 days, the chairman or

1 the executive director of the ³[²facilities²]³ authority shall certify to
2 the State Treasurer, with written notice to the fiscal officer of the local
3 unit, the amount remaining unpaid, and the State Treasurer shall pay
4 that amount to the ³[²facilities²]³ authority; or if the right to receive
5 those payments has been pledged or assigned to a trustee for the
6 benefit of the holders of bonds or refunding bonds of the
7 ³[²facilities²]³ authority, to that trustee, out of the State aid payable
8 to the local unit, until the amount so certified has been paid.
9 Notwithstanding any provision of this act to the contrary, the State
10 Treasurer's obligation to pay the ³[²facilities²]³ authority pursuant to
11 this section shall not extend beyond the amount of State aid payable
12 to the local unit.

13 c. The amount paid to the ³[²facilities²]³ authority pursuant to
14 this section shall be deducted from the appropriation or apportionment
15 of State aid payable to the local unit and shall not obligate the State
16 to make, nor entitle the local unit to receive, any additional
17 appropriation or apportionment. The obligation of the State Treasurer
18 to make payments to the ³[²facilities²]³ authority or trustee and the
19 right of the ³[²facilities²]³ authority or trustee to receive those
20 payments shall be subject and subordinate to the rights of holders of
21 qualified bonds issued prior to the effective date of this act pursuant
22 to P.L.1976, c.38 (C.40A:3-1 et seq.) and P.L.1976, c.39 (C.18A:24-
23 85 et seq.).

24

25 22. (New section) a. The ³[²facilities²]³ authority ³[²and the
26 building authority²]³ shall have the power to accept and use any funds
27 appropriated and paid by the State to the ³[²facilities²]³ authority
28 ³[²and the building authority²]³ for the purposes for which the
29 appropriations are made. The ³[²facilities²]³ authority ³[²and the
30 building authority²]³ shall have the power to apply for and receive and
31 accept appropriations or grants of property, money, services or
32 reimbursements for money previously spent and other assistance
33 offered or made available to it by or from any person, government
34 agency, public authority or any public or private entity whatever for
35 any lawful corporate purpose of the ³[²facilities²]³ authority,
36 including, without limitation, grants, appropriations or reimbursements
37 from the federal government, and to apply and negotiate for the same
38 upon such terms and conditions as may be required by any person,
39 government agency, authority or entity as the ³[²facilities²]³ authority
40 ³[²and the building authority²]³ may determine to be necessary,
41 convenient or desirable.

42 b. The ³[²facilities²]³ authority shall establish a financial incentive
43 program for the purpose of promoting donations to school facilities
44 projects. Any entity which makes a donation approved by the State
45 Treasurer to the preliminary eligible costs of a school facilities project

1 shall receive an incentive payment pursuant to the provisions of this
2 subsection. The amount of the incentive payment shall equal 50% of
3 the fair market value of the donation but shall not in any one year
4 exceed one-half of the amount of taxes paid or otherwise due from the
5 donor pursuant to the provisions of the "New Jersey Gross Income
6 Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation
7 Business Tax Act," P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable,
8 for the tax year in which the donation is made. The fair market value
9 of a non-cash donation shall be determined by the State Treasurer. The
10 carry-forward for incentive payments shall not be inconsistent with
11 that allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a
12 donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in
13 the case of a donation by a corporation.

14 All incentive payments made pursuant to this section shall be funded
15 by and shall be subject to annual appropriations to the ³[²facilities²]³
16 authority for this purpose, and shall in no way rely upon funds raised
17 by the issuance of bonds for school facilities projects.

18

19 23. (New section) ²a.² Not less than the prevailing wage rate
20 determined by the Commissioner of Labor pursuant to the provisions
21 of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers
22 employed in the performance of construction contracts in connection
23 with any school facilities project that is undertaken by the
24 ³[²building²]³ authority ²[, a redevelopment entity,]² ³.³ a
25 redevelopment entity.³ or a district ²and any contractor who violates
26 the provisions of this subsection shall be prohibited from subsequently
27 bidding on any State or district contract.

28 b. Registration fees collected pursuant to P.L.1999, c.238 (C.34:11-
29 56.48 et seq.) shall be applied toward the enforcement and
30 administrative costs of the Division of Workplace Standards, Office of
31 Wage and Hour Compliance, Public Contracts section and Registration
32 section within the Department of Labor².

33

34 24. (New section) The commissioner, in consultation with the State
35 Treasurer, shall annually submit to the Governor, the Joint Budget
36 Oversight Committee, the President of the Senate and the Speaker of
37 the General Assembly a report on the school facilities construction
38 program established pursuant to the provisions of this act. The report
39 shall be submitted no later than August 1 of each year and shall
40 include, but not be limited to, the following information for the prior
41 fiscal year: the number of school facilities projects approved by the
42 commissioner pursuant to section 5 of this act; the number of projects
43 constructed by the ³[²building²]³ authority and the amount of time
44 that it has taken the ³[²building²]³ authority to complete those
45 projects; the ²[amount] ³[value²] aggregate principal amount³ of
46 bonds ³, notes or other obligations³ issued by the ³[²facilities²]³

1 authority for the ²State share of² construction and renovation of
 2 school facilities ²and whether there is a need to adjust the ³aggregate
 3 principal³ amount of bonds ³, notes or other obligations ³
 4 authorized for issuance pursuant to subsection a. of section 14 of this
 5 act²; the number of projects constructed by districts; ²[the number of
 6 demonstration projects approved;]² ³the number of demonstration
 7 projects approved;³ the number of approved projects which exceeded
 8 the facilities efficiency standards, the components of those projects
 9 which exceeded the standards, and the amount of construction by
 10 individual districts and Statewide estimated to have exceeded the
 11 standards; and recommendations for changes in the school facilities
 12 construction program established pursuant to this act.

13

14 25. (New section) Notwithstanding the provisions of ³[P.L.1999,
 15 c.138] the annual appropriations act³ to the contrary concerning the
 16 conditions on the appropriation and reappropriation of the balance in
 17 the School Construction and Renovation Fund, the unexpended
 18 balance in the School Construction and Renovation Fund on the
 19 effective date of this act is appropriated to the ³[²building] ³
 20 authority ²[to be used to pay for school facilities projects and the
 21 administrative, insurance, and other operating cost of the authority
 22 incurred in connection with those projects] ³[for deposit in the
 23 School Facilities Construction Fund established pursuant to subsection
 24 e. of section 13 of this act²] to be used to pay for school facilities
 25 projects and the administrative, insurance, and other operating costs
 26 of the authority incurred in connection with school facilities projects.
 27 In addition, there is appropriated from the General Fund to the
 28 Department of Law and Public Safety, Office of the Attorney General,
 29 an amount not to exceed \$1,000,000, subject to the approval of the
 30 Director of the Division of Budget and Accounting in the Department
 31 of the Treasury, for the Unit of Fiscal Integrity in School
 32 Construction, established pursuant to section 70 of this act, and any
 33 additional amounts as may be required by the unit, subject to the
 34 approval of the Director of the Division of Budget and Accounting and
 35 the Joint Budget Oversight Committee³.

36

37 26. (New section) a. The commissioner shall adopt, pursuant to the
 38 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
 39 seq.), rules and regulations necessary to implement the provisions of
 40 sections 1 through 12 ²and ³[58 through 60²] 57 and 58 and 64³ of
 41 this act; except that notwithstanding any provision of P.L.1968, c.410
 42 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt,
 43 immediately upon filing with the Office of Administrative Law, such
 44 rules and regulations as the commissioner deems necessary to
 45 implement the provisions of sections 1 through 12 ³and 57 and 58 and

1 64³ of this act which shall be effective for a period not to exceed 12
2 months. Determinations made by the commissioner pursuant to this
3 act and the rules and regulations adopted by the commissioner to
4 implement this act shall be considered to be final agency action and
5 appeal of that action shall be directly to the Appellate Division of the
6 Superior Court. The regulations shall thereafter be amended, adopted
7 or re-adopted by the State Board of Education in accordance with the
8 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

9 b. The ³[²facilities²]³ authority shall adopt, pursuant to the
10 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
11 seq.), ³[and in consultation with the State Treasurer,]³ rules and
12 regulations necessary to implement the provisions of ³[sections 13
13 through 22 of]³ this act ³that apply to the authority ³; except that
14 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
15 to the contrary, the ³[²facilities²]³ authority may adopt, immediately
16 upon filing with the Office of Administrative Law, such rules and
17 regulations as the ³[²facilities²]³ authority deems necessary to
18 implement the provisions of ³[sections 13 through 22 of]³ this act
19 ³that apply to the authority³ which shall be effective for a period not
20 to exceed 12 months and shall thereafter be amended, adopted or re-
21 adopted by the ³[²facilities²]³ authority, in accordance with the
22 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

23 c. ³[The building authority shall adopt, pursuant to the
24 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
25 seq.), rules and regulations necessary to implement the provisions of
26 this act as they apply to the building authority; except that
27 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
28 to the contrary, the building authority may adopt, immediately upon
29 filing with the Office of Administrative Law, such rules and regulations
30 as the building authority deems necessary to implement the provisions
31 of this act as they apply to the building authority which shall be
32 effective for a period not to exceed 12 months and shall thereafter be
33 amended, adopted or re-adopted by the building authority, in
34 accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et
35 seq.).

36 d.²³ Any regulations adopted to implement this act shall include
37 provisions to ensure that all programs necessary to comply with
38 Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), are approved.

39

40 27. (New section) All property of the ³[²facilities authority and the
41 building²]³ authority shall be exempt from levy and sale by virtue of
42 an execution and no execution of other judicial process shall issue
43 against the same nor shall any judgment against the ³[²facilities
44 authority and the building²]³ authority be a charge or lien upon ²[its]
45 ³[their²]³ its³ property; provided that nothing herein contained shall

1 apply to or limit the rights of the holder of any bonds, notes or other
2 obligations to pursue any remedy for the enforcement of any pledge or
3 lien given by the ³[²facilities authority and the building²]³ authority
4 on or with respect to any project, school facilities project, or any
5 revenues or other moneys.

6
7 28. (New section) If any clause, sentence, paragraph, section or
8 part of this act shall be adjudged by any court of competent
9 jurisdiction to be invalid, the judgment shall not affect, impair or
10 invalidate the remainder thereof, but shall be confined in its operation
11 to the clause, sentence, paragraph, section or part thereof directly
12 involved in the controversy in which the judgment shall have been
13 rendered.

14
15 29. (New section) This act shall be construed liberally to effectuate
16 the legislative intent and the purposes of this act as complete and
17 independent authority for the performance of each act and thing herein
18 authorized and all powers herein granted shall be broadly interpreted
19 to effectuate the intent and purposes and not as a limitation of
20 powers.

21
22 30. (New section) There shall be appropriated annually for the
23 purposes of this act up to \$100,000,000 from monies made available
24 to the State from tobacco companies under the nationwide settlement
25 of the respective actions by the various states against those companies,
26 entered into by this State in the Master Settlement Agreement in State
27 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
28 Court, Chancery Division, Middlesex County, No.C.254-96.

29
30 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
31 read as follows:

32 11. Each school district and county vocational school district shall
33 make an annual report of its progress in conforming to the standards
34 for the evaluation of school performance adopted pursuant to section
35 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
36 shall include but not be limited to:

- 37 a. Demographic data related to each school;
- 38 b. Results of designated assessment programs, including Statewide
39 assessment programs established pursuant to law and regulation;
- 40 c. Information on each school's fiscal operation, including the
41 budget of each school;
- 42 d. (Deleted by amendment, P.L.1996, c.138).
- 43 e. Plans and programs for professional improvement;
- 44 f. Plans to carry out innovative educational programs designed to
45 improve the quality of education;
- 46 g. Recommendations for school improvements during the ensuing
47 year; and

1 h. Such additional information as may be prescribed by the
2 commissioner.

3 [Additionally, the State Board of Education may require each
4 district to submit a facilities survey, including current use practices and
5 projected capital project needs.]

6 The district reports shall be submitted to the commissioner annually
7 on a date to be prescribed by the commissioner, who shall make them
8 the basis for an annual report to the Governor and the Legislature,
9 describing the condition of education in New Jersey, the efforts of
10 New Jersey schools in meeting the standards of a thorough and
11 efficient education, the steps underway to correct deficiencies in
12 school performance, and the progress of New Jersey schools in
13 comparison to other state education systems in the United States.

14 (cf: P.L.1996, c.138, s.36)

15

16 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
17 read as follows:

18 1. a. In any State-operated school district created pursuant to the
19 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
20 established a Capital Project Control Board, hereinafter the board,
21 which shall be responsible for the review of any capital project
22 proposed by the State district superintendent provided that the State
23 district superintendent proposes that the capital project be financed in
24 whole or in part by school bonds or notes, or through a lease purchase
25 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
26 shall also be responsible for the certification to the State district
27 superintendent of schools and the Commissioner of Education of the
28 necessity for the capital project and the certification of the
29 appropriation to be made by the governing body of the municipality.

30 b. The board shall consist of five voting members. One member
31 shall be appointed by the Commissioner of Education and two
32 members shall be appointed by the chief executive officer with the
33 consent of a majority of the full membership of the local governing
34 body of the municipality or municipalities in which the school district
35 is located. If the school district is comprised of two municipalities,
36 each municipality shall be entitled to one member, appointed by the
37 executive officer with the consent of the governing body. If the school
38 district is comprised of more than two municipalities, each of the two
39 municipalities with the largest population according to the most recent
40 federal decennial census shall be entitled to one member, appointed by
41 the executive officer with the consent of the governing body.
42 However, if a local governing body fails to agree upon the selection of
43 either board member appointed by an executive officer, then the
44 Commissioner of Education shall make the appointment. One member
45 shall be appointed by the Director of the Division of Local
46 Government Services in the Department of Community Affairs who
47 shall have experience in the area of local finance and capital projects.

1 The fifth member shall be the State district superintendent of schools
2 who shall serve ex-officio and shall act as chairperson of the board.
3 The board members, except for the State district superintendent, shall
4 each serve for a term of one year commencing on July 1 of each year
5 and expiring on June 30 of the following year. Any vacancy in the
6 membership of the board shall be filled for the unexpired term in the
7 manner provided by the original appointment. Members of the board
8 may be employees of the State or any subdivision thereof. All
9 members of the board shall serve without compensation.

10 c. The board shall meet from time to time upon the request of the
11 State district superintendent. All meetings of the board shall be
12 conducted pursuant to the provisions of the "Open Public Meetings
13 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
14 superintendent, or his designee, shall be charged with the responsibility
15 of preparing a transcript of the proceedings and all votes shall be
16 recorded in writing.

17 (cf: P.L.1991, c.139, s.1)

18

19 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
20 read as follows:

21 2. The board shall hear the recommendation of the State district
22 superintendent concerning any proposed capital project, which is to be
23 financed in whole or in part by school bonds or notes, or through a
24 lease purchase agreement pursuant to subsection f. of
25 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
26 the proposed capital project to determine whether the project will
27 assist the State-operated school district in providing a thorough and
28 efficient system of education in that district. In making this
29 determination it may take into consideration factors such as the
30 conditions in the school district, any applicable educational goals, the
31 objectives and standards established by the State, the need for the
32 capital project, the reasonableness of the amount to be expended for
33 the capital project, the estimated time for the undertaking and
34 completion of the capital project, and any other factors which the
35 board may deem necessary including the relationship of the capital
36 project to the long-term capital budget or plan of the school district
37 and the fiscal implications thereof.

38 Following its review and within 60 days of the date on which the
39 State district superintendent submits the recommendation to the board,
40 the board shall adopt a resolution as to whether the State-operated
41 school district should undertake the capital project and providing its
42 reasons therefor. The board shall adopt a resolution indicating the
43 necessity for the capital project and shall also fix and determine by
44 resolution the amount necessary to be raised locally for the capital
45 project. If the board fails to act within 60 days of the submission date,
46 the State district superintendent shall submit the recommendation to
47 the commissioner who shall approve or disapprove the capital project.

1 If the board makes a decision which is contrary to the recommendation
2 of the superintendent, the superintendent may, within 30 days from the
3 date of the board's action, submit the matter to the commissioner for
4 final decision. If the commissioner determines that a capital project
5 should be undertaken, the commissioner shall so notify the board and
6 shall indicate the amount necessary to be raised locally for the capital
7 project. Upon notification, the board shall adopt a resolution
8 indicating the necessity for the capital project and shall also fix and
9 determine by resolution the amount necessary for the capital project
10 as indicated by the commissioner. Certified copies of any resolution
11 requesting the authorization and issuance of bonds and notes or the
12 authorization of a lease purchase agreement shall be delivered to the
13 State district superintendent, the Commissioner of Education, the
14 Director of the Division of Local Government Services in the
15 Department of Community Affairs and the governing body of the
16 municipality or municipalities in which the school district is located.
17 The board shall not approve or recommend any capital project which
18 is inconsistent with the provisions of N.J.S.18A:21-1.
19 (cf: P.L.1991, c.139, s.2)

20

21 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
22 read as follows:

23 3. Notwithstanding the provisions of any law to the contrary, the
24 cost of any capital project authorized pursuant to this act which is to
25 be funded by bonds or notes and certified by the board to the State
26 district superintendent, the Commissioner of Education, the Director
27 of the Division of Local Government Services in the Department of
28 Community Affairs and the governing body of the municipality or
29 municipalities in which the school district is located shall be financed
30 by the issuance of school bonds or notes pursuant to the provisions of
31 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
32 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
33 other obligations shall be authorized, issued, sold and delivered in the
34 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).
35 (cf: P.L.1991, c.139, s.3)

36

37 35. N.J.S.18A:20-4.2 is amended to read as follows:

38 18A:20-4.2 The board of education of any school district may, for
39 school purposes:

40 (a) Purchase, take and condemn lands within the district and lands
41 not exceeding 50 acres in extent without the district but situate in a
42 municipality or municipalities adjoining the district, but no more than
43 25 acres may be so acquired in any one such municipality, without the
44 district, except with the consent, by ordinance, of such municipality;

45 (b) Grade, drain and landscape lands owned or to be acquired by it
46 and improve the same in like manner;

47 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,

1 repair or furnish buildings;

2 (d) Borrow money therefor, with or without mortgage; in the case
3 of a type II district without a board of school estimate, when
4 authorized so to do at any annual or special school election; and in the
5 case of a type II district having a board of school estimate, when the
6 amount necessary to be provided therefor shall have been fixed,
7 determined and certified by the board of school estimate; and in the
8 case of a type I district, when an ordinance authorizing expenditures
9 for such purpose is finally adopted by the governing body of a
10 municipality comprised within the district; provided, however, that no
11 such election shall be held nor shall any such resolution of a school
12 estimate board or ordinance of a municipal governing body be
13 introduced to authorize any lease of any building for a term exceeding
14 one year, until the proposed terms of such lease have been reviewed
15 and approved by the Commissioner of Education and the Local
16 Finance Board in the Department of Community Affairs;

17 (e) Construct, purchase, lease or otherwise acquire a building with
18 the federal government, the State, a political subdivision thereof or any
19 other individual or entity properly authorized to do business in the
20 State; provided that: (1) the noneducational uses of the building are
21 compatible with the establishment and operation of a school, as
22 determined by the Commissioner of Education; (2) the portion of the
23 building to be used as a school meets regulations of the Department of
24 Education; (3) the board of education has complied with the
25 provisions of law and regulations relating to the selection and approval
26 of sites; and (4) in the case of a lease, that any lease in excess of five
27 years shall be approved by the Commissioner of Education and the
28 Local Finance Board in the Department of Community Affairs;

29 (f) Acquire [by lease purchase agreement a site and school
30 building; provided that the site and building meet guidelines and
31 regulations of the Department of Education and that any lease
32 purchase agreement in excess of five years shall be approved by the
33 Commissioner of Education as in the best interest of the school district
34 after determining that the relationship of the proposed lease purchase
35 project to the district's goals and objectives established pursuant to
36 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
37 provided that for any lease purchase agreement in excess of five years
38 the Local Finance Board in the Department of Community Affairs shall
39 determine within 30 days that the cost and the financial terms and
40 conditions of the agreement are reasonable], with the approval of
41 either the commissioner, or voters or board of school estimate, as
42 applicable, improvements or additions to school buildings through
43 lease purchase agreements not in excess of five years. The agreement
44 shall be recorded as an expenditure of the General Fund of the district.
45 The commissioner shall approve the agreement only upon a
46 demonstration by the district that the lease purchase payments and any
47 operating expenses related to the agreement can be included within the

1 district's net budget spending growth limitation and will not result in
2 the need for approval by the voters or board of school estimate, as
3 appropriate, of additional spending proposals to maintain existing
4 instructional programs and extracurricular activities. If the
5 commissioner cannot approve the agreement, the board of education
6 may frame a separate question to authorize the lease purchase
7 agreement and obtain voter or board of school estimate approval to
8 enter into the agreement. A district may, without separate prior
9 approval of the commissioner, also acquire equipment through a lease
10 purchase agreement not in excess of five years, provided that the
11 amount of the first installment and each subsequent installment for the
12 lease purchase payments is included in the budget that is advertised
13 and submitted for approval to the voters of the district or the board of
14 school estimate, as appropriate. As used herein, a "lease purchase
15 agreement" refers to any agreement which gives the board of
16 education as lessee the option of purchasing the leased [premises]
17 equipment or improvements or additions to existing school buildings
18 during or upon termination of the lease, with credit toward the
19 purchase price of all or part of rental payments which have been made
20 by the board of education in accordance with the lease. As part of
21 such a transaction [approved by the Commissioner of Education], the
22 board of education may transfer or lease land or rights in land,
23 including any building thereon, after publicly advertising for proposals
24 for the transfer for nominal or fair market value, to the party selected
25 by the board of education, by negotiation or otherwise, after
26 determining that the proposal is in the best interest of the taxpayers of
27 the district, to construct or to improve and to lease or to own or to
28 have ownership interests in the site and the school building to be
29 leased pursuant to such lease purchase agreement, notwithstanding the
30 provisions of any other law to the contrary. The land and any building
31 thereon which is described in a lease purchase agreement entered into
32 pursuant to this amendatory act, shall be deemed to be and treated as
33 property of the school district, used for school purposes pursuant to
34 R.S.54:4-3.3, and shall not be considered or treated as property leased
35 to another whose property is not exempt, and shall not be assessed as
36 real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any
37 lease purchase agreement authorized by this section shall contain a
38 provision making payments thereunder subject to the annual
39 appropriation of funds sufficient to meet the required payments or
40 shall contain an annual cancellation clause and shall require all
41 construction contracts let by public school districts or let by
42 developers or owners of property used for school purposes to be
43 competitively bid, pursuant to [P.L.1977, c.114 (N.J.S.18A:18A-1 et
44 seq.)] N.J.S.18A:18A-1 et seq.;

45 (g) Establish with an individual or entity authorized to do business
46 in the State a tenancy in common, condominium, horizontal property
47 regime or other joint ownership arrangement on a site contributed by

1 the school district; provided the following conditions are met:

2 (1) The individual or entity agrees to construct on the site, or
3 provide for the construction thereon, a building or buildings for use of
4 the board of education separately or jointly with the individual or
5 entity, which shall be subject to the joint ownership arrangement;

6 (2) The provision of the building shall be at no cost or at a reduced
7 cost to the board of education;

8 (3) The school district shall not make any payment for use of the
9 building other than its pro rata share of costs of maintenance and
10 improvements;

11 (4) The noneducational uses of the building are compatible with the
12 establishment and operation of a school, as determined by the
13 Commissioner of Education;

14 (5) The portion of the building to be used as a school, and the site,
15 meet regulations of the Department of Education; and

16 (6) Any such agreement shall be approved by the Commissioner of
17 Education and the Local Finance Board in the Department of
18 Community Affairs;

19 (h) Acquire through sale and lease-back textbooks and
20 non-consumable instructional materials provided that the sale price and
21 principal amount of the lease-back do not exceed the fair market value
22 of the textbooks and instructional materials and that the interest rate
23 applied in the lease-back is consistent with prevailing market rates or
24 is less.

25 (cf: P.L.1998, c.55, s.1)

26

27 36. N.J.S.18A:22-18 is amended to read as follows:

28 18A:22-18. When a board of education of a type I district shall
29 determine by resolution that it is necessary to sell school bonds to
30 raise money for any capital project authorized by law, it shall prepare
31 and deliver to each member of the board of school estimate a
32 statement of the amount of money estimated to be necessary for such
33 purpose. The statement shall include the amount needed to be raised
34 by school bonds, the final eligible costs of the project as approved by
35 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
36 pending before the Legislature as this bill) ²[and in the case of a
37 demonstration project pursuant to section 6 of P.L. , c. (C.)
38 (now pending before the Legislature as this bill)]^{2 3} and in the case
39 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
40 (C.) (now pending before the Legislature as this bill)³ , and, if
41 applicable, the amount of any costs of the project which are in addition
42 to the final eligible costs.

43 (cf: P.L.1993, c.83, s.6)

44

45 37. N.J.S.18A:22-19 is amended to read as follows:

46 18A:22-19. The board of school estimate shall fix and determine
47 the local share amount necessary for said purpose and shall certify

1 such amount separately to the board of education and to the governing
2 body of the municipality.

3 (cf: N.J.S.18A:22-19)

4

5 38. N.J.S.18A:22-27 is amended to read as follows:

6 18A:22-27. Whenever the board of education in a type II school
7 district having a board of school estimate shall, by resolution adopted
8 by recorded roll call affirmative vote of two thirds of its full
9 membership, determine that it is necessary to sell school bonds to raise
10 money for any capital project, it shall, by such resolution, estimate the
11 amount necessary to be raised for such project or projects, itemizing
12 such estimate so as to make it readily understandable, and the
13 secretary of the board of education shall certify a copy of such
14 resolution to each member of the board of school estimate of the
15 district. The resolution shall include the amount needed to be raised
16 by school bonds, the final eligible costs of the project as approved by
17 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
18 pending before the Legislature as this bill) ² [and in the case of a
19 demonstration project pursuant to section 6 of P.L. , c. (C.)
20 (now pending before the Legislature as this bill)]^{2 3} and in the case
21 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
22 (C.) (now pending before the Legislature as this bill)³ , and, if
23 applicable, the amount of any costs of the project which are in
24 addition to the final eligible costs.

25 (cf: P.L.1993, c.83, s.8)

26

27 39. N.J.S.18A:22-28 is amended to read as follows:

28 18A:22-28. The board of education of such district shall also, upon
29 delivery of such certificate to the members of the board of school
30 estimate, fix a date, place and time for the holding of a public hearing
31 by the board of school estimate with respect to the amount of money
32 to be raised locally for such project or projects, which date shall be not
33 less than 15 nor more than 30 days after the date of such delivery, and
34 shall cause notice of such public hearing and such resolution, including
35 a statement that said resolution will be on file and open to
36 examination to the public between reasonable hours to be fixed and at
37 a place to be named therein from the date of such notice until the date
38 of said public hearing, to be published at least once and not less than
39 seven days before such public hearing in at least one newspaper,
40 published in each municipality comprised within the school district,
41 and if no newspaper is published in any such municipality, then, as to
42 such municipality, in at least one newspaper circulating in the
43 municipality, and said board of education shall cause said resolution
44 to be on file and open to the examination of the public accordingly and
45 to be produced at said public hearing for the information of those
46 attending the same.

47 (cf: N.J.S.18A:22-28)

1 40. N.J.S.18A:22-29 is amended to read as follows:

2 18A:22-29. On the date and at the time and place so fixed for such
3 public hearing, the board of school estimate shall grant the taxpayers
4 and other interested persons an opportunity to present objections and
5 to be heard with respect to said resolution and the amount of money
6 necessary to be raised locally for such project or projects and with
7 respect to the various items and projects for which the same is to be
8 raised.

9 (cf: N.J.S.18A:22-29)

10

11 41. N.J.S.18A:22-30 is amended to read as follows:

12 18A:22-30. At or after such hearing the board of school estimate
13 shall fix and determine the amount of money necessary to be raised
14 locally for said project or projects, and the secretary of said board
15 shall certify said amount to the board of education of the district and
16 to the board or body of each municipality comprised therein which has
17 power to make appropriations of money to be raised by taxes in such
18 municipality. The board of education of the district and the governing
19 body of each such municipality comprising the district shall apportion
20 the amount so to be appropriated, assessed, levied and raised in each
21 of such municipalities, as nearly as may be, on the same basis and by
22 the application of the same standards as are provided by law for
23 apportionment of appropriations by county tax boards.

24 (cf: N.J.S.18A:22-30)

25

26 42. N.J.S.18A:22-39 is amended to read as follows:

27 18A:22-39. Whenever the undertaking of any capital project or
28 projects to be paid for from the proceeds of an issue or issue of bonds
29 is submitted to the voters of a type II district at an annual or special
30 school election for their approval or disapproval, the board shall frame
31 and adopt by a recorded roll call majority vote of its full membership
32 the question or questions to be submitted so that each project is
33 submitted in a separate question, or all or any number of them are
34 submitted in one question, which shall state the project or projects so
35 submitted and the amounts to be raised for each of the projects so
36 separately submitted or for each or for all of the projects so jointly
37 submitted, as the case may be, but any proposal for the purchase of
38 land shall be sufficient to authorize the taking and condemning of such
39 land. If the project is to be constructed by the New Jersey
40 ²[Economic Development] ³[Building²] Economic Development³
41 Authority ²[or a redevelopment entity]² ³or a redevelopment entity³
42 or by the district with a grant pursuant to section 15 of P.L. , c.
43 (C.) (now pending before the Legislature as this bill), the referendum
44 shall, when framed as a single question, request approval for the local
45 share and shall disclose the final eligible costs of the project as
46 approved by the commissioner pursuant to section 5 of P.L. , c. (C.)
47 (now pending before the Legislature as this bill) ²[and in the case of

1 a demonstration project pursuant to section 6 of P.L. , c. (C.)
 2 (now pending before the Legislature as this bill)]^{2 3} and in the case
 3 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
 4 (C.) (now pending before the Legislature as this bill)³ , and, if
 5 applicable, the amount of any costs of the project which are in addition
 6 to the final eligible costs. If the school facilities project is not to be
 7 constructed by the New Jersey ²[Economic Development]
 8 ³[Building²] Economic Development³ Authority ²[or a
 9 redevelopment entity]^{2 3} or a redevelopment entity³ or by the district
 10 with a grant pursuant to section 15 of P.L. , c. (C.) (now pending
 11 before the Legislature as this bill), the referendum shall, when framed
 12 as a single question, request approval for the total costs of the project,
 13 shall disclose State debt service aid for the project and, if applicable,
 14 the amount of any costs of the project which are in addition to the final
 15 eligible costs of the project. When a project is framed in more than
 16 one question, a summary shall be included in the explanatory statement
 17 which accompanies the questions that includes the total costs of the
 18 project, total State debt service aid, and, if applicable, the amount of
 19 the costs of the project which are in addition to the final eligible costs
 20 of the project, and any individual question containing costs in addition
 21 to the final eligible costs shall include the amount of those additional
 22 costs.

23 The statement of additional costs in any ballot question and in any
 24 explanatory statement that accompanies a ballot question shall describe
 25 the additional costs as follows: "This project includes \$(insert
 26 amount) for school facility construction elements in addition to the
 27 facilities efficiency standards developed by the Commissioner of
 28 Education."

29 (cf: P.L.1993, c.83, s.12)

30

31 ²[43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read
 32 as follows:

33 2. The Legislature hereby finds and determines that:

34 a. Department of Labor [and Industry] statistics of recent years
 35 indicate a continuing decline in manufacturing employment within the
 36 State, which is a contributing factor to the drastic unemployment
 37 existing within the State, which far exceeds the national average, thus
 38 adversely affecting the economy of the State and the prosperity,
 39 safety, health and general welfare of its inhabitants and their standard
 40 of living; that there is an urgent need to protect and enhance the
 41 quality of the natural environment and to reduce, abate and prevent
 42 environmental pollution derived from the operation of industry,
 43 utilities and commerce within the State; and that the availability of
 44 financial assistance and suitable facilities are important inducements to
 45 new and varied employment promoting enterprises to locate in the
 46 State, to existing enterprises to remain and expand in the State, and
 47 to industry, utilities and commerce to reduce, abate and prevent

1 environmental pollution.

2 b. The provision of buildings, structures and other facilities to
3 increase opportunity for employment in manufacturing, industrial,
4 commercial, recreational, retail and service enterprises in the State is
5 in the public interest and it is a public purpose for the State to induce
6 and to accelerate opportunity for employment in such enterprises.

7 c. In order to aid in supplying these needs and to assist in the
8 immediate reduction of unemployment and to provide sufficient
9 employment for the citizens of the State in the future, it is necessary
10 and in the public interest to aid and encourage the immediate
11 commencement of new construction projects of all types, to induce
12 and facilitate the acquisition and installation at an accelerated rate of
13 such devices, equipment and facilities as may be required to reduce,
14 abate and prevent environmental pollution by industry, utilities and
15 commerce.

16 d. The availability of financial assistance by the State will reduce
17 present unemployment and improve future employment opportunities
18 by encouraging and inducing the undertaking of such construction
19 projects, the location, retaining or expanding of employment
20 promoting enterprises within the State, and the accelerated acquisition
21 and installation of energy saving improvements and pollution control
22 devices, equipment and facilities.

23 e. In many municipalities in our State substantial and persistent
24 unemployment exists; and many existing residential, industrial,
25 commercial and manufacturing facilities within such municipalities are
26 either obsolete, inefficient, dilapidated or are located without regard
27 to the master plans of such municipalities; and the obsolescence and
28 abandonment of existing facilities will increase with further
29 technological advances, the provision of modern, efficient facilities in
30 other states and the difficulty which many municipalities have in
31 attracting new facilities; and that many existing and planned
32 employment promoting facilities are far from or not easily accessible
33 to the places of residence of substantial numbers of unemployed and
34 underemployed persons.

35 f. By virtue of their architectural and cultural heritage, their
36 positions as principal centers of communication and transportation
37 and their concentration of productive and energy efficient facilities,
38 many municipalities are capable of ameliorating the conditions of
39 deterioration which impede sound community growth and
40 development; and that building a proper balance of housing, industrial
41 and commercial facilities and increasing the attractiveness of such
42 municipalities to persons of all income levels is essential to restoring
43 such municipalities as desirable places to live, work, shop and enjoy
44 life's amenities; that the accomplishment of these objectives is beyond
45 remedy solely by the regulatory process in the exercise of the police
46 power and cannot be dealt with effectively by the ordinary operations
47 of private enterprise without the powers provided herein, and that the

1 exercise of the powers herein provided is critical to continuing the
2 process of revitalizing such municipalities and will serve an urgent
3 public use and purpose.

4 The Legislature further determines that in order to aid in remedying
5 the aforesaid conditions and to further and implement the purposes of
6 this act, that there shall be created a body politic and corporate having
7 the powers, duties and functions provided in this act; and that the
8 authority and powers conferred under this act, and the expenditure of
9 moneys pursuant thereto constitute a serving of a valid public purpose;
10 and that the enactment of the provisions hereinafter set forth is in the
11 public interest and for the public benefit and good, and is hereby so
12 declared to be as a matter of express legislative determination.

13 The Legislature further finds and determines that:

14 g. It is essential that this and future generations of young people be
15 given the fullest opportunity to learn and develop their intellectual
16 capacities; that institutions of public elementary and secondary
17 education within the State be provided with the appropriate additional
18 means required to assist these young citizens in achieving the required
19 levels of learning and the complete development of their intellectual
20 abilities; and that the resources of the State be employed to meet the
21 tremendous demand for public elementary and secondary educational
22 opportunities.

23 h. Public elementary and secondary educational facilities are an
24 integral part of the effort in this State to provide educational
25 opportunities; it is the purpose of P.L. , c. (C.)(now pending
26 before the Legislature as this bill) to provide a measure of assistance
27 and an alternative method of financing to enable school districts to
28 provide the facilities which are so critically needed; the inventory of
29 public elementary and secondary school buildings and the equipment
30 and capital resources currently available are aging, both
31 chronologically and technologically; and the current funding at the
32 federal, State, and local levels and the current mechanisms for
33 construction of these capital projects are inadequate to meet the
34 demonstrated need for school facilities, and these inadequacies
35 necessitate additional sources of funding and the coordination of
36 construction activities at the State level to meet those needs.

37 i. While the credit status of New Jersey's school districts is sound,
38 it can be economically more reasonable to finance the costs of
39 developing the educational infrastructure of the State's public
40 elementary and secondary schools by providing for the funding of
41 capital projects through the issuance of bonds, notes or other
42 obligations by the New Jersey Economic Development Authority, to
43 be retired through annual payments made by the State subject to
44 appropriation by the State Legislature, and to provide for the use of
45 the proceeds of those bonds, notes or other obligations to pay for
46 educational infrastructure projects; and such a structure would
47 substantially reduce the costs of financing and provide for a more

1 efficient use of the funds available for the development of the
2 educational infrastructure.

3 j. The New Jersey Economic Development Authority has
4 substantial and significant experience in undertaking major capital
5 construction projects, has a system of internal controls and procedures
6 to ensure the integrity of construction activities, and is therefore the
7 appropriate entity to undertake the planning, design, construction, and
8 operation of educational infrastructure projects; and by authorizing the
9 New Jersey Economic Development Authority to undertake these
10 activities, there will be achieved economies of scale, better
11 coordination of resources, more effective financial management and
12 control and increased monitoring and quality control of school district
13 construction.

14 (cf: P.L.1983, c.282, s.1)]²

15

16 ²[44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read
17 as follows:

18 3. As used in this act, unless a different meaning clearly appears
19 from the context:

20 a. "Authority" means the New Jersey Economic Development
21 Authority, created by section 4 of this act.

22 b. "Bonds" means bonds or other obligations issued by the
23 authority pursuant to this act [or], "Economic Recovery Bonds or
24 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
25 bonds, notes, other obligations and refunding bonds issued by the
26 authority pursuant to P.L. , c. (C.)(now pending before the
27 Legislature as this bill).

28 c. "Cost" means the cost of the acquisition, construction,
29 reconstruction, repair, alteration, improvement and extension of any
30 building, structure, facility including water transmission facilities, or
31 other improvement; the cost of machinery and equipment; the cost of
32 acquisition, construction, reconstruction, repair, alteration,
33 improvement and extension of energy saving improvements or
34 pollution control devices, equipment or facilities; the cost of lands,
35 rights-in-lands, easements, privileges, agreements, franchises, utility
36 extensions, disposal facilities, access roads and site development
37 deemed by the authority to be necessary or useful and convenient for
38 any project or school facilities project or in connection therewith;
39 discount on bonds; cost of issuance of bonds; engineering and
40 inspection costs; costs of financial, legal, professional and other
41 estimates and advice; organization, administrative, insurance,
42 operating and other expenses of the authority or any person prior to
43 and during any acquisition or construction, and all such expenses as
44 may be necessary or incident to the financing, acquisition, construction
45 or completion of any project or school facilities project or part thereof,
46 and also such provision for reserves for payment or security of
47 principal of or interest on bonds during or after such acquisition or

- 1 construction as the authority may determine.
- 2 d. "County" means any county of any class.
- 3 e. "Development property" means any real or personal property,
4 interest therein, improvements thereon, appurtenances thereto and air
5 or other rights in connection therewith, including land, buildings,
6 plants, structures, systems, works, machinery and equipment acquired
7 or to be acquired by purchase, gift or otherwise by the authority within
8 an urban growth zone.
- 9 f. "Person" means any person, including individuals, firms,
10 partnerships, associations, societies, trusts, public or private
11 corporations, or other legal entities, including public or governmental
12 bodies, as well as natural persons. "Person" shall include the plural as
13 well as the singular.
- 14 g. "Pollution control project" means any device, equipment,
15 improvement, structure or facility, or any land and any building,
16 structure, facility or other improvement thereon, or any combination
17 thereof, whether or not in existence or under construction, or the
18 refinancing thereof in order to facilitate improvements or additions
19 thereto or upgrading thereof, and all real and personal property
20 deemed necessary thereto, having to do with or the end purpose of
21 which is the control, abatement or prevention of land, sewer, water,
22 air, noise or general environmental pollution, including, but not limited
23 to, any air pollution control facility, noise abatement facility, water
24 management facility, thermal pollution control facility, radiation
25 contamination control facility, wastewater collection system,
26 wastewater treatment works, sewage treatment works system, sewage
27 treatment system or solid waste disposal facility or site; provided that
28 the authority shall have received from the Commissioner of the State
29 Department of Environmental Protection or his duly authorized
30 representative a certificate stating the opinion that, based upon
31 information, facts and circumstances available to the State Department
32 of Environmental Protection and any other pertinent data, (1) said
33 pollution control facilities do not conflict with, overlap or duplicate
34 any other planned or existing pollution control facilities undertaken or
35 planned by another public agency or authority within any political
36 subdivision, and (2) that such facilities, as designed, will be a pollution
37 control project as defined in this act and are in furtherance of the
38 purpose of abating or controlling pollution.
- 39 h. "Project" means: (1) (a) acquisition, construction,
40 reconstruction, repair, alteration, improvement and extension of any
41 building, structure, facility, including water transmission facilities or
42 other improvement, whether or not in existence or under construction,
43 (b) purchase and installation of equipment and machinery, (c)
44 acquisition and improvement of real estate and the extension or
45 provision of utilities, access roads and other appurtenant facilities; and
46 (2) (a) the acquisition, financing, or refinancing of inventory, raw
47 materials, supplies, work in process, or stock in trade, or (b) the

1 financing, refinancing or consolidation of secured or unsecured debt,
2 borrowings, or obligations, or (c) the provision of financing for any
3 other expense incurred in the ordinary course of business; all of which
4 are to be used or occupied by any person in any enterprise promoting
5 employment, either for the manufacturing, processing or assembly of
6 materials or products, or for research or office purposes, including,
7 but not limited to, medical and other professional facilities, or for
8 industrial, recreational, hotel or motel facilities, public utility and
9 warehousing, or for commercial and service purposes, including, but
10 not limited to, retail outlets, retail shopping centers, restaurant and
11 retail food outlets, and any and all other employment promoting
12 enterprises, including, but not limited to, motion picture and television
13 studios and facilities and commercial fishing facilities, commercial
14 facilities for recreational fishermen, fishing vessels, aquaculture
15 facilities and marketing facilities for fish and fish products and (d)
16 acquisition of an equity interest in, including capital stock of, any
17 corporation; or any combination of the above, which the authority
18 determines will: (i) tend to maintain or provide gainful employment
19 opportunities within and for the people of the State, or (ii) aid, assist
20 and encourage the economic development or redevelopment of any
21 political subdivision of the State, or (iii) maintain or increase the tax
22 base of the State or of any political subdivision of the State, or (iv)
23 maintain or diversify and expand employment promoting enterprises
24 within the State; and (3) the cost of acquisition, construction,
25 reconstruction, repair, alteration, improvement and extension of an
26 energy saving improvement or pollution control project which the
27 authority determines will tend to reduce the consumption in a building
28 devoted to industrial or commercial purposes, or in an office building,
29 of nonrenewable sources of energy or to reduce, abate or prevent
30 environmental pollution within the State; and (4) the acquisition,
31 construction, reconstruction, repair, alteration, improvement,
32 extension, development, financing or refinancing of infrastructure and
33 transportation facilities or improvements related to economic
34 development and of cultural, recreational and tourism facilities or
35 improvements related to economic development and of capital facilities
36 for primary and secondary schools and of mixed use projects
37 consisting of housing and commercial development; and (5) the
38 establishment, acquisition, construction, rehabilitation, improvement,
39 and ownership of port facilities as defined in section 3 of P.L.1997,
40 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
41 any person for costs in connection with any project, or the refinancing
42 of any project or portion thereof, if determined by the authority as
43 necessary and in the public interest to maintain employment and the
44 tax base of any political subdivision and will facilitate improvements
45 thereto or the completion thereof, and (ii) development property and
46 any construction, reconstruction, improvement, alteration, equipment
47 or maintenance or repair, or planning and designing in connection

1 therewith. For the purpose of carrying out mixed use projects
2 consisting of both housing and commercial development, the authority
3 may enter into agreements with the New Jersey Housing and Mortgage
4 Finance Agency for loan guarantees for any such project in accordance
5 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
6 that purpose shall allocate to the New Jersey Housing and Mortgage
7 Finance Agency, under such agreements, funding available pursuant to
8 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
9 shall not include a school facilities project.

10 i. "Revenues" means receipts, fees, rentals or other payments to be
11 received on account of lease, mortgage, conditional sale, or sale, and
12 payments and any other income derived from the lease, sale or other
13 disposition of a project, moneys in such reserve and insurance funds
14 or accounts or other funds and accounts, and income from the
15 investment thereof, established in connection with the issuance of
16 bonds or notes for a project or projects, and fees, charges or other
17 moneys to be received by the authority in respect of projects or school
18 facilities projects and contracts with persons.

19 j. "Resolution" means any resolution adopted or trust agreement
20 executed by the authority, pursuant to which bonds of the authority
21 are authorized to be issued.

22 k. "Energy saving improvement" means the construction, purchase
23 and installation in a building devoted to industrial or commercial
24 purposes of any of the following, designed to reduce the amount of
25 energy from nonrenewable sources needed for heating and cooling that
26 building: insulation, replacement burners, replacement high efficiency
27 heating and air conditioning units, including modular boilers and
28 furnaces, water heaters, central air conditioners with or without heat
29 recovery to make hot water for industrial or commercial purposes or
30 in office buildings, and any solar heating or cooling system
31 improvement, including any system which captures solar radiation to
32 heat a fluid which passes over or through the collector element of that
33 system and then transfers that fluid to a point within the system where
34 the heat is withdrawn from the fluid for direct usage or storage. These
35 systems shall include, but not necessarily be limited to, systems
36 incorporating flat plate, evacuated tube or focusing solar collectors.

37 The foregoing list shall not be construed to be exhaustive, and shall
38 not serve to exclude other improvements consistent with the legislative
39 intent of this amendatory act.

40 l. "Urban growth zone" means any area within a municipality
41 receiving State aid pursuant to the provisions of P.L.1978, c.14
42 (C.52:27D-178 et seq.) or a municipality certified by the
43 Commissioner of Community Affairs to qualify under such law in
44 every respect except population, which area has been so designated
45 pursuant to an ordinance of the governing body of such municipality.

46 m. "District" means a local or regional school district established
47 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey

1 Statutes, a county special services school district established pursuant
2 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
3 county vocational school district established pursuant to article 3 of
4 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
5 operated school district established pursuant to P.L.1987, c.399
6 (C.18A:7A-34 et seq.).

7 n. "Local unit" means a county, municipality, board of education
8 or any other political entity authorized to construct, operate and
9 maintain a school facilities project and to borrow money for those
10 purposes pursuant to Title 18A of the New Jersey Statutes.

11 o. "Refunding bonds" means bonds, notes or other obligations
12 issued to refinance bonds previously issued by the authority pursuant
13 to P.L.1974, c.80 (C34:1B-1 et seq.) and P.L. , c. (C.)(now
14 pending before the Legislature as this bill).

15 p. "School facilities project" means the acquisition, demolition,
16 construction, improvement, repair, alteration, modernization,
17 renovation, reconstruction or maintenance of all or any part of a
18 school facility or of any other personal property necessary for, or
19 ancillary to, any school facility, and shall include fixtures, furnishings
20 and equipment, and shall also include, but is not limited to, site
21 acquisition, site development, the services of design professionals,
22 such as engineers and architects, construction management, legal
23 services, financing costs and administrative costs and expenses
24 incurred in connection with the project.

25 q. "School facility" means and includes any structure, building or
26 facility used wholly or in part for academic purposes by a district, but
27 shall exclude athletic stadiums, grandstands, and any structure, building
28 or facility used solely for school administration.

29 (cf: P.L.1997, c.150, s.22)]²

30
31 ²[45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read
32 as follows:

33 4. a. There is hereby established in, but not of, the Department of
34 **[Commerce and Economic Development]** the Treasury a public body
35 corporate and politic, with corporate succession, to be known as the
36 "New Jersey Economic Development Authority." The authority is
37 hereby constituted as an instrumentality of the State exercising public
38 and essential governmental functions, and the exercise by the authority
39 of the powers conferred by this act shall be deemed and held to be an
40 essential governmental function of the State.

41 b. The authority shall consist of the Commissioner of Banking, the
42 **[Commissioner of Commerce and Economic Development]** Chief
43 Executive Officer and Secretary of the New Jersey Commerce and
44 Economic Growth Commission, the Commissioner of Labor, the
45 Commissioner of Education, and the State Treasurer, who shall be
46 members ex officio, and **[six]** eight public members appointed by the
47 Governor **[with the advice and consent of the Senate, of which one]**

1 as follows: two public [member] members (who shall not be [a
2 legislator] legislators) shall be appointed by the Governor upon
3 recommendation of the Senate President [and one]; two public
4 [member] members (who shall not be [a legislator] legislators) shall
5 be appointed by the Governor upon recommendation of the Speaker
6 of the General Assembly; and four public members shall be appointed
7 by the Governor, with the advice and consent of the Senate, all for
8 terms of three years. [The first two public member positions on the
9 authority that are or become vacant on or after the effective date of
10 P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of
11 the Governor upon the recommendation of the Senate President and
12 the Speaker of the General Assembly, respectively.] Each member
13 shall hold office for the term of his appointment and until his successor
14 shall have been appointed and qualified. A member shall be eligible for
15 reappointment. Any vacancy in the membership occurring other than
16 by expiration of term shall be filled in the same manner as the original
17 appointment but for the unexpired term only. In the event the
18 authority shall by resolution determine to accept the declaration of an
19 urban growth zone by any municipality, the mayor or other chief
20 executive officer of such municipality shall ex officio be a member of
21 the authority for the purpose of participating and voting on all matters
22 pertaining to such urban growth zone.

23 The Governor shall appoint [with the advice and consent of the
24 Senate,] three alternate members of the authority[, of which] as
25 follows: one alternate member (who shall not be a legislator) shall be
26 appointed by the Governor upon the recommendation of the Senate
27 President[, and]; one alternate member (who shall not be a legislator)
28 shall be appointed by the Governor upon the recommendation of the
29 Speaker of the General Assembly ; and one alternate member shall be
30 appointed by the Governor with the advice and consent of the Senate,
31 all for terms of three years. [The first two alternate member positions
32 on the authority that are or become vacant on or after the effective
33 date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by
34 appointment of the Governor upon the recommendation of the Senate
35 President and the Speaker of the General Assembly, respectively.]
36 The chairperson may authorize an alternate member, in order of
37 appointment, to exercise all of the powers, duties and responsibilities
38 of such member, including, but not limited to, the right to vote on
39 matters before the authority.

40 Each alternate member shall hold office for the term of his
41 appointment and until his successor shall have been appointed and
42 qualified. An alternate member shall be eligible for reappointment.
43 Any vacancy in the alternate membership occurring other than by the
44 expiration of a term shall be filled in the same manner as the original
45 appointment but for the unexpired term only. Any reference to a
46 member of the authority in this act shall be deemed to include alternate

1 members unless the context indicates otherwise.

2 The terms of office of the members and alternate members of the
3 authority appointed by the Governor who are serving on the effective
4 date of P.L. , c. (C.) (now pending before the Legislature as this
5 bill) shall expire upon the appointment by the Governor of eight public
6 members and three alternate members. The initial appointments of the
7 eight public members shall be as follows: the two members appointed
8 upon the recommendation of the President of the Senate and the two
9 members appointed upon the recommendation of the Speaker of the
10 General Assembly shall serve terms of three years; two members shall
11 serve terms of two years; and two members shall serve terms of one
12 year. The initial appointments of the alternate members shall be as
13 follows: the alternate member appointed upon the recommendation of
14 the President of the Senate shall serve a term of three years; the
15 alternate member appointed upon the recommendation of the Speaker
16 of the General Assembly shall serve a term of two years; and one
17 alternate member shall serve a term of one year.

18 c. Each member appointed by the Governor may be removed from
19 office by the Governor, for cause, after a public hearing, and may be
20 suspended by the Governor pending the completion of such hearing.
21 Each member before entering upon his duties shall take and subscribe
22 an oath to perform the duties of his office faithfully, impartially and
23 justly to the best of his ability. A record of such oaths shall be filed in
24 the office of the Secretary of State.

25 d. [The Commissioner of Commerce and Economic Development
26 may, at his discretion, serve as the chairperson of the authority or may
27 appoint one of the six public members of the authority as chairperson.
28 Any such designation or appointment shall be made in writing and shall
29 be delivered to the authority and to the Governor and shall continue
30 in effect until revoked or amended by a writing delivered to the
31 authority and the Governor.] A chairperson shall be appointed by the
32 Governor, with the advice and consent of the Senate, from the public
33 members. The members of the authority shall elect from their
34 remaining number a vice chairperson and a treasurer thereof. The
35 authority shall employ an executive director who shall be its secretary
36 and chief executive officer. The powers of the authority shall be
37 vested in the members thereof in office from time to time and [six]
38 seven members of the authority shall constitute a quorum at any
39 meeting thereof. Action may be taken and motions and resolutions
40 adopted by the authority at any meeting thereof by the affirmative vote
41 of at least [six] seven members of the authority. No vacancy in the
42 membership of the authority shall impair the right of a quorum of the
43 members to exercise all the powers and perform all the duties of the
44 authority.

45 e. Each member of the authority shall execute a bond to be
46 conditioned upon the faithful performance of the duties of such
47 member in such form and amount as may be prescribed by the Director

1 of the Division of Budget and Accounting in the Department of the
2 Treasury. Such bonds shall be filed in the office of the Secretary of
3 State. At all times thereafter the members and treasurer of the
4 authority shall maintain such bonds in full force and effect. All costs
5 of such bonds shall be borne by the authority.

6 f. The members of the authority shall serve without
7 compensation, but the authority shall reimburse its members for actual
8 expenses necessarily incurred in the discharge of their duties.
9 Notwithstanding the provisions of any other law, no officer or
10 employee of the State shall be deemed to have forfeited or shall forfeit
11 his office or employment or any benefits or emoluments thereof by
12 reason of his acceptance of the office of ex officio member of the
13 authority or his services therein.

14 g. Each ex officio member of the authority may designate an
15 officer or employee of his department to represent him at meetings of
16 the authority, and each such designee may lawfully vote and otherwise
17 act on behalf of the member for whom he constitutes the designee.
18 Any such designation shall be in writing delivered to the authority and
19 shall continue in effect until revoked or amended by writing delivered
20 to the authority.

21 h. The authority may be dissolved by act of the Legislature on
22 condition that the authority has no debts or obligations outstanding or
23 that provision has been made for the payment or retirement of such
24 debts or obligations. Upon any such dissolution of the authority, all
25 property, funds and assets thereof shall be vested in the State.

26 i. A true copy of the minutes of every meeting of the authority
27 shall be forthwith delivered by and under the certification of the
28 secretary thereof to the Governor. No action taken at such meeting
29 by the authority shall have force or effect until 10 days, Saturdays,
30 Sundays, and public holidays excepted, after the copy of the minutes
31 shall have been so delivered, unless during such 10-day period the
32 Governor shall approve the same in which case such action shall
33 become effective upon such approval. If, in that 10-day period, the
34 Governor returns such copy of the minutes with veto of any action
35 taken by the authority or any member thereof at such meeting, such
36 action shall be null and void and of no effect. The powers conferred
37 in this subsection i. upon the Governor shall be exercised with due
38 regard for the rights of the holders of bonds and notes of the authority
39 at any time outstanding, and nothing in, or done pursuant to, this
40 subsection i. shall in any way limit, restrict or alter the obligation or
41 powers of the authority or any representative or officer of the
42 authority to carry out and perform in every detail each and every
43 covenant, agreement or contract at any time made or entered into by
44 or on behalf of the authority with respect to its bonds or notes or for
45 the benefit, protection or security of the holders thereof.

46 j. On or before March 31 in each year, the authority shall make
47 an annual report of its activities for the preceding calendar year to the

1 Governor and the Legislature. Each such report shall set forth a
2 complete operating and financial statement covering the authority's
3 operations during the year. The authority shall cause an audit of its
4 books and accounts to be made at least once in each year by certified
5 public accountants and cause a copy thereof to be filed with the
6 Secretary of State and the Director of the Division of Budget and
7 Accounting in the Department of the Treasury.

8 k. The Director of the Division of Budget and Accounting in the
9 Department of the Treasury and his legally authorized representatives
10 are hereby authorized and empowered from time to time to examine
11 the accounts, books and records of the authority including its receipts,
12 disbursements, contracts, sinking funds, investments and any other
13 matters relating thereto and to its financial standing.

14 l. No member, officer, employee or agent of the authority shall
15 be interested, either directly or indirectly, in any project or school
16 facilities project, or in any contract, sale, purchase, lease or transfer of
17 real or personal property to which the authority is a party.
18 (cf: P.L.1995, c.227)]²

19

20 ²[46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
21 as follows:

22 5. The authority shall have the following powers:

23 a. To adopt bylaws for the regulation of its affairs and the conduct
24 of its business;

25 b. To adopt and have a seal and to alter the same at pleasure;

26 c. To sue and be sued;

27 d. To acquire in the name of the authority by purchase or
28 otherwise, on such terms and conditions and such manner as it may
29 deem proper, or by the exercise of the power of eminent domain in the
30 manner provided by the Eminent Domain Act of 1971, P.L.1971,
31 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
32 property which it may determine is reasonably necessary for any
33 project or school facilities project; provided, however, that the
34 authority in connection with any project shall not take by exercise of
35 the power of eminent domain any real property except upon consent
36 thereto given by resolution of the governing body of the municipality
37 in which such real property is located; and provided further that the
38 authority shall be limited in its exercise of the power of eminent
39 domain in connection with any project to municipalities receiving State
40 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
41 to municipalities which had a population, according to the latest
42 federal decennial census, in excess of 10,000;

43 e. To enter into contracts with a person upon such terms and
44 conditions as the authority shall determine to be reasonable, including,
45 but not limited to, reimbursement for the planning, designing,
46 financing, construction, reconstruction, improvement, equipping,
47 furnishing, operation and maintenance of the project or the school

- 1 facilities project and to pay or compromise any claims arising
2 therefrom;
- 3 f. To establish and maintain reserve and insurance funds with
4 respect to the financing of the project or the school facilities project;
- 5 g. To sell, convey or lease to any person all or any portion of a
6 project or school facilities project, for such consideration and upon
7 such terms as the authority may determine to be reasonable;
- 8 h. To mortgage, pledge or assign or otherwise encumber all or any
9 portion of a project , school facilities project or revenues, whenever
10 it shall find such action to be in furtherance of the purposes of this act
11 and P.L. , c. (C.)(now pending before the Legislature as this
12 bill);
- 13 i. To grant options to purchase or renew a lease for any of its
14 projects or school facilities projects on such terms as the authority may
15 determine to be reasonable;
- 16 j. To contract for and to accept any gifts or grants or loans of funds
17 or property or financial or other aid in any form from the United States
18 of America or any agency or instrumentality thereof, or from the State
19 or any agency, instrumentality or political subdivision thereof, or from
20 any other source and to comply, subject to the provisions of the act
21 and P.L. , c. (C.)(now pending before the Legislature as this
22 bill), with the terms and conditions thereof;
- 23 k. In connection with any application for assistance under this act
24 or P.L. , c. (C.)(now pending before the Legislature as this bill)
25 or commitments therefor, to require and collect such fees and charges
26 as the authority shall determine to be reasonable;
- 27 l. To adopt, amend and repeal regulations to carry out the
28 provisions of this act and P.L. , c. (C.)(now pending before the
29 Legislature as this bill);
- 30 m. To acquire, purchase, manage and operate, hold and dispose of
31 real and personal property or interests therein, take assignments of
32 rentals and leases and make and enter into all contracts, leases,
33 agreements and arrangements necessary or incidental to the
34 performance of its duties;
- 35 n. To purchase, acquire and take assignments of notes, mortgages
36 and other forms of security and evidences of indebtedness;
- 37 o. To purchase, acquire, attach, seize, accept or take title to any
38 project or school facilities project by conveyance or by foreclosure,
39 and sell, lease, manage or operate any project or school facilities
40 project for a use specified in this act and P.L. , c. (C.)(now
41 pending before the Legislature as this bill);
- 42 p. To borrow money and to issue bonds of the authority and to
43 provide for the rights of the holders thereof, as provided in this act and
44 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 45 q. To extend credit or make loans to any person for the planning,
46 designing, acquiring, constructing, reconstructing, improving,
47 equipping and furnishing of a project or school facilities project, which

1 credits or loans may be secured by loan and security agreements,
2 mortgages, leases and any other instruments, upon such terms and
3 conditions as the authority shall deem reasonable, including provision
4 for the establishment and maintenance of reserve and insurance funds,
5 and to require the inclusion in any mortgage, lease, contract, loan and
6 security agreement or other instrument, such provisions for the
7 construction, use, operation and maintenance and financing of a
8 project or school facilities project as the authority may deem necessary
9 or desirable;

10 r. To guarantee up to 90% of the amount of a loan to a person, if
11 the proceeds of the loan are to be applied to the purchase and
12 installation, in a building devoted to industrial or commercial
13 purposes, or in an office building, of an energy improvement system;

14 s. To employ consulting engineers, architects, attorneys, real estate
15 counselors, appraisers, and such other consultants and employees as
16 may be required in the judgment of the authority to carry out the
17 purposes of the act and P.L. , c. (C.)(now pending before the
18 Legislature as this bill), and to fix and pay their compensation from
19 funds available to the authority therefor, all without regard to the
20 provisions of Title 11A of the New Jersey Statutes;

21 t. To do and perform any acts and things authorized by this act and
22 P.L. , c. (C.)(now pending before the Legislature as this bill)
23 under, through or by means of its own officers, agents and employees,
24 or by contract with any person;

25 u. To procure insurance against any losses in connection with its
26 property, operations or assets in such amounts and from such insurers
27 as it deems desirable;

28 v. To do any and all things necessary or convenient to carry out its
29 purposes and exercise the powers given and granted in the act and
30 P.L., c. (C.)(now pending before the Legislature as this bill);

31 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
32 maintain or repair or provide for the construction, reconstruction,
33 improvement, alteration, equipping or maintenance or repair of any
34 development property and lot, award and enter into construction
35 contracts, purchase orders and other contracts with respect thereto,
36 upon such terms and conditions as the authority shall determine to be
37 reasonable, including, but not limited to, reimbursement for the
38 planning, designing, financing, construction, reconstruction,
39 improvement, equipping, furnishing, operation and maintenance of any
40 such development property and the settlement of any claims arising
41 therefrom and the establishment and maintenance of reserve funds with
42 respect to the financing of such development property;

43 x. When authorized by the governing body of a municipality
44 exercising jurisdiction over an urban growth zone, to construct, cause
45 to be constructed or to provide financial assistance to projects in an
46 urban growth zone which shall be exempt from the terms and
47 requirements of the land use ordinances and regulations, including, but

1 not limited to, the master plan and zoning ordinances, of such
2 municipality; and
3 y. To enter into business employment incentive agreements as
4 provided in the "Business Employment Incentive Program Act,"
5 P.L.1996, c.26 (C.34:1B-124 et al.)[.];
6 z. To undertake school facilities projects and to enter into
7 agreements or contracts, execute instruments, and do and perform all
8 acts or things necessary, convenient or desirable for the purposes of
9 the authority to carry out any power expressly provided pursuant to
10 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
11 pending before the Legislature as this bill), including, but not limited
12 to, entering into contracts with the State Treasurer, the Commissioner
13 of Education, districts and any other entity which may be required in
14 order to carry out the provisions of P.L. , c. (C.)(now pending
15 before the Legislature as this bill);
16 aa. To enter into leases, rentals or other disposition of a real
17 property interest in and of any school facilities project to or from any
18 local unit pursuant to P.L. , c. (C.)(now pending before the
19 Legislature as this bill);
20 bb. To make and contract to make loans or leases and to make
21 grants to local units to finance the cost of school facilities projects and
22 to acquire and contract to acquire bonds, notes or other obligations
23 issued or to be issued by local units to evidence the loans or leases, all
24 in accordance with the provisions of P.L. , c. (C.)(now pending
25 before the Legislature as this bill);
26 cc. Subject to any agreement with holders of its bonds issued to
27 finance a project or school facilities project, obtain as security or to
28 provide liquidity for payment of all or any part of the principal of and
29 interest and premium on the bonds of the authority or for the purchase
30 upon tender or otherwise of the bonds, lines of credit, letters of credit,
31 reimbursement agreements, interest rate exchange agreements,
32 currency exchange agreements, interest rate floors or caps, options,
33 puts or calls to hedge payment, currency, rate, spread or similar
34 exposure or similar agreements, float agreements, forward agreements,
35 insurance contract, surety bond, commitment to purchase or sell
36 bonds, purchase or sale agreement, or commitments or other contracts
37 or agreements, and other security agreements or instruments in any
38 amounts and upon any terms as the authority may determine and pay
39 any fees and expenses required in connection therewith;
40 dd. To charge to and collect from local units, the State and any
41 other person, any fees and charges in connection with the authority's
42 actions undertaken with respect to school facilities projects, including,
43 but not limited to, fees and charges for the authority's administrative,
44 organization, insurance, operating and other expenses incident to the
45 financing, construction and placing into service and maintenance of
46 school facilities projects.
47 (cf: P.L.1996, c.26, s.16)]²

1 ²[47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to
2 read as follows:

3 1. The New Jersey Economic Development Authority shall adopt
4 rules and regulations requiring that not less than the prevailing wage
5 rate be paid to workers employed in the performance of construction
6 contracts undertaken in connection with [Authority financial
7 assistance] any of its projects or school facilities projects. The
8 prevailing wage rate shall be the rate determined by the Commissioner
9 of Labor [and Industry] pursuant to the provisions of P.L.1963,
10 c.150 (C.34:11-56.25 et seq.).
11 (cf: P.L.1979, c.303, s.1)]²

12

13 ²[48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to
14 read as follows:

15 4. a. The New Jersey Economic Development Authority shall adopt
16 rules and regulations to establish an affirmative action program for the
17 hiring of minority workers employed in the performance of
18 construction contracts undertaken in connection with any of its
19 projects [receiving Authority assistance] and school facilities
20 projects, and to expand the business opportunities of socially and
21 economically disadvantaged contractors and vendors seeking to
22 provide materials and services for those contracts, consistent with the
23 provisions of the "Law Against Discrimination," P.L.1945, c.169
24 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
25 proper enforcement and administration of such rules and regulations.

26 b. Within 180 days of the effective date of P.L. , c. (C.)(now
27 pending before the Legislature as this bill), but before adoption of its
28 rules and regulations concerning its affirmative action program, the
29 authority shall submit the proposed rules and regulations to the
30 presiding officers and the standing committees on State government
31 of both houses of the Legislature for their review.

32 (cf: P.L.1979, c.303, s.4)]²

33

34 ²[49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to
35 read as follows:

36 15. The exercise of the powers granted by this act and P.L. , c.
37 (C.)(now pending before the Legislature as this bill) shall constitute
38 the performance of an essential governmental function and the
39 authority shall not be required to pay any taxes or assessments upon
40 or in respect of a project or school facilities project, or any property
41 or moneys of the authority, and the authority, its projects and school
42 facilities projects, property and moneys and any bonds and notes
43 issued under the provisions of this act and P.L. , c. (C.)(now
44 pending before the Legislature as this bill), their transfer and the
45 income therefrom, including any profit made on the sale thereof, shall
46 at all times be free from taxation of every kind by the State except for

1 transfer, inheritance and estate taxes and by any political subdivision
2 of the State; provided, that any person occupying a project whether
3 as lessee, vendee or otherwise shall, as long as title thereto shall
4 remain in the authority, pay to the political subdivision in which such
5 project is located a payment in lieu of taxes which shall equal the
6 taxes on real and personal property, including water and sewer service
7 charges or assessments, which such person would have been required
8 to pay had it been the owner of such property during the period for
9 which such payment is made and neither the authority nor its projects,
10 properties, money or bonds and notes shall be obligated, liable or
11 subject to lien of any kind for the enforcement, collection or payment
12 thereof. If and to the extent the proceedings under which the bonds
13 authorized to be issued under the provisions of this act so provide, the
14 authority may agree to cooperate with such person occupying a
15 project, in connection with any administrative or judicial proceedings
16 for determining the validity or amount of such payments and may
17 agree to appoint or designate and reserve the right in and for such
18 person to take all action which the authority may lawfully take in
19 respect of such payments and all matters relating thereto, provided
20 such person shall bear and pay all costs and expenses of the authority
21 thereby incurred at the request of such person or by reason of any
22 such action taken by such person in behalf of the authority. If such
23 person occupying a project has paid the amounts in lieu of taxes
24 required by this section to be paid such person shall not be required
25 to pay any such taxes as to which a payment in lieu thereof has been
26 made to the State or to any political subdivision, any other statute to
27 the contrary notwithstanding.

28 (cf: P.L.1974, c.80, s.15)]²

29

30 ²[50. (New section) In the exercise of powers granted by P.L. ,
31 c. (C.)(now pending before the Legislature as this bill) in
32 connection with any school facilities project, any and all claims,
33 damages, losses, liabilities or costs that the authority may incur shall
34 be payable only from the amounts made available to the authority
35 pursuant to that act. In connection with any agreement or contract
36 entered into by the authority relating to any school facilities project,
37 there shall be no recovery against the authority for punitive or
38 consequential damages arising out of contract nor shall there be any
39 recovery against the authority for claims based upon implied
40 warranties or upon contracts implied in law.]²

41

42 ²[51. (New section) a. No municipality shall modify or change the
43 drawings, plans or specifications for the construction, reconstruction,
44 rehabilitation, alteration or improvement of any school facilities
45 project of the authority, or the construction, plumbing, heating,
46 lighting or other mechanical branch of work necessary to complete the
47 work in question, nor to require that any person, firm or corporation

1 employed on any such work shall perform the work in any other or
2 different manner than that provided by the drawings, plans and
3 specifications, nor to require that any person, firm or corporation
4 obtain any other or additional authority, approval, permit or certificate
5 from the municipality in relation to the work being done, and the doing
6 of the work by any person, firm or corporation in accordance with the
7 terms of the drawings, plans, specifications or contracts shall not
8 subject the person, firm or corporation to any liability or penalty, civil
9 or criminal, other than as may be stated in the contracts or incidental
10 to the proper enforcement thereof; nor shall any municipality require
11 the authority or any person, firm, partnership or corporation which
12 leases or purchases the school facilities project for lease or purchase
13 to a State agency, to obtain any other or additional authority,
14 approval, permit, certificate or certificate of occupancy from the
15 municipality as a condition of owning, using, maintaining, operating or
16 occupying any school facilities project acquired, constructed,
17 reconstructed, rehabilitated, altered or improved by the authority or by
18 any subsidiary thereof. The foregoing provisions shall not preclude
19 any municipality from exercising the right of inspection for the purpose
20 of requiring compliance by any school facilities project with local
21 requirements for operation and maintenance affecting the health, safety
22 and welfare of the occupants thereof, provided that the compliance
23 does not require changes, modifications or additions to the original
24 construction of the school facilities project.

25 b. Each municipality in which any school facilities project of the
26 authority is located shall provide for the school facilities project,
27 whether then owned by the authority, any subsidiary, any State agency
28 or any person, firm, partnership or corporation, police, fire, sanitation,
29 health protection and other municipal services of the same character
30 and to the same extent as those provided for other residents of the
31 municipality.

32 c. In carrying out any school facilities project, the authority may
33 enter into contractual agreements with local government agencies with
34 respect to the furnishing of any community, municipal or public
35 facilities or services necessary or desirable for the school facilities
36 project, and any local government agency may enter into these
37 contractual agreements with the authority and do all things necessary
38 to carry out its obligations.]²

39
40 ²[52. (New section) a. The authority, in the exercise of its
41 authority to make and enter into contracts and agreements for school
42 facilities projects necessary or incidental to the performance of its
43 duties and the execution of its powers, shall adopt standing rules and
44 procedures providing that no contract on behalf of the authority in
45 connection with a school facilities project shall be entered into for the
46 doing of any work, or for the hiring of equipment or vehicles, where
47 the sum to be expended exceeds the sum of \$7,500 unless the

1 authority shall first publicly advertise for bids therefor, and shall award
2 the contract to the lowest responsible bidder. Advertising shall not
3 be required where the contract to be entered into is one for the
4 furnishing or performing of services of a professional nature or for the
5 supplying of any product or the rendering of any service by a public
6 utility subject to the jurisdiction of the Board of Public Utilities and
7 tariffs and schedules of the charges made, charged, or exacted by the
8 public utility for any products to be supplied or services to be
9 rendered are filed with the board. This section shall not prevent the
10 authority from having any work done by its own employees, nor shall
11 it apply to repairs, or to the furnishing of materials, supplies or labor,
12 or the hiring of equipment or vehicles, when the safety or protection
13 of its or other public property or the public convenience requires, or
14 the exigency of the accomplishment of the school facilities projects
15 will not allow advertisement. In that case, the board of directors of
16 the authority shall, by resolution, declare the exigency or emergency
17 to exist, and set forth in the resolution the nature thereof and the
18 approximate amount to be so expended.

19 b. (1) In undertaking any school facilities project where the cost of
20 construction, reconstruction, rehabilitation or improvement will exceed
21 \$25,000 the authority shall be subject to the rules and regulations of
22 the Division of Property Management and Construction concerning
23 procedural requirements for the making, negotiating or awarding of
24 purchases, contracts or agreements and the prequalification and
25 classification of bidders; and the authority, with the assistance of the
26 division, may prepare, or cause to be prepared, separate plans and
27 specifications for:

28 (a) The plumbing and gas fitting and all work and materials kindred
29 thereto,

30 (b) The steam and hot water heating and ventilating apparatus,
31 steam power plants and all work and materials kindred thereto,

32 (c) The electrical work,

33 (d) Structural steel and ornamental iron work and materials, and

34 (e) General construction, which shall include all other work and
35 materials required to complete the building.

36 (2) The authority shall receive (a) separate bids for each of the
37 branches of work specified in paragraph (1) of this subsection; or (b)
38 bids for all the work and materials required to complete the school
39 facilities projects to be included in a single overall contract, in which
40 case there shall be set forth in the bid the name or names of all
41 subcontractors to whom the bidder will subcontract for the furnishing
42 of any of the work and materials specified in branches (a) through (d)
43 in paragraph (1) of this subsection; or (c) both.

44 (3) Contracts shall be awarded to the lowest responsible bidder in
45 each branch of work in the case of separate bids and to the single
46 lowest responsible bidder in the case of single bids. In the event that
47 a contract is advertised in accordance with subparagraph (c) of

1 paragraph (2) of this subsection, the contract shall be awarded in the
2 following manner: If the sum total of the amounts bid by the lowest
3 responsible bidder for each branch is less than the amount bid by the
4 lowest responsible bidder for all of the work and materials, the
5 authority shall award separate contracts for each of branches to the
6 lowest responsible bidder therefor, but if the sum total of the amount
7 bid by the lowest responsible bidder for each branch is not less than
8 the amount bid by the lowest responsible bidder for all the work and
9 materials, the authority shall award a single over-all contract to the
10 lowest responsible bidder for all of the work and materials.

11 Whenever a contract is awarded under subparagraph (b) or (c) of
12 paragraph (2) of this subsection, all payments required to be made by
13 the authority under the contract for work and materials supplied by a
14 subcontractor may, upon the certification of the contractor of the
15 amount due to the subcontractor, be paid directly to the
16 subcontractor. Payments to a subcontractor for work and materials
17 supplied in connection with the contract shall be made within 10
18 calendar days of the receipt of payment for that work or the delivery
19 of those materials by the subcontractor in accordance with the
20 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
21 regulations promulgated thereunder.

22 (4) All construction, reconstruction, rehabilitation or improvement
23 of school facilities projects undertaken by the authority pursuant to
24 the provisions of P.L. , c. (C.) (now pending before the
25 Legislature as this bill) shall be subject during such undertaking to the
26 supervision of the Division of Property Management and Construction
27 to the same extent as any project undertaken by the State.]²

28

29 ²[53. (New section) a. If the authority shall find it necessary in
30 connection with the undertaking of any school facilities project to
31 change the location of any portion of any public highway or road, it
32 may contract with any government agency, or public or private
33 corporation which may have jurisdiction over the public highway or
34 road to cause the public highway or road to be constructed at such
35 locations as the authority shall deem most favorable. The cost of the
36 reconstruction and any damage incurred in changing the location of the
37 highway shall be ascertained and paid by the authority as part of the
38 cost of the school facilities project. Any public highway affected by
39 the construction of any school facilities project may be vacated or
40 relocated by the authority in the manner now provided by law for the
41 vacation or relocation of public roads, and any damages awarded on
42 account thereof shall be paid by the authority as a part of the cost of
43 the school facilities project. In all undertakings authorized by this
44 subsection, the authority shall consult and obtain the approval of the
45 Commissioner of Transportation.

46 b. The authority and its authorized agents and employees may enter
47 upon any lands, waters and premises for the purpose of making

1 surveys, soundings, drillings and examinations as it may deem
2 necessary or convenient for the purposes of this act, all in accordance
3 with due process of law, and this entry shall not be deemed a trespass
4 nor shall an entry for this purpose be deemed an entry under any
5 condemnation proceedings which may be then pending. The authority
6 shall make reimbursement for any actual damages resulting to the
7 lands, waters and premises as a result of these activities.

8 c. The authority shall have the power to make reasonable
9 regulations for the installation, construction, maintenance, repair,
10 renewal, relocation and removal of tracks, pipes, mains, conduits,
11 cables, wires, towers, poles and other equipment and appliances,
12 herein called "public utility facilities," or any public utility as defined
13 in R.S.48:2-13, in, on, along, over or under any school facilities
14 project. Whenever the authority shall determine that it is necessary
15 that any public utility facilities which now are, or hereafter may be,
16 located in, on, along, over or under any school facilities project shall
17 be relocated in the school facilities project, or should be removed from
18 the school facilities project, the public utility owning or operating the
19 facilities shall relocate or remove them in accordance with the order
20 of the authority. The cost and expenses of the relocation or removal,
21 including the cost of installing the facilities in a new location or new
22 locations, and the cost of any lands, or any rights or interests in lands,
23 and any other rights, acquired to accomplish the relocation or removal,
24 shall be ascertained and paid by the authority as a part of the cost of
25 the school facilities project. In case of any relocation or removal of
26 facilities, the public utility owning or operating them, its successors or
27 assigns, may maintain and operate the facilities, with the necessary
28 appurtenances, in the new location or new locations, for as long a
29 period, and upon the same terms and conditions, as it had the right to
30 maintain and operate the facilities in their former location or locations.
31 In all undertakings authorized by this subsection the authority shall
32 consult and obtain the approval of the Board of Public Utilities.]²

33

34 ²[54. (New section) Notwithstanding the provisions of any law to
35 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
36 pending before the Legislature as this bill) shall be fully negotiable
37 within the meaning and for all purposes of Title 12A of the New Jersey
38 Statutes, and each holder or owner of such a bond or other obligation,
39 or of any coupon appurtenant thereto, by accepting the bond or
40 coupon shall be conclusively deemed to have agreed that the bond or
41 coupon is and shall be fully negotiable within the meaning and for all
42 purposes of Title 12A.]²

43

44 ²[55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to
45 read as follows:

46 22. a. Whenever the planning board shall have adopted any portion
47 of the master plan, the governing body or other public agency having

1 jurisdiction over the subject matter, before taking action necessitating
2 the expenditure of any public funds, incidental to the location,
3 character or extent of such project, shall refer the action involving
4 such specific project to the planning board for review and
5 recommendation in conjunction with such master plan and shall not act
6 thereon, without such recommendation or until 45 days have elapsed
7 after such reference without receiving such recommendation. This
8 requirement shall apply to action by a housing, parking, highway,
9 special district, or other authority, redevelopment agency, school
10 board or other similar public agency, State, county or municipal.

11 b. The planning board shall review and issue findings concerning
12 any long-range facilities plan submitted to the board pursuant to the
13 "Educational Facilities Construction and Financing Act," P.L. _____,
14 c. (C. _____) (now pending before the Legislature as this bill), for the
15 purpose of review of the extent to which the long-range facilities plan
16 is informed by, and consistent with, at least the land use plan element
17 and the housing element contained within the municipal master plan
18 adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and
19 such other elements of the municipal master plan as the planning board
20 deems necessary to determine whether the prospective sites for school
21 facilities contained in the long range facilities plan promote more
22 effective and efficient coordination of school construction with the
23 development efforts of the municipality. The planning board shall
24 devote at least one full meeting of the board to presentation and
25 review of the long-range facilities plan prior to adoption of a
26 resolution setting forth the board's findings.

27 (cf: P.L.1975, c.291, s.22)]²

28

29 ³[²43. N.J.S.18A:72A-1 is amended to read as follows:

30 18A:72A-1. [It is hereby declared] The Legislature finds and
31 declares that a serious public emergency exists affecting and
32 threatening the welfare, comfort, health, safety and prosperity of the
33 people of the state and resulting from the fact that financial resources
34 are lacking with which to construct required dormitory and other
35 educational facilities at public and private institutions of higher
36 education and to construct public elementary and secondary school
37 facilities; that it is essential that this and future generations of youth
38 be given the fullest opportunity to learn and to develop their
39 intellectual and mental capacities; that it is essential that institutions
40 for higher education and school districts within the state be provided
41 with appropriate additional means to assist such youth in achieving
42 the required levels of learning and development of their intellectual
43 and mental capacities; that it is essential that all resources of the state
44 be employed in order to meet the tremendous demand for higher
45 educational opportunities and public school facilities; that all
46 institutions of higher education in the state, both public and private,
47 and all public elementary and secondary educational institutions, are

1 an integral part of the total educational effort in the state for
2 providing higher educational opportunities, and that it is the purpose
3 of this chapter and P.L. , c. (C.) (now pending before the
4 Legislature as this bill) to provide a measure of assistance and an
5 alternative method of financing to enable institutions of higher
6 education and public school districts in the state to provide the
7 facilities which are sorely needed to accomplish the purposes of this
8 chapter and P.L. , c. (C.) (now pending before the Legislature as
9 this bill), all to the public benefit and good, to the extent and manner
10 provided herein and in P.L. , c. (C.) (now pending before the
11 Legislature as this bill).

12 The Legislature further finds that the inventory of public
13 elementary and secondary school buildings and the equipment and
14 capital resources currently available are aging, both chronologically
15 and technologically; that the current funding at the federal, State, and
16 local levels and the current mechanisms for construction of these
17 capital projects is inadequate to meet the demonstrated need for public
18 school facilities and these inadequacies necessitate additional sources
19 of funding and the coordination of construction activities at the State
20 level to meet those needs; that while the credit status of New Jersey's
21 school districts is sound, it can be economically more reasonable to
22 finance the costs of developing the educational infrastructure of the
23 State's public elementary and secondary schools, by providing for the
24 funding of capital projects through the issuance of bonds, notes or
25 other obligations by the New Jersey Educational Facilities Authority,
26 to be retired through annual payments made by the State subject to
27 appropriation by the State Legislature, and to provide for the use of
28 the proceeds of those bonds, notes or other obligations to pay for
29 educational infrastructure projects; that such a structure would
30 substantially reduce the costs of financing and provide for a more
31 efficient use of the funds available for the development of the
32 educational infrastructure; that the New Jersey Building Authority has
33 substantial and significant experience in undertaking major capital
34 construction projects, has a system of internal controls and procedures
35 to ensure the integrity of construction activities, and is therefore the
36 appropriate entity to undertake the planning, design, construction and
37 operation of elementary and secondary educational infrastructure
38 projects; and that by authorizing the New Jersey Educational Facilities
39 Authority and the New Jersey Building Authority to undertake these
40 activities, there will be achieved economies of scale, better
41 coordination of resources, effective financial management and
42 reporting, and increased monitoring and quality control of school
43 district instruction. ²

44 (cf: N.J.S.18A:72A-1)]³

45

46 ³[²44. N.J.S.18A:72A-3 is amended to read as follows:

47 18A:72A-3. As used in this act, the following words and terms

1 shall have the following meanings, unless the context indicates or
2 requires another or different meaning or intent:

3 "Authority" means the New Jersey Educational Facilities Authority
4 created by this chapter or any board, body, commission, department
5 or officer succeeding to the principal functions thereof or to whom the
6 powers conferred upon the authority by this chapter and P.L. , c.
7 (C.) (now pending before the Legislature as this bill) shall be given
8 by law;

9 "Bond" means bonds [or] , notes or other obligations and
10 refunding bonds of the authority issued pursuant to this chapter and
11 P.L. , c. (C.) (now pending before the Legislature as this bill);

12 "Cost" means in connection with a school facilities project, all costs
13 and expenses necessary or incident to all or part of a school facilities
14 project, including the costs associated with financing and
15 administrative fees and expenses ;

16 "County college capital project" means any capital project of a
17 county college certified pursuant to section 2 of P.L.1971, c.12
18 (C.18A:64A-22.2) and approved by the State Treasurer for funding
19 pursuant to the "County College Capital Projects Fund Act,"
20 P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

21 "District" means a local or regional school district established
22 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
23 Statutes, a county special services school district established pursuant
24 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
25 county vocational school district established pursuant to article 3 of
26 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
27 operated school district established pursuant to P.L.1987, c.399
28 (C.18A:7A-34);

29 "Dormitory" means a housing unit with necessary and usual
30 attendant and related facilities and equipment;

31 "Educational facility" means a structure suitable for use as a
32 dormitory, dining hall, student union, administration building,
33 academic building, library, laboratory, research facility, classroom,
34 athletic facility, health care facility, teaching hospital, and parking
35 maintenance storage or utility facility and other structures or facilities
36 related thereto or required or useful for the instruction of students or
37 the conducting of research or the operation of an institution for higher
38 education, and public libraries, and the necessary and usual attendant
39 and related facilities and equipment, but shall not include any facility
40 used or to be used for sectarian instruction or as a place for religious
41 worship;

42 "Emerging needs program" means a program at one or more public
43 or private institutions of higher education directed to meeting new and
44 advanced technology needs or to supporting new academic programs
45 in science and technology;

46 "Higher education equipment" means any property consisting of, or
47 relating to, scientific, engineering, technical, computer,

1 communications or instructional equipment;

2 "Local unit" means a county, municipality, board of education or
3 any other political entity authorized to construct, operate and maintain
4 a school facilities project and to borrow money for those purposes
5 pursuant to Title 18A of the New Jersey Statutes;

6 "Participating college" means a public institution of higher
7 education or private college which, pursuant to the provisions of this
8 chapter, participates with the authority in undertaking the financing
9 and construction or acquisition of a project;

10 "Project" means a dormitory or an educational facility or any
11 combination thereof, or a county college capital project, but shall not
12 include a school facilities project;

13 "Private college" means an institution for higher education other
14 than a public college, situated within the State and which, by virtue of
15 law or charter, is a nonprofit educational institution empowered to
16 provide a program of education beyond the high school level;

17 "Private institution of higher education" means independent colleges
18 or universities incorporated and located in New Jersey, which by virtue
19 of law or character or license, are nonprofit educational institutions
20 authorized to grant academic degrees and which provide a level of
21 education which is equivalent to the education provided by the State's
22 public institutions of higher education as attested by the receipt of and
23 continuation of regional accreditation by the Middle States Association
24 of Colleges and Schools, and which are eligible to receive State aid;

25 "Public institution of higher education" means Rutgers, The State
26 University, the State colleges, the New Jersey Institute of Technology,
27 the University of Medicine and Dentistry of New Jersey, the county
28 colleges and any other public university or college now or hereafter
29 established or authorized by law;

30 "School facilities project" means the acquisition, demolition,
31 construction, improvement, repair, alteration, modernization,
32 renovation, reconstruction or maintenance of all or any part of any
33 school facility or of any other personal property necessary for or
34 ancillary to any school facility, and shall include fixtures, furnishings
35 and equipment, and shall include, but is not limited to, site
36 acquisition, site development, the services of design professionals such
37 as engineers and architects, construction management, legal services,
38 financing costs and administrative costs and expenses incurred in
39 connection with the school facilities project.

40 "School facility" means and includes any structure, building or
41 facility used wholly or in part for academic purposes by a district, but
42 shall exclude athletic stadiums, grandstands, and any structure,
43 building or facility used solely for school administration.

44 "Refunding bonds" means bonds, notes, or other obligations issued
45 to refinance bonds previously issued by the authority pursuant to this
46 chapter and P.L. , c. (C.) (now pending before the Legislature as
47 this bill).

1 "University" means Rutgers, The State University.²
2 (cf: P.L.1999, c.184, s.6)]³

3
4 ³[²45. N.J.S.18A:72A-4 is amended to read as follows:

5 18A:72A-4. (a) There is hereby established in but not of the
6 Department of the Treasury a public body corporate and politic, with
7 corporate succession to be known as the "New Jersey educational
8 facilities authority." Notwithstanding this allocation, the authority shall
9 be independent of any supervision or control by the department or any
10 officer thereof. The authority shall constitute a political subdivision of
11 the State established as an instrumentality exercising public and
12 essential governmental functions, and the exercise by the authority of
13 the powers conferred by this chapter and P.L. , c. (C.) (now
14 pending before the Legislature as this bill) shall be deemed and held
15 to be an essential governmental function of the State.

16 (b) The authority shall consist of seven members, two of whom
17 shall be the chairman of the Commission on Higher Education, ex
18 officio, and the State Treasurer, ex officio, or when so designated by
19 them, their deputies; one person to be appointed by the Governor upon
20 the recommendation of the President of the Senate and one person
21 appointed by the Governor upon the recommendation of the Speaker
22 of the General Assembly who shall serve during the two-year
23 legislative term in which they are appointed and until their successors
24 are appointed and qualified; and [five] three citizens of the State to be
25 appointed by the Governor [with the advice and consent of the
26 Senate] no more than two of whom shall be of the same political party
27 for terms of five years [; provided that the terms of the members first
28 appointed shall be arranged by the Governor so that one of such terms
29 shall expire on April 30 in each successive year ensuing after such
30 appointments]. Each member shall hold office for the term of his
31 appointment and shall continue to serve during the term of his
32 successor unless and until his successor shall have been appointed and
33 qualified. Any vacancy among the members appointed by the
34 Governor shall be filled by appointment for the unexpired term only.
35 A member of the authority shall be eligible for reappointment.

36 The terms of office of members of the authority appointed by the
37 Governor who are serving on the effective date of P.L. , c. (C.)
38 (now pending before the Legislature as this bill) shall expire upon the
39 appointment by the Governor of five members of the authority as
40 provided by this section. The five members initially appointed by the
41 Governor pursuant to this section shall be as follows: one member
42 upon the recommendation of the President of the Senate and one
43 member upon the recommendation of the Speaker of the General
44 Assembly, who shall serve during the two-year legislative term in
45 which they are appointed; and three members whose terms shall be
46 arranged so that a term of one of the members expires on April 30 in

1 each successive year ensuing after the appointments.

2 (c) Any member of the authority appointed by the Governor may
3 be removed from office by the Governor for cause after a public
4 hearing.

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

8 (e) The authority, upon the first appointment of its members and
9 thereafter on or after April 30 in each year, shall annually elect from
10 among its members a chairman and a vice chairman who shall hold
11 office until April 30 next ensuing and shall continue to serve during the
12 terms of their respective successors unless and until their respective
13 successors shall have been appointed and qualified. The authority may
14 also appoint, retain and employ, without regard to the provisions of
15 Title 11, Civil Service, of the Revised Statutes, such officers, agents,
16 employees and experts as it may require, and it shall determine their
17 qualifications, terms of office, duties, services and compensation.

18 (f) The powers of the authority shall be vested in the members
19 thereof in office from time to time and a majority of the total
20 authorized membership of the authority shall constitute a quorum at
21 any meeting thereof. Action may be taken and motions and resolutions
22 adopted by the authority at any meeting thereof by the affirmative vote
23 of a majority of the members present, unless in any case the bylaws of
24 the authority shall require a larger number. No vacancy in the
25 membership of the authority shall impair the right of a quorum to
26 exercise all the rights and perform all the duties of the authority.

27 (g) Before the issuance of any bonds under the provisions of this
28 chapter or P.L. , c. (C.) (now pending before the Legislature as
29 this bill), the members and the officer of the authority charged with
30 the handling of the authority's moneys shall be covered by a surety
31 bond or bonds in a penal sum of not less than \$25,000.00 per person
32 conditioned upon the faithful performance of the duties of their
33 respective offices, and executed by a surety company authorized to
34 transact business in the State of New Jersey as surety. Each such bond
35 shall be submitted to the attorney general for his approval and upon his
36 approval shall be filed in the Office of the Secretary of State prior to
37 the issuance of any bonds by the authority. At all times after the
38 issuance of any bonds by the authority the officer of the authority and
39 each member charged with the handling of the authority's moneys shall
40 maintain such surety bonds in full force and effect. All costs of such
41 surety bonds shall be borne by the authority.

42 (h) Notwithstanding any other law to the contrary, it shall not be
43 or constitute a conflict of interest for a trustee, director, officer or
44 employee of a participating college or a member or employee of a
45 board of education to serve as a member of the authority; provided
46 such trustee, director, officer, member or employee shall abstain from
47 discussion, deliberation, action and vote by the authority under this

1 chapter or P.L. , c. (C.) (now pending before the Legislature as
2 this bill) in specific respect to such participating college or board of
3 education of which such member is a trustee, director, officer,
4 member or employee.

5 (i) A true copy of the minutes of every meeting of the authority
6 shall be forthwith delivered by and under the certification of the
7 secretary thereof, to the Governor. No action taken at such meeting
8 by the authority shall have force or effect until 10 days, Saturdays,
9 Sundays and public holidays excepted, after such copy of the minutes
10 shall have been so delivered. If, in said 10-day period, the Governor
11 returns such copy of the minutes with veto of any action taken by the
12 authority or any member thereof at such meeting, such action shall be
13 null and of no effect. If the Governor shall not return the minutes
14 within said 10-day period, any action therein recited shall have force
15 and effect according to the wording thereof. At any time prior to the
16 expiration of the said 10-day period, the Governor may sign a
17 statement of approval of any such action of the authority, in which
18 case the action so approved shall not thereafter be disapproved.

19 Notwithstanding the foregoing provisions of this subsection (i),
20 with regard to the authorization or sale of bonds of the authority, the
21 authority shall furnish to the Governor a certified copy of the minutes
22 of the meeting at which the bonds are authorized or sold and the
23 Governor shall indicate approval or disapproval of the action upon
24 receipt of the certified copy of the minutes.

25 The powers conferred in this subsection (i) upon the Governor shall
26 be exercised with due regard for the rights of the holders of bonds of
27 the authority at any time outstanding, and nothing in, or done pursuant
28 to, this subsection (i) shall in any way limit, restrict or alter the
29 obligation or powers of the authority or any representative or officer
30 of the authority to carry out and perform in every detail each and
31 every covenant, agreement or contract at any time made or entered
32 into by or on behalf of the authority with respect to its bonds or for
33 the benefit, protection or security of the holders thereof.²

34 (cf: P.L.1999, c.217, s.11)]³

35

36 ³[²46. N.J.S.18A:72A-5 is amended to read as follows:

37 18A:72A-5. The authority shall have power:

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

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

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

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

46 (e) To borrow money and to issue bonds and notes and other
47 obligations of the authority and to provide for the rights of the holders

1 thereof as provided in this chapter and P.L. , c. (C.) (now
2 pending before the Legislature as this bill);

3 (f) To acquire, lease as lessee, hold and dispose of real and
4 personal property or any interest therein, in the exercise of its powers
5 and the performance of its duties under this chapter and P.L. , c.
6 (C.) (now pending before the Legislature as this bill);

7 (g) To acquire in the name of the authority by purchase or
8 otherwise, on such terms and conditions and in such manner as it may
9 deem proper, or by the exercise of the power of eminent domain, any
10 land or interest therein and other property which it may determine is
11 reasonably necessary for any project or school facilities project,
12 including any lands held by any county, municipality, local unit or
13 other governmental subdivision of the State; and to hold and use the
14 same and to sell, convey, lease or otherwise dispose of property so
15 acquired, no longer necessary for the authority's purposes;

16 (h) To receive and accept, from any federal or other public agency
17 or governmental entity, grants or loans for or in aid of the acquisition
18 or construction of any project or school facilities project, and to
19 receive and accept aid or contributions from any other source, of
20 either money, property, labor or other things of value, to be held, used
21 and applied only for the purposes for which such grants, loans and
22 contributions may be made consistent with this chapter and section 22
23 of P.L. , c. (C.) (now pending before the Legislature as this bill);

24 (i) To prepare or cause to be prepared plans, specifications,
25 designs and estimates of costs for the construction and equipment of
26 projects for participating colleges under the provisions of this chapter,
27 and from time to time to modify such plans, specifications, designs or
28 estimates;

29 (j) By contract or contracts or by its own employees to construct,
30 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
31 projects for participating colleges and, pursuant to the provisions of
32 P.L. , c. (C.) (now pending before the Legislature as this bill), to
33 finance the planning, design, and construction of school facilities
34 projects; however, in any contract or contracts undertaken by the
35 authority for the construction, reconstruction, rehabilitation or
36 improvement of any public college project where the cost of such
37 work will exceed \$25,000, the contracting agent shall advertise for and
38 receive in the manner provided by law:

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

40 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

6 Contracts shall be awarded to the lowest responsible bidder whose
7 bid, conforming to the invitation for bids, will be the most
8 advantageous to the authority;

9 (k) To determine the location and character of any project to be
10 undertaken pursuant to the provisions of this chapter; and to
11 construct, reconstruct, maintain, repair, operate, lease, as lessee or
12 lessor, and regulate the same pursuant to this chapter in the case of
13 any project, and as authorized pursuant to the provisions of P.L. , c.
14 (C.) (now pending before the Legislature as this bill) in the case of
15 any school facilities project; to enter into contracts for any or all such
16 purposes; to enter into contracts for the management and operation of
17 a project and the financing of a school facilities project, and to
18 designate a participating college as its agent to determine the location
19 and character of a project undertaken by such participating college
20 under the provisions of this chapter and, as the agent of the authority,
21 to construct, reconstruct, maintain, repair, operate, lease, as lessee or
22 lessor, and regulate the same, and, as agent of the authority, to enter
23 into contracts for any and all such purposes including contracts for the
24 management and operation of such project;

25 (l) To establish rules and regulations for the use of a project or any
26 portion thereof and to designate a participating college as its agent to
27 establish rules and regulations for the use of a project undertaken by
28 such participating college;

29 (m) Generally to fix and revise from time to time and to charge and
30 collect rates, rents, fees and other charges for the use of and for the
31 services furnished or to be furnished by a project or, if applicable, a
32 school facilities project or any portion thereof and to contract with
33 holders of its bonds and with any other person, party, association,
34 corporation or other body, public or private, in respect thereof;

35 (n) To enter into any and all agreements or contracts, execute any
36 and all instruments, and do and perform any and all acts or things
37 necessary, convenient or desirable for the purposes of the authority or
38 to carry out any power expressly given in this chapter or in P.L. ,
39 c. (C.) (now pending before the Legislature as this bill);

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

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

47 (q) To enter into loan agreements with any county, to hold bonds

1 or notes of the county evidencing those loans, and to issue bonds or
2 notes of the authority to finance county college capital projects
3 pursuant to the provisions of the "County College Capital Projects
4 Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

5 (r) To enter into agreements or contracts, execute instruments, and
6 do and perform all acts or things necessary, convenient or desirable for
7 the purposes of the authority to carry out any power expressly
8 provided pursuant to this chapter and P.L. , c. (C.)(now
9 pending before the Legislature as this bill), including, but not limited
10 to, entering into contracts with the State Treasurer and the building
11 authority as authorized pursuant to section 18 of P.L. , c. (C.)
12 (now pending before the Legislature as this bill and entering into
13 agreements with districts as may be authorized pursuant to P.L. , c.
14 (C.)(now pending before the Legislature as this bill);

15 (s) To enter into leases, rentals or other disposition of a real
16 property interest in and of any school facilities project to or from any
17 local unit, pursuant to P.L. , c. (C.)(now pending before the
18 Legislature as this bill);

19 (t) To make and contract to make loans or leases to local units to
20 finance the cost of school facilities projects and to acquire and
21 contract to acquire bonds, notes or other obligations issued or to be
22 issued by local units to evidence the loans or leases, all in accordance
23 with the provisions of this chapter and P.L. , c. (C.)(now
24 pending before the Legislature as this bill);

25 (u) Subject to any agreement with holders of its bonds issued to
26 finance a school facilities project, obtain as security or to provide
27 liquidity for payment of all or any part of the principal of and interest
28 and premium on the bonds of the authority or for the purchase upon
29 tender or otherwise of the bonds, lines of credit, letters of credit,
30 reimbursement agreements, interest rate exchange agreements,
31 currency exchange agreements, interest rate floors or caps, options,
32 puts or calls to hedge payment, currency, rate, spread or similar
33 exposure or similar agreements, float agreements, forward agreements,
34 insurance contract, surety bond, commitment to purchase or sell
35 bonds, purchase or sale agreement, or commitments or other contracts
36 or agreements and other security agreements or instruments in any
37 amounts and upon any terms as the authority may determine and pay
38 any fees and expenses required in connection therewith;

39 (v) To charge to and collect from local units, the State and any
40 other person, any fees and charges in connection with the authority's
41 actions undertaken with respect to projects and school facilities
42 projects, including, but not limited to, fees and charges for the
43 authority's administrative, organization, insurance, operating and other
44 expenses incident to the financing, construction and placing into
45 service and maintenance of projects and school facilities projects.²

46 (cf: P.L.1997, c.360, s.6)]³

1 ³[²47. N.J.S.18A:72A-12 is amended to read as follows:

2 18A:72A-12. ~~[All] With respect to projects,~~ all moneys received
3 pursuant to the authority of this chapter, whether as proceeds from the
4 sale of bonds or as revenues, shall be deemed to be trust funds to be
5 held and applied solely as provided in this chapter. Any officer with
6 whom, or any bank or trust company with which, such moneys shall be
7 deposited shall act as trustee of such moneys and shall hold and apply
8 the same for the purposes hereof, subject to such regulations as this
9 chapter and the resolution authorizing the bonds of any issue or the
10 trust agreement securing such bonds may provide.²

11 (cf: N.J.S.18A:72A-12)]³

12

13 ³[²48. N.J.S.18A:72A-15 is amended to read as follows:

14 18A:72A-15. Bonds and notes issued by the authority under the
15 provisions of this chapter ~~and P.L. , c. (C.) (now pending before~~
16 ~~the Legislature as this bill)~~ are hereby made securities in which the
17 state and all political subdivisions of the state, their officers, boards,
18 commissions, departments or other agencies, all banks, bankers,
19 savings banks, trust companies, savings and loan associations,
20 investment companies and other persons carrying on a banking
21 business, all insurance companies, insurance associations, and other
22 persons carrying on an insurance business, and all administrators,
23 executors, guardians, trustees and other fiduciaries, and all other
24 persons whatsoever who now are or may hereafter be authorized to
25 invest in bonds or other obligations of the state, may properly and
26 legally invest any funds, including capital belonging to them or within
27 their control; and said bonds, notes or other securities or obligations
28 are hereby made securities which may properly and legally be
29 deposited with and received by any state or municipal officers or
30 agency of the state for any purpose for which the deposit of bonds or
31 other obligations of the state is now or may hereafter be authorized
32 by law.²

33 (cf: N.J.S.18A:72A-15)]³

34

35 ³[²49. Section 2 of P.L.1981, c.120 (C.52:18A-78.2) is amended
36 to read as follows:

37 2. As used in this act, unless the context clearly indicates
38 otherwise:

39 a. "Authority" means the New Jersey Building Authority created
40 under this act.

41 b. "Bonds" means bonds ~~, notes, other obligations and refunding~~
42 ~~bonds~~ issued by the authority pursuant to this act.

43 c. "Building" includes any portion thereof, such as an apartment
44 created under the "Horizontal Property Act," P.L.1963, c.168
45 (C.46:8A-1 et seq.) or a unit created under the "Condominium Act,"
46 P.L.1969, c.257 (C.46:8B-1 et seq.).

47 d. "Local governmental agency" means any municipality, county,

1 school district, or any agency, department or instrumentality of any of
2 the foregoing, or any other public body having local or regional
3 jurisdiction or powers and not constituting a State agency.

4 e. "Notes" means notes issued by the authority pursuant to this act.

5 f. "Project" means any building or buildings, including related
6 structures, parking facilities, improvements, real and personal property
7 or any interest therein, including lands under water, space rights and
8 air rights, and other appurtenances and facilities necessary or
9 convenient to the use or operation of the building or buildings,
10 acquired, owned, constructed, reconstructed, extended, rehabilitated,
11 renovated, preserved or improved by the authority for the purposes set
12 forth in section 8 of P.L.1992, c.174 (C.52:18A-78.5a), but shall not
13 include a school facilities project.

14 g. "State agency" means the Executive, Legislative or Judicial
15 branch of the State Government or any officer, department, board,
16 commission, bureau, division, public authority or corporation, agency
17 or instrumentality of the State.

18 h. "Historic public building" means a building that is owned by a
19 governmental agency and that is on or eligible for State or National
20 Registers of Historic Places.

21 i. "District" means a local or regional school district established
22 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
23 Statutes, a county special services school district established pursuant
24 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
25 county vocational school district established pursuant to article 3 of
26 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
27 operated school district established pursuant to P.L.1987, c.399
28 (C.18A:7A-34).

29 j. "Local unit" means a county, municipality, board of education or
30 any other political entity authorized to construct, operate and maintain
31 a school facilities project and to borrow money for those purposes
32 pursuant to Title 18A of the New Jersey Statutes.

33 k. "School facilities project" means the acquisition, demolition,
34 construction, improvement, repair, alteration, modernization,
35 renovation, reconstruction or maintenance of all or any part of a
36 school facility or of any other personal property necessary for or
37 ancillary to a school facility, and shall include fixtures, furnishings and
38 equipment, and shall include, but is not limited to, site acquisition, site
39 development, the services of design professionals such as engineers
40 and architects, construction management, legal services and financing
41 and administrative costs incurred in connection with the school
42 facilities project.

43 l. "School facility" means and includes any structure, building or
44 facility used wholly or in part for academic purposes by a district, but
45 shall exclude athletic stadiums, grandstands, and any structure,
46 building or facility used solely for school administration.

47 m. "Refunding bonds" means bonds, notes, or other obligations

1 issued to refinance bonds previously issued by the authority pursuant
2 to P.L.1981, c.120 (C.52:18A-78.1 et seq.).²
3 (cf: P.L.1992, c.174, s.1)]³

4
5 ³[²50. Section 3 of P.L.1981, c.120 (C.52:18A-78.3) is amended
6 to read as follows:

7 3. The Legislature finds and declares the following:

8 a. That for many years the functions of the State Government have
9 grown and that during this period of rapid expansion no definite
10 program has been adopted for the housing and carrying out of the
11 operations of the many State agencies.

12 b. That many State agencies have their offices in privately owned
13 or inadequate State owned buildings and that these buildings are
14 inadequate to meet the needs of these State agencies and the needs of
15 the people of the State.

16 c. That it is to the economic benefit and general welfare of the
17 citizens of the State to provide sufficient office space and related
18 facilities for these State agencies and thus provide for a more efficient
19 and economic operation of State Government.

20 d. That projects for the construction of correctional facilities are
21 required because of a critical public need and a legal constraint.

22 e. That in order to provide for office space and related facilities at
23 a cost that these State agencies can afford, it is necessary to create and
24 establish a building authority for the purposes of constructing,
25 operating, selling and leasing office buildings and related facilities to
26 meet the needs of State agencies.

27 f. It is necessary and in the public interest that this building
28 authority have the necessary funds to provide for predevelopment
29 cost, temporary financing, land development expenses, construction
30 and operation of office buildings and related facilities for the use of,
31 and sale or rental to, State agencies.

32 g. That the renovation and preservation of historic public buildings
33 contribute to the preservation of the State's heritage, the promotion of
34 the cultural life of our people, and the development and redevelopment
35 of our municipalities.

36 h. For these purposes, there should be created a corporate
37 governmental agency to be known as the "New Jersey Building
38 Authority" which, through issuance of bonds and notes to the private,
39 investing public may provide or obtain the capital resources necessary
40 to acquire, construct, reconstruct, rehabilitate, renovate, preserve or
41 improve these office buildings and related facilities necessary or
42 convenient to the operation of any State agency, or historic public
43 buildings, as the case may be.

44 i. That the acquisition, construction, reconstruction, rehabilitation,
45 renovation, preservation or improvement of these office buildings and
46 related facilities necessary or convenient to the operation of any State
47 agency, and historic public buildings are public uses and public

1 purposes for which public money may be loaned and private property
2 may be acquired and tax exemptions granted, and that the powers and
3 duties of the New Jersey Building Authority as set forth in this act are
4 necessary and proper for the purpose of achieving the ends here
5 recited.

6 j. That the construction, reconstruction, rehabilitation, renovation,
7 preservation and improvement activities of the authority will provide
8 a much needed stimulus for the construction industry, and related
9 industries and professions, particularly in urban areas.

10 k. That the highest priority for the New Jersey Building shall be the
11 renovation and preservation of the following facilities in the State
12 Capital: the State House, the Old Barracks, the War Memorial, the
13 Kelsey Building, and the townhouses adjacent to the Kelsey Building.

14 The Legislature further finds and declares that:

15 l. It is essential that this and future generations of young people be
16 given the fullest opportunity to learn and develop their intellectual
17 capacities; that institutions of public elementary and secondary
18 education within the State be provided with the appropriate additional
19 means required to assist these young citizens in achieving the required
20 levels of learning and the complete development of their intellectual
21 abilities; and that the resources of the State be employed to meet the
22 tremendous demand for public elementary and secondary educational
23 opportunities.

24 m. Public elementary and secondary educational facilities are an
25 integral part of the effort in this State to provide educational
26 opportunities; it is the purpose of P.L. , c. (C.) (now pending
27 before the Legislature as this bill) to provide a measure of assistance
28 and an alternative method of financing to enable school districts to
29 provide the facilities which are so critically needed; the inventory of
30 public elementary and secondary school buildings and the equipment
31 and capital resources currently available are aging, both
32 chronologically and technologically; and the current funding at the
33 federal, State, and local levels and the current mechanisms for
34 construction of these capital projects is inadequate to meet the
35 demonstrated need for school facilities and these inadequacies
36 necessitate additional sources of funding and the coordination of
37 construction activities at the State level to meet those needs.

38 n. While the credit status of New Jersey's school districts is sound,
39 it can be economically more reasonable to finance the costs of
40 developing the educational infrastructure of the State's public
41 elementary and secondary schools, by providing for the funding of
42 capital projects through the issuance of bonds, notes or other
43 obligations by the New Jersey Educational Facilities Authority, to be
44 retired through annual payments made by the State subject to
45 appropriation by the State Legislature, and to provide for the use of
46 the proceeds of those bonds, notes or other obligations to pay for
47 educational infrastructure projects; and such a structure would

1 substantially reduce the costs of financing and provide for a more
2 efficient use of the funds available for the development of the
3 educational infrastructure.

4 o. The New Jersey Building Authority has substantial and
5 significant experience in undertaking major capital construction
6 projects, has a system of internal controls and procedures to ensure the
7 integrity of construction activities, and is therefore the appropriate
8 entity to undertake the planning, design, construction, and operation
9 of educational infrastructure projects; and by authorizing the New
10 Jersey Building Authority and the New Jersey Educational Facilities
11 Authority to undertake these activities, there will be achieved
12 economies of scale, better coordination of resources, effective
13 financial management and control and increased monitoring and quality
14 control of school district construction.²

15 (cf: P.L.1992, c.174, s.2)]³

16

17 ³[²⁵¹. Section 4 of P.L.1981, c.120 (C.52:18A-78.4) is amended
18 to read as follows:

19 4. a. There is established in the Department of the Treasury a
20 public body corporate and politic, with corporate succession, to be
21 known as the "New Jersey Building Authority." The authority is
22 constituted an instrumentality of the State exercising public and
23 essential governmental functions, and the exercise by the authority
24 thereof of the powers conferred by this act shall be deemed and held
25 to be an essential governmental function of the State.

26 b. The membership of the authority shall consist of [12] 15
27 directors as follows: the State Treasurer, [the Comptroller of the
28 Treasury,] the Chairman of the Commission on Capital Budgeting
29 and Planning and the Commissioner of Education who shall be
30 members ex officio; [two] three persons appointed by the Governor
31 upon the recommendation of the President of the Senate and [two]
32 three persons appointed by the Governor upon the recommendation
33 of the Speaker of the General Assembly, of whom no more than [one]
34 two of each group of [two] three shall be of the same political party,
35 and who shall serve during the [2-] two- year legislative term in
36 which they are appointed and until their successors shall have been
37 appointed and qualified; and [five] six directors appointed by the
38 Governor [with the advice and consent of the Senate] for terms of 4
39 years no more than [three] four of whom shall be of the same political
40 party. [The directors of the authority first appointed by the Governor
41 shall serve for terms of 1 year, 2 years, 3 years and two for 4 years,
42 respectively, and thereafter directors shall be appointed by the
43 Governor for terms of 4 years.] Each such director shall hold office
44 for the term of his appointment and until his successor shall have been
45 appointed and qualified. A director shall be eligible for
46 reappointment. Any vacancy on the board of directors occurring other

1 than by expiration of term shall be filled in the same manner as the
2 original appointment but for the unexpired term only. At least six of
3 the directors appointed by the Governor shall have as part of their
4 vocational, professional, or civic background some experience in the
5 field of public education or in the construction of a public school
6 facility or in the financing of a public school facility.

7 The terms of office of the directors of the authority appointed by
8 the Governor who are serving on the effective date of P.L. , c. (C.)
9 (now pending before the Legislature as this bill) shall expire upon the
10 appointment by the Governor of ten directors pursuant to this
11 section . The 12 directors appointed by the Governor pursuant to the
12 provisions of this section shall be as follows: three persons upon the
13 recommendation of the President of the Senate and three persons
14 upon the recommendation of the Speaker of the General Assembly,
15 who shall serve during the two- year legislative term in which they are
16 appointed; and six persons, one of whom shall serve for a term of one
17 year, two for terms of two years, two for terms of three years, and
18 one for a term on four years.

19 c. Each director appointed by the Governor, except those
20 appointed upon recommendation of the President of the Senate and
21 Speaker of the General Assembly, may be removed from office by the
22 Governor for cause, after a public hearing, and may be suspended by
23 the Governor pending the completion of the hearing. Each director
24 before entering upon his duties shall take and subscribe an oath to
25 perform the duties of his office faithfully, impartially and justly to the
26 best of his ability. A record of the oaths shall be filed in the office of
27 the Secretary of State.

28 d. The authority shall not be deemed to be constituted and shall not
29 take action or adopt motions or resolutions until all original authorized
30 members shall have been appointed and qualified in the manner
31 provided in this section. A chairman shall be appointed by the
32 Governor with the advice and consent of the Senate from the
33 directors of the authority other than the ex officio directors, and the
34 directors of the authority shall annually elect one of their number as
35 vice chairman thereof. The directors shall elect a secretary and a
36 treasurer who need not be directors, and the same person may be
37 elected to serve both as secretary and treasurer. The powers of the
38 authority shall be vested in the directors thereof in office from time to
39 time and seven directors of the authority shall constitute a quorum at
40 any meeting thereof. Action may be taken and motions and
41 resolutions adopted by the authority at any meeting thereof by the
42 affirmative vote of at least **[seven]** eight directors of the authority.
43 No vacancy on the board of directors of the authority shall impair the
44 right of a quorum of the directors to exercise all the powers and
45 perform all the duties of the authority.

46 e. Each director and the treasurer of the authority shall execute a
47 bond to be conditioned upon the faithful performance of the duties of

1 the director or treasurer, as the case may be, in such form and amount
2 as may be prescribed by the Comptroller of the Treasury. Bonds shall
3 be filed in the office of the Secretary of State. At all times thereafter,
4 the directors and treasurer of the authority shall maintain these bonds
5 in full effect. All costs of the bonds shall be borne by the authority.

6 f. The directors of the authority shall serve without compensation,
7 but the authority shall reimburse its directors for actual expenses
8 necessarily incurred in the discharge of their duties. Notwithstanding
9 the provisions of any other law, no officer or employee of the State
10 shall be deemed to have forfeited or shall forfeit his office or
11 employment or any benefits or emoluments thereof by reason of his
12 acceptance of the office of ex officio director of the authority or his
13 services therein.

14 g. The State Treasurer [and the Comptroller of the Treasury of the
15 State], as an ex officio [directors] director of the authority, may
16 [each] designate an officer or employee of the Department of the
17 Treasury to represent him at meetings of the authority, and the
18 Chairman of the Commission on Capital Budgeting and Planning, as
19 ex officio director of the authority, may designate a member or the
20 executive director of the Commission on Capital Budgeting and
21 Planning to represent him at meetings of the authority and the
22 Commissioner of Education, as an ex officio director of the authority,
23 may designate an officer or employee of the Department of Education
24 to represent him at meetings of the authority. Each designee may
25 lawfully vote and otherwise act on behalf of the director for whom he
26 constitutes the designee. The designation shall be in writing delivered
27 to the authority and shall continue in effect until revoked or amended
28 in writing delivered to the authority.

29 h. The authority may be dissolved by act of the Legislature on
30 condition that the authority has no debts or obligations outstanding or
31 that provision has been made for the payment or retirement of these
32 debts or obligations. Upon any dissolution of the authority all
33 property, funds and assets thereof shall be vested in the State. In
34 addition, subject to any property rights of a person, firm, partnership
35 [or], corporation or local unit resulting from the sale or leasing of a
36 project or a school facilities project by the authority to the person,
37 firm, partnership [or], corporation or local unit, any project or school
38 facilities project shall be vested in the State upon the payment or
39 retirement of all debts or obligations for the project or school
40 facilities project or upon the assumption by the State of liability for
41 any outstanding debts or obligations for the project or school facilities
42 project.

43 i. A true copy of the minutes of every meeting of the authority shall
44 be forthwith delivered by and under the certification of the secretary
45 thereof to the Governor and the presiding officers of both houses of
46 the Legislature. No action taken at any meeting by the authority shall
47 have effect until 15 days after a copy of the minutes has been so

1 delivered unless during the 15-day period the Governor shall approve
2 the same in which case the action shall become effective upon the
3 approval. If, in the 15-day period, the Governor returns the copy of
4 the minutes with veto of any action taken by the authority or any
5 member thereof at that meeting, the action shall be of no effect. The
6 powers conferred in this subsection upon the Governor shall be
7 exercised with due regard for the rights of the holders of bonds and
8 notes of the authority at any time outstanding; and nothing in, or
9 done pursuant to, this subsection shall in any way limit, restrict or
10 alter the obligation or powers of the authority or any representative
11 or officer of the authority to carry out and perform in every detail
12 each and every covenant, agreement or contract at any time made or
13 entered into by or on behalf of the authority with respect to its bonds
14 or notes or for the benefit, protection or security of the holders
15 thereof.²
16 (cf: P.L.1983, c.138, s.3)]³

1 ³[²52. Section 5 of P.L.1981, c.120 (C.52:18A-78.5) is amended
2 to read as follows:

3 5. Except as otherwise limited by this act, the authority shall have
4 power:

5 a. To make and alter bylaws for its organization and internal
6 management and, subject to agreements with noteholders and
7 bondholders, to make rules and regulations with respect to its projects,
8 its school facilities projects, operations, properties and facilities.

9 b. To adopt an official seal and alter the same at pleasure.

10 c. To sue and be sued.

11 d. To make and enter into all contracts and agreements necessary
12 or incidental to the performance of its duties and the exercise of its
13 powers under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and
14 P.L. , c. (C.)(now pending before the Legislature as this bill).

15 e. To enter into agreements or other transactions with and accept
16 grants and the cooperation of the United States or any agency thereof
17 or any State agency in furtherance of the purposes of this act,
18 including but not limited to the development, maintenance, operation
19 and financing of any project or school facilities project, and to do any
20 and all things necessary in order to avail itself of this aid and
21 cooperation.

22 f. To receive and accept aid or contributions from any source of
23 money, property, labor or other things of value, to be held, used and
24 applied to carry out the purposes of [this act] P.L.1981, c.120
25 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
26 the Legislature as this bill) subject to such conditions upon which this
27 aid and these contributions may be made, including but not limited to,
28 gifts or grants from any department or agency of the United States or
29 any State agency for any purpose consistent with [this act] P.L.1981,
30 c.120 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending
31 before the Legislature as this bill) .

32 g. To acquire, own, hold, sell, assign, exchange, lease, mortgage
33 or otherwise dispose of real and personal property or any interest
34 therein in the exercise of its powers and the performance of its duties
35 under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and P.L. ,
36 c. (C.)(now pending before the Legislature as this bill).

37 h. To appoint an executive director and such other officers,
38 employees and agents as it may require for the performance of its
39 duties, and to fix their compensation, promote and discharge them, all
40 without regard to the provisions of Title 11 of the Revised Statutes.

41 i. To acquire, construct, reconstruct, rehabilitate, renovate,
42 preserve, improve, alter or repair or provide for the demolition,
43 construction, reconstruction, improvement, alteration or repair of any
44 project or school facilities project and let, award and enter into
45 construction contracts, purchase orders and other contracts with
46 respect thereto in such manner as the authority shall determine.

47 j. To arrange or contract with a county or municipality and any

1 relevant utility for the planning, replanning, opening, grading or
2 closing of streets, roads, roadways, alleys or other places, or for the
3 furnishing of facilities or for the acquisition by a county or
4 municipality of property or property rights or for the furnishing of
5 property or services, in connection with a project or school facilities
6 project.

7 k. To sell, lease, assign, transfer, convey, exchange, mortgage or
8 otherwise dispose of or encumber any project or school facilities
9 project or other property no longer needed to carry out the public
10 purposes of the authority and, in the case of the sale of any project or
11 school facilities project or property, to accept a purchase money
12 mortgage in connection therewith; and to lease, repurchase or
13 otherwise acquire and hold any project or school facilities project or
14 property which the authority has theretofore sold, leased or otherwise
15 conveyed, transferred or disposed of.

16 l. To grant options to purchase any project or school facilities
17 project or to renew any leases entered into by it in connection with any
18 of its projects or school facilities project, on such terms and conditions
19 as it deems advisable.

20 m. To acquire by purchase, lease or otherwise, on such terms and
21 conditions and in such manner as it may deem proper, or by the
22 exercise of the power of eminent domain, except with respect to lands
23 owned by the State or any public lands reserved for recreation and
24 conservation purposes, any land and other property, including railroad
25 lands and land under water, which it may determine is reasonably
26 necessary for any of its projects or school facilities project or for the
27 relocation or reconstruction of any highway by the authority and any
28 and all rights, title and interest in that land and other property,
29 including public lands, highways or parkways, owned by or in which
30 a State agency or local governmental agency has any right, title or
31 interest, or parts thereof or rights therein and any fee simple absolute
32 or any lesser interest in private property, and any fee simple absolute
33 in, easements upon or the benefit of restrictions upon, abutting
34 property to preserve and protect any project or school facilities
35 project.

36 n. To prepare or cause to be prepared plans, specifications, designs
37 and estimates of costs for the construction, reconstruction,
38 rehabilitation, improvement, alteration or repair of any project or
39 school facilities project, and from time to time to modify these plans,
40 specifications, designs or estimates.

41 o. To sell, lease, rent, sublease or otherwise dispose of any project
42 or any space embraced in any project to any State agency or to any
43 person, firm, partnership or corporation for sale, leasing, rental or
44 subleasing to any State agency, and, where applicable, to establish and
45 revise the purchase price, rents or other charges therefor; provided,
46 however, that the incurrence of any liabilities by a State agency under
47 any agreement entered into with the authority pursuant to the

1 aforesaid authorization, including, without limitation, the payment of
2 any and all rentals or other amounts required to be paid by the agency
3 thereunder, shall be subject to and dependent upon appropriations
4 being made from time to time by the Legislature for that purpose and
5 approval by the presiding officers, or such other officers as may be
6 provided by law, of both houses of any such lease.

7 p. To sell, lease, rent, sublease or otherwise dispose of, to any
8 person, firm, partnership or corporation, any surplus space in any
9 project over and above that sold, leased, rented, subleased or
10 otherwise disposed of to State agencies and to establish and revise the
11 purchase price, rents or charges therefor.

12 q. To approve of the selection of any tenant not a State agency
13 under a lease or sublease agreement for the use or occupation of any
14 portion of a building in which a project is located.

15 r. To manage or operate any project or school facilities project or
16 real or personal property related thereto whether owned or leased by
17 the authority or any State agency or any person, firm, partnership or
18 corporation, and to enter into agreements with any State agency, or
19 any local governmental agency, or local unit or with any person, firm,
20 association, partnership or corporation, either public or private, for the
21 purpose of causing any project or school facilities project or related
22 property to be managed.

23 s. To provide advisory, consultative, training and educational
24 services, technical assistance and advice to any person, firm,
25 association, partnership or corporation, either public or private, in
26 order to carry out the purposes of [this act] P.L.1981, c.120
27 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
28 the Legislature as this bill).

29 t. Subject to the provisions of any contract with noteholders or
30 bondholders to consent to any modification, amendment or revision of
31 any kind of any contract, lease or agreement of any kind to which the
32 authority is a party.

33 u. To determine, after holding a public hearing in the municipality
34 in which the project is to be located, except as otherwise provided in
35 section 6 of [this act] P.L.1981, c.120 (C.52:18A-78.6), and at any
36 time, with respect to a school facilities project, the location, type and
37 character of the project or school facilities project or any part thereof
38 and all other matters in connection with all or any part of the project
39 or school facilities project notwithstanding any land use plan, zoning
40 regulation, [building code] or similar regulation heretofore or
41 hereafter adopted by any municipality, county, public body corporate
42 and politic, or any other political subdivision of the State.

43 v. To borrow money and to issue its bonds and notes and to secure
44 the same and provide for the rights of the holders thereof as provided
45 in this act.

46 w. Subject to any agreement with bondholders or noteholders, to
47 invest moneys of the authority not required for immediate use,

1 including proceeds from the sale of any bonds or notes, in those
2 obligations, securities and other investments as the authority shall
3 deem prudent.

4 x. To procure insurance against any loss in connection with its
5 property and other assets and operations in such amounts and from
6 such insurers as it deems desirable.

7 y. To engage the services of architects, engineers, attorneys,
8 accountants, building contractors, urban planners, landscape architects
9 and financial experts and such other advisors, consultants and agents
10 as may be necessary in its judgment and to fix their compensation.

11 z. To enter into agreements or contracts, execute instruments, and
12 do and perform all acts or things necessary, convenient or desirable for
13 the purposes of the authority or to carry out any power expressly
14 provided pursuant to P.L.1981, c.120 (C.52:18A-78.1 et. seq.) and
15 P.L. , c. (C.)(now pending before the Legislature as this bill).

16 aa. To enter into agreements with the State Treasurer, the
17 Commissioner of Education, districts, the New Jersey Educational
18 Facilities Authority and any other entity which may be required in
19 order to carry out the provisions of P.L. , c. (C.)(now pending
20 before the Legislature as this bill).

21 bb. To do any act necessary or convenient to the exercise of the
22 foregoing powers or reasonably implied therefrom.²
23 (cf: P.L.1992, c.174, s.10)]³

24

25 ³[²53. Section 10 of P.L.1981, c.120 (C.52:18A-78.10) is
26 amended to read as follows:

27 10. a. No municipality shall modify or change the drawings, plans
28 or specifications for the construction, reconstruction, rehabilitation,
29 alteration or improvement of any project or school facilities project
30 of the authority, or the construction, plumbing, heating, lighting or
31 other mechanical branch of work necessary to complete the work in
32 question, nor to require that any person, firm or corporation employed
33 on any such work shall perform the work in any other or different
34 manner than that provided by the drawings, plans and specifications,
35 nor to require that any person, firm or corporation obtain any other
36 or additional authority, approval, permit or certificate from the
37 municipality in relation to the work being done, and the doing of the
38 work by any person, firm or corporation in accordance with the terms
39 of the drawings, plans, specifications or contracts shall not subject the
40 person, firm or corporation to any liability or penalty, civil or
41 criminal, other than as may be stated in the contracts or incidental to
42 the proper enforcement thereof; nor shall any municipality require the
43 authority or any State agency which leases or purchases the project,
44 or any person, firm, partnership or corporation which leases or
45 purchases the project for lease or purchase to a State agency, to
46 obtain any other or additional authority, approval, permit, certificate
47 or certificate of occupancy from the municipality as a condition of

1 owning, using, maintaining, operating or occupying any project
2 acquired, constructed, reconstructed, rehabilitated, altered or
3 improved by the authority or by any subsidiary thereof. The
4 foregoing provisions shall not preclude any municipality from
5 exercising the right of inspection for the purpose of requiring
6 compliance by any project with local requirements for operation and
7 maintenance, affecting the health, safety and welfare of the occupants
8 thereof, provided that the compliance does not require changes,
9 modifications or additions to the original construction of the project.

10 b. Each municipality in which any project or school facilities
11 project of the authority is located shall provide for the project or
12 school facilities project, whether then owned by the authority, any
13 subsidiary, any State agency or any person, firm, partnership or
14 corporation, police, fire, sanitation, health protection and other
15 municipal services of the same character and to the same extent as
16 those provided for other residents of the municipality.

17 c. In carrying out any project or school facilities project, the
18 authority may enter into contractual agreements with local
19 governmental agencies with respect to the furnishing of any
20 community, municipal or public facilities or services necessary or
21 desirable for the project or school facilities project, and any local
22 governmental agency may enter into these contractual agreements with
23 the authority and do all things necessary to carry out its obligations
24 under the same.²

25 (cf: P.L.1983, c.138, s.7)]³

26

27 ³[²54. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is
28 amended to read as follows:

29 11. a. The authority, in the exercise of its authority to make and
30 enter into contracts and agreements necessary or incidental to the
31 performance of its duties and the execution of its powers, shall adopt
32 standing rules and procedures providing that no contract on behalf of
33 the authority shall be entered into for the doing of any work, or for the
34 hiring of equipment or vehicles, where the sum to be expended
35 exceeds the sum of \$7,500.00 unless the authority shall first publicly
36 advertise for bids therefor, and shall award the contract to the lowest
37 responsible bidder. Advertising shall not be required where the
38 contract to be entered into is one for the furnishing or performing of
39 services of a professional nature or for the supplying of any product
40 or the rendering of any service by a public utility subject to the
41 jurisdiction of the Board of Public Utilities and tariffs and schedules
42 of the charges made, charged, or exacted by the public utility for any
43 products to be supplied or services to be rendered are filed with the
44 board. This section shall not prevent the authority from having any
45 work done by its own employees, nor shall it apply to repairs, or to the
46 furnishing of materials, supplies or labor, or the hiring of equipment or
47 vehicles, when the safety or protection of its or other public property

1 or the public convenience requires, or the exigency of the
2 accomplishment of the projects or school facilities projects will not
3 allow advertisement. In that case, the board of directors of the
4 authority shall, by resolution, declare the exigency or emergency to
5 exist, and set forth in the resolution the nature thereof and the
6 approximate amount to be so expended.

7 b. (1) In undertaking any project or school facilities project where
8 the cost of construction, reconstruction, rehabilitation or improvement
9 will exceed \$25,000.00, the authority shall be subject to the rules and
10 regulations of the Division of **[Building] Property Management** and
11 Construction concerning procedural requirements for the making,
12 negotiating or awarding of purchases, contracts or agreements ,
13 except as otherwise provided in P.L. , c. (C.)(now pending before
14 the Legislature as this bill) ; and the authority, with the assistance of
15 the division, may prepare, or cause to be prepared, separate plans and
16 specifications for:

17 (a) The plumbing and gas fitting and all work and materials kindred
18 thereto,

19 (b) The steam and hot water heating and ventilating apparatus,
20 steam power plants and all work and materials kindred thereto,

21 (c) The electrical work,

22 (d) Structural steel and ornamental iron work and materials, and

23 (e) General construction, which shall include all other work and
24 materials required to complete the building.

25 (2) The authority shall receive (a) separate bids for each of the
26 branches of work specified in paragraph (1) of this subsection; or (b)
27 bids for all the work and materials required to complete the project
28 or school facilities project to be included in a single overall contract,
29 in which case there shall be set forth in the bid the name or names of
30 all subcontractors to whom the bidder will subcontract for the
31 furnishing of any of the work and materials specified in branches (a)
32 through (d) in paragraph (1) of this subsection; or (c) both.

33 (3) Contracts shall be awarded to the lowest responsible bidder in
34 each branch of work in the case of separate bids and to the single
35 lowest responsible bidder in the case of single bids. In the event that
36 a contract is advertised in accordance with subparagraph (c) of
37 paragraph (2) of this subsection, the contract shall be awarded in the
38 following manner: If the sum total of the amounts bid by the lowest
39 responsible bidder for each branch is less than the amount bid by the
40 lowest responsible bidder for all of the work and materials, the
41 authority shall award separate contracts for each of the branches to the
42 lowest responsible bidder therefor, but if the sum total of the amount
43 bid by the lowest responsible bidder for each branch is not less than
44 the amount bid by the lowest responsible bidder for all the work and
45 materials, the authority shall award a single over-all contract to the
46 lowest responsible bidder for all of the work and materials.

47 Whenever a contract is awarded under subparagraph (b) or (c) of

1 paragraph (2) of this subsection, all payments required to be made by
2 the authority under the contract for work and materials supplied by a
3 subcontractor may, upon the certification of the contractor of the
4 amount due to the subcontractor, be paid directly to the subcontractor.
5 Payments to a subcontractor for work and materials supplied in
6 connection with the contract shall be made within 10 calendar days of
7 the receipt of payment for that work or the delivery of those materials
8 by the subcontractor in accordance with the provisions of P.L.1991,
9 c.133 (C.2A:30A-1 et seq.), and any regulations promulgated
10 thereunder.

11 (4) All construction, reconstruction, rehabilitation or improvement
12 undertaken by the authority pursuant to this act shall be subject during
13 such undertaking to the supervision of the Division of
14 [Building]Property Management and Construction to the same extent
15 as any project undertaken by the State.

16 c. With respect to the lease or sale of any project or portion
17 thereof to any person, firm, partnership or corporation, for subsequent
18 lease to or purchase by a State agency, no agreement for that lease or
19 sale shall be entered into, unless the authority shall first publicly
20 advertise for bids therefor. The authority shall employ a person, firm,
21 partnership or corporation, independent from any other aspect or
22 component of the financing of or any ownership or leasehold interest
23 in that project, to assist in the bid procedure and evaluation.²

24 (cf: P.L.1999, c.280, s.2)]³

25

26 ³[²55. Section 12 of P.L.1981, c.120 (C.52:18A-78.12) is
27 amended to read as follows:

28 12. a. If the authority shall find it necessary in connection with the
29 undertaking of any of its projects or school facilities projects to
30 change the location of any portion of any public highway, or road, it
31 may contract with any government agency, or public or private
32 corporation which may have jurisdiction over the public highway or
33 road to cause the public highway or road to be constructed at such
34 location as the authority shall deem most favorable. The cost of the
35 reconstruction and any damage incurred in changing the location of
36 the highway shall be ascertained and paid by the authority as a part of
37 the cost of the project or school facilities project. Any public highway
38 affected by the construction of any project or school facilities project
39 may be vacated or relocated by the authority in the manner now
40 provided by law for the vacation or relocation of public roads, and
41 any damages awarded on account thereof shall be paid by the
42 authority as a part of the cost of the project or school facilities project.
43 In all undertakings authorized by the subsection, the authority shall
44 consult and obtain the approval of the Commissioner of
45 Transportation.

46 b. In addition to the foregoing powers, the authority and its
47 authorized agents and employees may enter upon any lands, waters

1 and premises for the purpose of making surveys, soundings, drillings
2 and examinations as it may deem necessary or convenient for the
3 purposes of this act, all in accordance with due process of law, and
4 this entry shall not be deemed a trespass nor shall an entry for this
5 purpose be deemed an entry under any condemnation proceedings
6 which may be then pending. The authority shall make reimbursement
7 for any actual damages resulting to the lands, waters and premises as
8 a result of these activities.

9 c. The authority shall also have power to make reasonable
10 regulations for the installation, construction, maintenance, repair,
11 renewal, relocation and removal of tracks, pipes, mains, conduits,
12 cables, wires, towers, poles and other equipment and appliances,
13 herein called "public utility facilities" , or any public utility as defined
14 in R.S.48:2-13, in, on, along, over or under any project or school
15 facilities project. Whenever the authority shall determine that it is
16 necessary that any public utility facilities which now are, or hereafter
17 may be, located in, on, along, over or under any project or school
18 facilities project shall be relocated in the project or school facilities
19 project, or should be removed from the project or school facilities
20 project, the public utility owning or operating the facilities shall
21 relocate or remove the same in accordance with the order of the
22 authority. The cost and expenses of the relocation or removal,
23 including the cost of installing the facilities in a new location, or new
24 locations, and the cost of any lands, or any rights or interests in lands,
25 and any other rights, acquired to accomplish the relocation or
26 removal, shall be ascertained and paid by the authority as a part of the
27 cost of the project or school facilities project. In case of any
28 relocation or removal of facilities, as aforesaid, the public utility
29 owning or operating the same, its successors or assigns, may maintain
30 and operate the facilities, with the necessary appurtenances, in the
31 new location or new locations, for as long a period, and upon the
32 same terms and conditions, as it had the right to maintain and operate
33 the facilities in their former location or locations. In all undertakings
34 authorized by this subsection the authority shall consult and obtain the
35 approval of the Board of Public Utilities.²

36 (cf: P.L.1981, c.120, s.12)]³

37

38 ³[²56. Section 28 of P.L.1981, c.120 (C.52:18A-78.28) is
39 amended to read as follows:

40 28. a. The authority shall adopt rules and regulations to establish
41 an affirmative action program for the hiring of minority workers
42 employed in the performance of construction contracts undertaken in
43 connection with any of its projects and school facilities projects, and
44 to expand the business opportunities of socially and economically
45 disadvantaged contractors and vendors seeking to provide materials
46 and services for those contracts, consistent with the provisions of the
47 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

1 The authority shall provide for the proper enforcement and
2 administration of these rules and regulations.

3 b. Within 180 days of the effective date of this act, but before
4 adoption of its rules and regulations concerning its affirmative action
5 program, the authority shall submit the proposed rules and regulations
6 to the presiding officers and the standing committees on state
7 government of both houses of the Legislature for their review.²

8 (cf: P.L.1981, c.120, s.28)]³

9

10 ³[²57. Section 29 of P.L.1981, c.120 (C.52:18A-78.29) is
11 amended to read as follows:

12 29. The authority shall adopt rules and regulations requiring that
13 not less than the prevailing wage rate be paid to workers employed in
14 the performance of construction contracts undertaken in connection
15 with any of its projects or school facilities projects. The prevailing
16 wage rate shall be the rate determined by the Commissioner of Labor
17 and Industry pursuant to the provisions of P.L.1963, c.150
18 (C.34:11-56.25 et seq.).²

19 (cf: P.L.1981, c.120, s.29)]³

20

21 ³43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read
22 as follows:

23 2. The Legislature hereby finds and determines that:

24 a. Department of Labor [and Industry] statistics of recent years
25 indicate a continuing decline in manufacturing employment within the
26 State, which is a contributing factor to the drastic unemployment
27 existing within the State, which far exceeds the national average, thus
28 adversely affecting the economy of the State and the prosperity,
29 safety, health and general welfare of its inhabitants and their standard
30 of living; that there is an urgent need to protect and enhance the
31 quality of the natural environment and to reduce, abate and prevent
32 environmental pollution derived from the operation of industry,
33 utilities and commerce within the State; and that the availability of
34 financial assistance and suitable facilities are important inducements to
35 new and varied employment promoting enterprises to locate in the
36 State, to existing enterprises to remain and expand in the State, and
37 to industry, utilities and commerce to reduce, abate and prevent
38 environmental pollution.

39 b. The provision of buildings, structures and other facilities to
40 increase opportunity for employment in manufacturing, industrial,
41 commercial, recreational, retail and service enterprises in the State is
42 in the public interest and it is a public purpose for the State to induce
43 and to accelerate opportunity for employment in such enterprises.

44 c. In order to aid in supplying these needs and to assist in the
45 immediate reduction of unemployment and to provide sufficient
46 employment for the citizens of the State in the future, it is necessary
47 and in the public interest to aid and encourage the immediate

1 commencement of new construction projects of all types, to induce
2 and facilitate the acquisition and installation at an accelerated rate of
3 such devices, equipment and facilities as may be required to reduce,
4 abate and prevent environmental pollution by industry, utilities and
5 commerce.

6 d. The availability of financial assistance by the State will reduce
7 present unemployment and improve future employment opportunities
8 by encouraging and inducing the undertaking of such construction
9 projects, the location, retaining or expanding of employment
10 promoting enterprises within the State, and the accelerated acquisition
11 and installation of energy saving improvements and pollution control
12 devices, equipment and facilities.

13 e. In many municipalities in our State substantial and persistent
14 unemployment exists; and many existing residential, industrial,
15 commercial and manufacturing facilities within such municipalities are
16 either obsolete, inefficient, dilapidated or are located without regard
17 to the master plans of such municipalities; and the obsolescence and
18 abandonment of existing facilities will increase with further
19 technological advances, the provision of modern, efficient facilities in
20 other states and the difficulty which many municipalities have in
21 attracting new facilities; and that many existing and planned
22 employment promoting facilities are far from or not easily accessible
23 to the places of residence of substantial numbers of unemployed and
24 underemployed persons.

25 f. By virtue of their architectural and cultural heritage, their
26 positions as principal centers of communication and transportation
27 and their concentration of productive and energy efficient facilities,
28 many municipalities are capable of ameliorating the conditions of
29 deterioration which impede sound community growth and
30 development; and that building a proper balance of housing, industrial
31 and commercial facilities and increasing the attractiveness of such
32 municipalities to persons of all income levels is essential to restoring
33 such municipalities as desirable places to live, work, shop and enjoy
34 life's amenities; that the accomplishment of these objectives is beyond
35 remedy solely by the regulatory process in the exercise of the police
36 power and cannot be dealt with effectively by the ordinary operations
37 of private enterprise without the powers provided herein, and that the
38 exercise of the powers herein provided is critical to continuing the
39 process of revitalizing such municipalities and will serve an urgent
40 public use and purpose.

41 The Legislature further determines that in order to aid in remedying
42 the aforesaid conditions and to further and implement the purposes of
43 this act, that there shall be created a body politic and corporate having
44 the powers, duties and functions provided in this act; and that the
45 authority and powers conferred under this act, and the expenditure of
46 moneys pursuant thereto constitute a serving of a valid public purpose;
47 and that the enactment of the provisions hereinafter set forth is in the

1 public interest and for the public benefit and good, and is hereby so
2 declared to be as a matter of express legislative determination.

3 The Legislature further finds and determines that:

4 g. It is essential that this and future generations of young people
5 be given the fullest opportunity to learn and develop their intellectual
6 capacities; that institutions of public elementary and secondary
7 education within the State be provided with the appropriate additional
8 means required to assist these young citizens in achieving the required
9 levels of learning and the complete development of their intellectual
10 abilities; and that the resources of the State be employed to meet the
11 tremendous demand for public elementary and secondary educational
12 opportunities.

13 h. Public elementary and secondary educational facilities are an
14 integral part of the effort in this State to provide educational
15 opportunities; it is the purpose of P.L. , c. (C.)(now pending
16 before the Legislature as this bill) to provide a measure of assistance
17 and an alternative method of financing to enable school districts to
18 provide the facilities which are so critically needed; the inventory of
19 public elementary and secondary school buildings and the equipment
20 and capital resources currently available are aging, both
21 chronologically and technologically; and the current funding at the
22 federal, State, and local levels and the current mechanisms for
23 construction of these capital projects are inadequate to meet the
24 demonstrated need for school facilities, and these inadequacies
25 necessitate additional sources of funding and the coordination of
26 construction activities at the State level to meet those needs.

27 i. While the credit status of New Jersey's school districts is sound,
28 it can be economically more reasonable to finance the costs of
29 developing the educational infrastructure of the State's public
30 elementary and secondary schools by providing for the funding of
31 capital projects through the issuance of bonds, notes or other
32 obligations by the New Jersey Economic Development Authority, to
33 be retired through annual payments made by the State subject to
34 appropriation by the State Legislature, and to provide for the use of
35 the proceeds of those bonds, notes or other obligations to pay for
36 educational infrastructure projects; and such a structure would
37 substantially reduce the costs of financing and provide for a more
38 efficient use of the funds available for the development of the
39 educational infrastructure.

40 j. The New Jersey Economic Development Authority has
41 substantial and significant experience in undertaking major capital
42 construction projects, has a system of internal controls and procedures
43 to ensure the integrity of construction activities, and is therefore the
44 appropriate entity to undertake the planning, design, construction, and
45 operation of educational infrastructure projects; and by authorizing the
46 New Jersey Economic Development Authority to undertake these
47 activities, there will be achieved economies of scale, better

1 coordination of resources, more effective financial management and
2 control and increased monitoring and quality control of school district
3 construction.³

4 (cf: P.L.1983, c.282, s.1)

5

6 ³44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read
7 as follows:

8 3. As used in this act, unless a different meaning clearly appears
9 from the context:

10 a. "Authority" means the New Jersey Economic Development
11 Authority, created by section 4 of this act.

12 b. "Bonds" means bonds or other obligations issued by the
13 authority pursuant to this act [or], "Economic Recovery Bonds or
14 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
15 bonds, notes, other obligations and refunding bonds issued by the
16 authority pursuant to P.L. , c. (C.)(now pending before the
17 Legislature as this bill).

18 c. "Cost" means the cost of the acquisition, construction,
19 reconstruction, repair, alteration, improvement and extension of any
20 building, structure, facility including water transmission facilities, or
21 other improvement; the cost of machinery and equipment; the cost of
22 acquisition, construction, reconstruction, repair, alteration,
23 improvement and extension of energy saving improvements or
24 pollution control devices, equipment or facilities; the cost of lands,
25 rights-in-lands, easements, privileges, agreements, franchises, utility
26 extensions, disposal facilities, access roads and site development
27 deemed by the authority to be necessary or useful and convenient for
28 any project or school facilities project or in connection therewith;
29 discount on bonds; cost of issuance of bonds; engineering and
30 inspection costs; costs of financial, legal, professional and other
31 estimates and advice; organization, administrative, insurance,
32 operating and other expenses of the authority or any person prior to
33 and during any acquisition or construction, and all such expenses as
34 may be necessary or incident to the financing, acquisition, construction
35 or completion of any project or school facilities project or part thereof,
36 and also such provision for reserves for payment or security of
37 principal of or interest on bonds during or after such acquisition or
38 construction as the authority may determine.

39 d. "County" means any county of any class.

40 e. "Development property" means any real or personal property,
41 interest therein, improvements thereon, appurtenances thereto and air
42 or other rights in connection therewith, including land, buildings,
43 plants, structures, systems, works, machinery and equipment acquired
44 or to be acquired by purchase, gift or otherwise by the authority within
45 an urban growth zone.

46 f. "Person" means any person, including individuals, firms,
47 partnerships, associations, societies, trusts, public or private

1 corporations, or other legal entities, including public or governmental
2 bodies, as well as natural persons. "Person" shall include the plural as
3 well as the singular.

4 g. "Pollution control project" means any device, equipment,
5 improvement, structure or facility, or any land and any building,
6 structure, facility or other improvement thereon, or any combination
7 thereof, whether or not in existence or under construction, or the
8 refinancing thereof in order to facilitate improvements or additions
9 thereto or upgrading thereof, and all real and personal property
10 deemed necessary thereto, having to do with or the end purpose of
11 which is the control, abatement or prevention of land, sewer, water,
12 air, noise or general environmental pollution, including, but not limited
13 to, any air pollution control facility, noise abatement facility, water
14 management facility, thermal pollution control facility, radiation
15 contamination control facility, wastewater collection system,
16 wastewater treatment works, sewage treatment works system, sewage
17 treatment system or solid waste disposal facility or site; provided that
18 the authority shall have received from the Commissioner of the State
19 Department of Environmental Protection or his duly authorized
20 representative a certificate stating the opinion that, based upon
21 information, facts and circumstances available to the State Department
22 of Environmental Protection and any other pertinent data, (1) said
23 pollution control facilities do not conflict with, overlap or duplicate
24 any other planned or existing pollution control facilities undertaken or
25 planned by another public agency or authority within any political
26 subdivision, and (2) that such facilities, as designed, will be a pollution
27 control project as defined in this act and are in furtherance of the
28 purpose of abating or controlling pollution.

29 h. "Project" means: (1) (a) acquisition, construction,
30 reconstruction, repair, alteration, improvement and extension of any
31 building, structure, facility, including water transmission facilities or
32 other improvement, whether or not in existence or under construction,
33 (b) purchase and installation of equipment and machinery, (c)
34 acquisition and improvement of real estate and the extension or
35 provision of utilities, access roads and other appurtenant facilities; and
36 (2) (a) the acquisition, financing, or refinancing of inventory, raw
37 materials, supplies, work in process, or stock in trade, or (b) the
38 financing, refinancing or consolidation of secured or unsecured debt,
39 borrowings, or obligations, or (c) the provision of financing for any
40 other expense incurred in the ordinary course of business; all of which
41 are to be used or occupied by any person in any enterprise promoting
42 employment, either for the manufacturing, processing or assembly of
43 materials or products, or for research or office purposes, including,
44 but not limited to, medical and other professional facilities, or for
45 industrial, recreational, hotel or motel facilities, public utility and
46 warehousing, or for commercial and service purposes, including, but
47 not limited to, retail outlets, retail shopping centers, restaurant and

1 retail food outlets, and any and all other employment promoting
2 enterprises, including, but not limited to, motion picture and television
3 studios and facilities and commercial fishing facilities, commercial
4 facilities for recreational fishermen, fishing vessels, aquaculture
5 facilities and marketing facilities for fish and fish products and (d)
6 acquisition of an equity interest in, including capital stock of, any
7 corporation; or any combination of the above, which the authority
8 determines will: (i) tend to maintain or provide gainful employment
9 opportunities within and for the people of the State, or (ii) aid, assist
10 and encourage the economic development or redevelopment of any
11 political subdivision of the State, or (iii) maintain or increase the tax
12 base of the State or of any political subdivision of the State, or (iv)
13 maintain or diversify and expand employment promoting enterprises
14 within the State; and (3) the cost of acquisition, construction,
15 reconstruction, repair, alteration, improvement and extension of an
16 energy saving improvement or pollution control project which the
17 authority determines will tend to reduce the consumption in a building
18 devoted to industrial or commercial purposes, or in an office building,
19 of nonrenewable sources of energy or to reduce, abate or prevent
20 environmental pollution within the State; and (4) the acquisition,
21 construction, reconstruction, repair, alteration, improvement,
22 extension, development, financing or refinancing of infrastructure and
23 transportation facilities or improvements related to economic
24 development and of cultural, recreational and tourism facilities or
25 improvements related to economic development and of capital facilities
26 for primary and secondary schools and of mixed use projects
27 consisting of housing and commercial development; and (5) the
28 establishment, acquisition, construction, rehabilitation, improvement,
29 and ownership of port facilities as defined in section 3 of P.L.1997,
30 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
31 any person for costs in connection with any project, or the refinancing
32 of any project or portion thereof, if determined by the authority as
33 necessary and in the public interest to maintain employment and the
34 tax base of any political subdivision and will facilitate improvements
35 thereto or the completion thereof, and (ii) development property and
36 any construction, reconstruction, improvement, alteration, equipment
37 or maintenance or repair, or planning and designing in connection
38 therewith. For the purpose of carrying out mixed use projects
39 consisting of both housing and commercial development, the authority
40 may enter into agreements with the New Jersey Housing and Mortgage
41 Finance Agency for loan guarantees for any such project in accordance
42 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
43 that purpose shall allocate to the New Jersey Housing and Mortgage
44 Finance Agency, under such agreements, funding available pursuant to
45 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
46 shall not include a school facilities project.
47 i. "Revenues" means receipts, fees, rentals or other payments to be

1 received on account of lease, mortgage, conditional sale, or sale, and
2 payments and any other income derived from the lease, sale or other
3 disposition of a project, moneys in such reserve and insurance funds
4 or accounts or other funds and accounts, and income from the
5 investment thereof, established in connection with the issuance of
6 bonds or notes for a project or projects, and fees, charges or other
7 moneys to be received by the authority in respect of projects or school
8 facilities projects and contracts with persons.

9 j. "Resolution" means any resolution adopted or trust agreement
10 executed by the authority, pursuant to which bonds of the authority
11 are authorized to be issued.

12 k. "Energy saving improvement" means the construction, purchase
13 and installation in a building devoted to industrial or commercial
14 purposes of any of the following, designed to reduce the amount of
15 energy from nonrenewable sources needed for heating and cooling that
16 building: insulation, replacement burners, replacement high efficiency
17 heating and air conditioning units, including modular boilers and
18 furnaces, water heaters, central air conditioners with or without heat
19 recovery to make hot water for industrial or commercial purposes or
20 in office buildings, and any solar heating or cooling system
21 improvement, including any system which captures solar radiation to
22 heat a fluid which passes over or through the collector element of that
23 system and then transfers that fluid to a point within the system where
24 the heat is withdrawn from the fluid for direct usage or storage. These
25 systems shall include, but not necessarily be limited to, systems
26 incorporating flat plate, evacuated tube or focusing solar collectors.

27 The foregoing list shall not be construed to be exhaustive, and shall
28 not serve to exclude other improvements consistent with the legislative
29 intent of this amendatory act.

30 l. "Urban growth zone" means any area within a municipality
31 receiving State aid pursuant to the provisions of P.L.1978, c.14
32 (C.52:27D-178 et seq.) or a municipality certified by the
33 Commissioner of Community Affairs to qualify under such law in
34 every respect except population, which area has been so designated
35 pursuant to an ordinance of the governing body of such municipality.

36 m. "District" means a local or regional school district established
37 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
38 Statutes, a county special services school district established pursuant
39 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
40 county vocational school district established pursuant to article 3 of
41 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
42 operated school district established pursuant to P.L.1987, c.399
43 (C.18A:7A-34 et seq.).

44 n. "Local unit" means a county, municipality, board of education
45 or any other political entity authorized to construct, operate and
46 maintain a school facilities project and to borrow money for those
47 purposes pursuant to law.

1 o. "Refunding bonds" means bonds, notes or other obligations
2 issued to refinance bonds previously issued by the authority pursuant
3 to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
4 pending before the Legislature as this bill).

5 p. "School facilities project" means the acquisition, demolition,
6 construction, improvement, repair, alteration, modernization,
7 renovation, reconstruction or maintenance of all or any part of a
8 school facility or of any other personal property necessary for, or
9 ancillary to, any school facility, and shall include fixtures, furnishings
10 and equipment, and shall also include, but is not limited to, site
11 acquisition, site development, the services of design professionals,
12 such as engineers and architects, construction management, legal
13 services, financing costs and administrative costs and expenses
14 incurred in connection with the project.

15 q. "School facility" means and includes any structure, building or
16 facility used wholly or in part for academic purposes by a district, but
17 shall exclude athletic stadiums, grandstands, and any structure,
18 building or facility used solely for school administration.³

19 (cf: P.L.1997, c.150, s.22)

20
21 ³45. Section 4 of P.L.1974, c.80 (C.34:1B-4) is amended to read
22 as follows:

23 4. a. There is hereby established in, but not of, the Department of
24 **[Commerce and Economic Development]** the Treasury a public body
25 corporate and politic, with corporate succession, to be known as the
26 "New Jersey Economic Development Authority." The authority is
27 hereby constituted as an instrumentality of the State exercising public
28 and essential governmental functions, and the exercise by the authority
29 of the powers conferred by this act shall be deemed and held to be an
30 essential governmental function of the State.

31 b. The authority shall consist of the Commissioner of Banking, the
32 **[Commissioner of Commerce and Economic Development]** Chief
33 Executive Officer and Secretary of the New Jersey Commerce and
34 Economic Growth Commission, the Commissioner of Labor, the
35 Commissioner of Education, and the State Treasurer, who shall be
36 members ex officio, and **[six]** eight public members appointed by the
37 Governor **[with the advice and consent of the Senate, of which one]**
38 as follows: two public **[member]** members (who shall not be **[a**
39 **legislator]** legislators) shall be appointed by the Governor upon
40 recommendation of the Senate President **[and one]; two** public
41 **[member]** members (who shall not be **[a legislator]** legislators) shall
42 be appointed by the Governor upon recommendation of the Speaker
43 of the General Assembly; and four public members shall be appointed
44 by the Governor, all for terms of three years. **[The first two public**
45 **member positions on the authority that are or become vacant on or**
46 **after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be**

1 filled by appointment of the Governor upon the recommendation of the
2 Senate President and the Speaker of the General Assembly,
3 respectively.] Each member shall hold office for the term of his
4 appointment and until his successor shall have been appointed and
5 qualified. A member shall be eligible for reappointment. Any vacancy
6 in the membership occurring other than by expiration of term shall be
7 filled in the same manner as the original appointment but for the
8 unexpired term only. In the event the authority shall by resolution
9 determine to accept the declaration of an urban growth zone by any
10 municipality, the mayor or other chief executive officer of such
11 municipality shall ex officio be a member of the authority for the
12 purpose of participating and voting on all matters pertaining to such
13 urban growth zone.

14 The Governor shall appoint [with the advice and consent of the
15 Senate,] three alternate members of the authority, of which one
16 alternate member (who shall not be a legislator) shall be appointed by
17 the Governor upon the recommendation of the Senate President, and
18 one alternate member (who shall not be a legislator) shall be appointed
19 by the Governor upon the recommendation of the Speaker of the
20 General Assembly ; and one alternate member shall be appointed by
21 the Governor, all for terms of three years. [The first two alternate
22 member positions on the authority that are or become vacant on or
23 after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be
24 filled by appointment of the Governor upon the recommendation of the
25 Senate President and the Speaker of the General Assembly,
26 respectively.] The chairperson may authorize an alternate member, in
27 order of appointment, to exercise all of the powers, duties and
28 responsibilities of such member, including, but not limited to, the right
29 to vote on matters before the authority.

30 Each alternate member shall hold office for the term of his
31 appointment and until his successor shall have been appointed and
32 qualified. An alternate member shall be eligible for reappointment.
33 Any vacancy in the alternate membership occurring other than by the
34 expiration of a term shall be filled in the same manner as the original
35 appointment but for the unexpired term only. Any reference to a
36 member of the authority in this act shall be deemed to include alternate
37 members unless the context indicates otherwise.

38 The terms of office of the members and alternate members of the
39 authority appointed by the Governor who are serving on the effective
40 date of P.L. , c. (C.) (now pending before the Legislature as this
41 bill) shall expire upon the appointment by the Governor of eight public
42 members and three alternate members. The initial appointments of the
43 eight public members shall be as follows: the two members appointed
44 upon the recommendation of the President of the Senate and the two
45 members appointed upon the recommendation of the Speaker of the
46 General Assembly shall serve terms of three years; two members shall
47 serve terms of two years; and two members shall serve terms of one

1 year. The initial appointments of the alternate members shall be as
2 follows: the alternate member appointed upon the recommendation of
3 the President of the Senate shall serve a term of three years; the
4 alternate member appointed upon the recommendation of the Speaker
5 of the General Assembly shall serve a term of two years; and one
6 alternate member shall serve a term of one year. No member shall be
7 appointed who is holding elective office.

8 c. Each member appointed by the Governor may be removed from
9 office by the Governor, for cause, after a public hearing, and may be
10 suspended by the Governor pending the completion of such hearing.
11 Each member before entering upon his duties shall take and subscribe
12 an oath to perform the duties of his office faithfully, impartially and
13 justly to the best of his ability. A record of such oaths shall be filed in
14 the office of the Secretary of State.

15 d. [The Commissioner of Commerce and Economic Development
16 may, at his discretion, serve as the chairperson of the authority or may
17 appoint one of the six public members of the authority as chairperson.
18 Any such designation or appointment shall be made in writing and shall
19 be delivered to the authority and to the Governor and shall continue
20 in effect until revoked or amended by a writing delivered to the
21 authority and the Governor.] A chairperson shall be appointed by the
22 Governor from the public members. The members of the authority
23 shall elect from their remaining number a vice chairperson and a
24 treasurer thereof. The authority shall employ an executive director
25 who shall be its secretary and chief executive officer. The powers of
26 the authority shall be vested in the members thereof in office from time
27 to time and [six] seven members of the authority shall constitute a
28 quorum at any meeting thereof. Action may be taken and motions and
29 resolutions adopted by the authority at any meeting thereof by the
30 affirmative vote of at least [six] seven members of the authority. No
31 vacancy in the membership of the authority shall impair the right of a
32 quorum of the members to exercise all the powers and perform all the
33 duties of the authority.

34 e. Each member of the authority shall execute a bond to be
35 conditioned upon the faithful performance of the duties of such
36 member in such form and amount as may be prescribed by the Director
37 of the Division of Budget and Accounting in the Department of the
38 Treasury. Such bonds shall be filed in the office of the Secretary of
39 State. At all times thereafter the members and treasurer of the
40 authority shall maintain such bonds in full force and effect. All costs
41 of such bonds shall be borne by the authority.

42 f. The members of the authority shall serve without compensation,
43 but the authority shall reimburse its members for actual expenses
44 necessarily incurred in the discharge of their duties. Notwithstanding
45 the provisions of any other law, no officer or employee of the State
46 shall be deemed to have forfeited or shall forfeit his office or
47 employment or any benefits or emoluments thereof by reason of his

1 acceptance of the office of ex officio member of the authority or his
2 services therein.

3 g. Each ex officio member of the authority may designate an officer
4 or employee of his department to represent him at meetings of the
5 authority, and each such designee may lawfully vote and otherwise act
6 on behalf of the member for whom he constitutes the designee. Any
7 such designation shall be in writing delivered to the authority and shall
8 continue in effect until revoked or amended by writing delivered to the
9 authority.

10 h. The authority may be dissolved by act of the Legislature on
11 condition that the authority has no debts or obligations outstanding or
12 that provision has been made for the payment or retirement of such
13 debts or obligations. Upon any such dissolution of the authority, all
14 property, funds and assets thereof shall be vested in the State.

15 i. A true copy of the minutes of every meeting of the authority shall
16 be forthwith delivered by and under the certification of the secretary
17 thereof to the Governor. No action taken at such meeting by the
18 authority shall have force or effect until 10 days, Saturdays, Sundays,
19 and public holidays excepted, after the copy of the minutes shall have
20 been so delivered, unless during such 10-day period the Governor shall
21 approve the same in which case such action shall become effective
22 upon such approval. If, in that 10-day period, the Governor returns
23 such copy of the minutes with veto of any action taken by the
24 authority or any member thereof at such meeting, such action shall be
25 null and void and of no effect. The powers conferred in this
26 subsection i. upon the Governor shall be exercised with due regard for
27 the rights of the holders of bonds and notes of the authority at any
28 time outstanding, and nothing in, or done pursuant to, this subsection
29 i. shall in any way limit, restrict or alter the obligation or powers of the
30 authority or any representative or officer of the authority to carry out
31 and perform in every detail each and every covenant, agreement or
32 contract at any time made or entered into by or on behalf of the
33 authority with respect to its bonds or notes or for the benefit,
34 protection or security of the holders thereof.

35 j. On or before March 31 in each year, the authority shall make an
36 annual report of its activities for the preceding calendar year to the
37 Governor and the Legislature. Each such report shall set forth a
38 complete operating and financial statement covering the authority's
39 operations during the year. The authority shall cause an audit of its
40 books and accounts to be made at least once in each year by certified
41 public accountants and cause a copy thereof to be filed with the
42 Secretary of State and the Director of the Division of Budget and
43 Accounting in the Department of the Treasury.

44 k. The Director of the Division of Budget and Accounting in the
45 Department of the Treasury and his legally authorized representatives
46 are hereby authorized and empowered from time to time to examine
47 the accounts, books and records of the authority including its receipts,

1 disbursements, contracts, sinking funds, investments and any other
2 matters relating thereto and to its financial standing.

3 1. No member, officer, employee or agent of the authority shall be
4 interested, either directly or indirectly, in any project or school
5 facilities project, or in any contract, sale, purchase, lease or transfer of
6 real or personal property to which the authority is a party.³

7 (cf: P.L.1995, c.227)

8

9 ³46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
10 as follows:

11 5. The authority shall have the following powers:

12 a. To adopt bylaws for the regulation of its affairs and the conduct
13 of its business;

14 b. To adopt and have a seal and to alter the same at pleasure;

15 c. To sue and be sued;

16 d. To acquire in the name of the authority by purchase or
17 otherwise, on such terms and conditions and such manner as it may
18 deem proper, or by the exercise of the power of eminent domain in the
19 manner provided by the Eminent Domain Act of 1971, P.L.1971,
20 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
21 property which it may determine is reasonably necessary for any
22 project or school facilities project; provided, however, that the
23 authority in connection with any project shall not take by exercise of
24 the power of eminent domain any real property except upon consent
25 thereto given by resolution of the governing body of the municipality
26 in which such real property is located; and provided further that the
27 authority shall be limited in its exercise of the power of eminent
28 domain in connection with any project to municipalities receiving State
29 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
30 to municipalities which had a population, according to the latest
31 federal decennial census, in excess of 10,000;

32 e. To enter into contracts with a person upon such terms and
33 conditions as the authority shall determine to be reasonable, including,
34 but not limited to, reimbursement for the planning, designing,
35 financing, construction, reconstruction, improvement, equipping,
36 furnishing, operation and maintenance of the project or the school
37 facilities project and to pay or compromise any claims arising
38 therefrom;

39 f. To establish and maintain reserve and insurance funds with
40 respect to the financing of the project or the school facilities project;

41 g. To sell, convey or lease to any person all or any portion of a
42 project or school facilities project, for such consideration and upon
43 such terms as the authority may determine to be reasonable;

44 h. To mortgage, pledge or assign or otherwise encumber all or any
45 portion of a project , school facilities project or revenues, whenever
46 it shall find such action to be in furtherance of the purposes of this act
47 and P.L. , c. (C.)(now pending before the Legislature as this

- 1 bill);
- 2 i. To grant options to purchase or renew a lease for any of its
3 projects or school facilities projects on such terms as the authority may
4 determine to be reasonable;
- 5 j. To contract for and to accept any gifts or grants or loans of
6 funds or property or financial or other aid in any form from the United
7 States of America or any agency or instrumentality thereof, or from
8 the State or any agency, instrumentality or political subdivision
9 thereof, or from any other source and to comply, subject to the
10 provisions of the act and P.L. , c. (C.)(now pending before the
11 Legislature as this bill), with the terms and conditions thereof;
- 12 k. In connection with any application for assistance under this act
13 or P.L. , c. (C.)(now pending before the Legislature as this bill)
14 or commitments therefor, to require and collect such fees and charges
15 as the authority shall determine to be reasonable;
- 16 l. To adopt, amend and repeal regulations to carry out the
17 provisions of this act and P.L. , c. (C.)(now pending before the
18 Legislature as this bill);
- 19 m. To acquire, purchase, manage and operate, hold and dispose of
20 real and personal property or interests therein, take assignments of
21 rentals and leases and make and enter into all contracts, leases,
22 agreements and arrangements necessary or incidental to the
23 performance of its duties;
- 24 n. To purchase, acquire and take assignments of notes, mortgages
25 and other forms of security and evidences of indebtedness;
- 26 o. To purchase, acquire, attach, seize, accept or take title to any
27 project or school facilities project by conveyance or by foreclosure,
28 and sell, lease, manage or operate any project or school facilities
29 project for a use specified in this act and P.L. , c. (C.)(now
30 pending before the Legislature as this bill);
- 31 p. To borrow money and to issue bonds of the authority and to
32 provide for the rights of the holders thereof, as provided in this act and
33 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 34 q. To extend credit or make loans to any person for the planning,
35 designing, acquiring, constructing, reconstructing, improving,
36 equipping and furnishing of a project or school facilities project, which
37 credits or loans may be secured by loan and security agreements,
38 mortgages, leases and any other instruments, upon such terms and
39 conditions as the authority shall deem reasonable, including provision
40 for the establishment and maintenance of reserve and insurance funds,
41 and to require the inclusion in any mortgage, lease, contract, loan and
42 security agreement or other instrument, such provisions for the
43 construction, use, operation and maintenance and financing of a
44 project or school facilities project as the authority may deem necessary
45 or desirable;
- 46 r. To guarantee up to 90% of the amount of a loan to a person, if
47 the proceeds of the loan are to be applied to the purchase and

- 1 installation, in a building devoted to industrial or commercial
2 purposes, or in an office building, of an energy improvement system;
- 3 s. To employ consulting engineers, architects, attorneys, real estate
4 counselors, appraisers, and such other consultants and employees as
5 may be required in the judgment of the authority to carry out the
6 purposes of the act and P.L. , c. (C.)(now pending before the
7 Legislature as this bill), and to fix and pay their compensation from
8 funds available to the authority therefor, all without regard to the
9 provisions of Title 11A of the New Jersey Statutes;
- 10 t. To do and perform any acts and things authorized by this act
11 and P.L. , c. (C.)(now pending before the Legislature as this
12 bill) under, through or by means of its own officers, agents and
13 employees, or by contract with any person;
- 14 u. To procure insurance against any losses in connection with its
15 property, operations or assets in such amounts and from such insurers
16 as it deems desirable;
- 17 v. To do any and all things necessary or convenient to carry out its
18 purposes and exercise the powers given and granted in the act and
19 P.L., c. (C.)(now pending before the Legislature as this bill);
- 20 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
21 maintain or repair or provide for the construction, reconstruction,
22 improvement, alteration, equipping or maintenance or repair of any
23 development property and lot, award and enter into construction
24 contracts, purchase orders and other contracts with respect thereto,
25 upon such terms and conditions as the authority shall determine to be
26 reasonable, including, but not limited to, reimbursement for the
27 planning, designing, financing, construction, reconstruction,
28 improvement, equipping, furnishing, operation and maintenance of any
29 such development property and the settlement of any claims arising
30 therefrom and the establishment and maintenance of reserve funds with
31 respect to the financing of such development property;
- 32 x. When authorized by the governing body of a municipality
33 exercising jurisdiction over an urban growth zone, to construct, cause
34 to be constructed or to provide financial assistance to projects in an
35 urban growth zone which shall be exempt from the terms and
36 requirements of the land use ordinances and regulations, including, but
37 not limited to, the master plan and zoning ordinances, of such
38 municipality; and
- 39 y. To enter into business employment incentive agreements as
40 provided in the "Business Employment Incentive Program Act,"
41 P.L.1996, c.26 (C.34:1B-124 et al.)[.];
- 42 z. To undertake school facilities projects and to enter into
43 agreements or contracts, execute instruments, and do and perform all
44 acts or things necessary, convenient or desirable for the purposes of
45 the authority to carry out any power expressly provided pursuant to
46 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
47 pending before the Legislature as this bill), including, but not limited

1 to, entering into contracts with the State Treasurer, the Commissioner
2 of Education, districts and any other entity which may be required in
3 order to carry out the provisions of P.L. , c. (C.)(now pending
4 before the Legislature as this bill);

5 aa. To enter into leases, rentals or other disposition of a real
6 property interest in and of any school facilities project to or from any
7 local unit pursuant to P.L. , c. (C.)(now pending before the
8 Legislature as this bill);

9 bb. To make and contract to make loans or leases and to make
10 grants to local units to finance the cost of school facilities projects and
11 to acquire and contract to acquire bonds, notes or other obligations
12 issued or to be issued by local units to evidence the loans or leases, all
13 in accordance with the provisions of P.L. , c. (C.)(now pending
14 before the Legislature as this bill);

15 cc. Subject to any agreement with holders of its bonds issued to
16 finance a project or school facilities project, obtain as security or to
17 provide liquidity for payment of all or any part of the principal of and
18 interest and premium on the bonds of the authority or for the purchase
19 upon tender or otherwise of the bonds, lines of credit, letters of credit,
20 reimbursement agreements, interest rate exchange agreements,
21 currency exchange agreements, interest rate floors or caps, options,
22 puts or calls to hedge payment, currency, rate, spread or similar
23 exposure or similar agreements, float agreements, forward agreements,
24 insurance contract, surety bond, commitment to purchase or sell
25 bonds, purchase or sale agreement, or commitments or other contracts
26 or agreements, and other security agreements or instruments in any
27 amounts and upon any terms as the authority may determine and pay
28 any fees and expenses required in connection therewith;

29 dd. To charge to and collect from local units, the State and any
30 other person, any fees and charges in connection with the authority's
31 actions undertaken with respect to school facilities projects, including,
32 but not limited to, fees and charges for the authority's administrative,
33 organization, insurance, operating and other expenses incident to the
34 financing, construction and placing into service and maintenance of
35 school facilities projects.³

36 (cf: P.L.1996, c.26, s.16)

37
38 ³47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to
39 read as follows:

40 1. The New Jersey Economic Development Authority shall adopt
41 rules and regulations requiring that not less than the prevailing wage
42 rate be paid to workers employed in the performance of construction
43 contracts undertaken in connection with [Authority financial
44 assistance] any of its projects or school facilities projects. The
45 prevailing wage rate shall be the rate determined by the Commissioner

1 of Labor [and Industry] pursuant to the provisions of P.L.1963,
2 c.150 (C.34:11-56.25 et seq.).³
3 (cf: P.L.1979, c.303, s.1)

4
5 ³48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to
6 read as follows:

7 4. a. The New Jersey Economic Development Authority shall
8 adopt rules and regulations to establish an affirmative action program
9 for the hiring of minority workers employed in the performance of
10 construction contracts undertaken in connection with any of its
11 projects [receiving Authority assistance] and school facilities
12 projects, and to expand the business opportunities of socially and
13 economically disadvantaged contractors and vendors seeking to
14 provide materials and services for those contracts, consistent with the
15 provisions of the "Law Against Discrimination," P.L.1945, c.169
16 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
17 proper enforcement and administration of such rules and regulations.

18 b. Within 180 days of the effective date of P.L. , c. (C.)(now
19 pending before the Legislature as this bill), but before adoption of its
20 rules and regulations concerning its affirmative action program, the
21 authority shall submit the proposed rules and regulations to the
22 presiding officers and the standing committees on State government
23 of both houses of the Legislature for their review.³

24 (cf: P.L.1979, c.303, s.4)

25

26 ³49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read
27 as follows:

28 15. The exercise of the powers granted by this act and P.L. , c.
29 (C.)(now pending before the Legislature as this bill) shall constitute
30 the performance of an essential governmental function and the
31 authority shall not be required to pay any taxes or assessments upon
32 or in respect of a project or school facilities project, or any property
33 or moneys of the authority, and the authority, its projects and school
34 facilities projects, property and moneys and any bonds and notes
35 issued under the provisions of this act and P.L. , c. (C.)(now
36 pending before the Legislature as this bill), their transfer and the
37 income therefrom, including any profit made on the sale thereof, shall
38 at all times be free from taxation of every kind by the State except for
39 transfer, inheritance and estate taxes and by any political subdivision
40 of the State; provided, that any person occupying a project whether
41 as lessee, vendee or otherwise shall, as long as title thereto shall
42 remain in the authority, pay to the political subdivision in which such
43 project is located a payment in lieu of taxes which shall equal the
44 taxes on real and personal property, including water and sewer service
45 charges or assessments, which such person would have been required
46 to pay had it been the owner of such property during the period for
47 which such payment is made and neither the authority nor its projects,

1 properties, money or bonds and notes shall be obligated, liable or
2 subject to lien of any kind for the enforcement, collection or payment
3 thereof. If and to the extent the proceedings under which the bonds
4 authorized to be issued under the provisions of this act so provide, the
5 authority may agree to cooperate with such person occupying a
6 project, in connection with any administrative or judicial proceedings
7 for determining the validity or amount of such payments and may
8 agree to appoint or designate and reserve the right in and for such
9 person to take all action which the authority may lawfully take in
10 respect of such payments and all matters relating thereto, provided
11 such person shall bear and pay all costs and expenses of the authority
12 thereby incurred at the request of such person or by reason of any
13 such action taken by such person in behalf of the authority. If such
14 person occupying a project has paid the amounts in lieu of taxes
15 required by this section to be paid such person shall not be required
16 to pay any such taxes as to which a payment in lieu thereof has been
17 made to the State or to any political subdivision, any other statute to
18 the contrary notwithstanding.³

19 (cf: P.L.1974, c.80, s.15)

20

21 ³50. (New section) In the exercise of powers granted by P.L. ,
22 c. (C.)(now pending before the Legislature as this bill) in
23 connection with any school facilities project, any and all claims,
24 damages, losses, liabilities or costs that the authority may incur shall
25 be payable only from the amounts made available to the authority
26 pursuant to that act. In connection with any agreement or contract
27 entered into by the authority relating to any school facilities project,
28 there shall be no recovery against the authority for punitive or
29 consequential damages arising out of contract nor shall there be any
30 recovery against the authority for claims based upon implied
31 warranties or upon contracts implied in law.³

32

33 ³51. (New section) a. No municipality shall modify or change the
34 drawings, plans or specifications for the construction, reconstruction,
35 rehabilitation, alteration or improvement of any school facilities
36 project of the authority, or the construction, plumbing, heating,
37 lighting or other mechanical branch of work necessary to complete the
38 work in question, nor to require that any person, firm or corporation
39 employed on any such work shall perform the work in any other or
40 different manner than that provided by the drawings, plans and
41 specifications, nor to require that any person, firm or corporation
42 obtain any other or additional authority, approval, permit or certificate
43 from the municipality in relation to the work being done, and the doing
44 of the work by any person, firm or corporation in accordance with the
45 terms of the drawings, plans, specifications or contracts shall not
46 subject the person, firm or corporation to any liability or penalty, civil
47 or criminal, other than as may be stated in the contracts or incidental

1 to the proper enforcement thereof; nor shall any municipality require
2 the authority or any person, firm, partnership or corporation which
3 leases or purchases the school facilities project for lease or purchase
4 to a State agency, to obtain any other or additional authority,
5 approval, permit, certificate or certificate of occupancy from the
6 municipality as a condition of owning, using, maintaining, operating or
7 occupying any school facilities project acquired, constructed,
8 reconstructed, rehabilitated, altered or improved by the authority or by
9 any subsidiary thereof. The foregoing provisions shall not preclude
10 any municipality from exercising the right of inspection for the purpose
11 of requiring compliance by any school facilities project with local
12 requirements for operation and maintenance affecting the health, safety
13 and welfare of the occupants thereof, provided that the compliance
14 does not require changes, modifications or additions to the original
15 construction of the school facilities project.

16 b. Each municipality in which any school facilities project of the
17 authority is located shall provide for the school facilities project,
18 whether then owned by the authority, any subsidiary, any State agency
19 or any person, firm, partnership or corporation, police, fire, sanitation,
20 health protection and other municipal services of the same character
21 and to the same extent as those provided for other residents of the
22 municipality.

23 c. In carrying out any school facilities project, the authority may
24 enter into contractual agreements with local government agencies with
25 respect to the furnishing of any community, municipal or public
26 facilities or services necessary or desirable for the school facilities
27 project, and any local government agency may enter into these
28 contractual agreements with the authority and do all things necessary
29 to carry out its obligations.³

30
31 ³52. (New section) a. In undertaking any school facilities projects
32 where the cost of construction, reconstruction, rehabilitation or
33 improvement will exceed \$25,000, the authority may prepare, or cause
34 to be prepared, separate plans and specifications for: (1) the plumbing
35 and gas fitting and all work and materials kindred thereto, (2) the
36 steam and hot water heating and ventilating apparatus, steam power
37 plants and all work and materials kindred thereto, (3) the electrical
38 work, (4) structural steel and miscellaneous iron work and materials,
39 and (5) all general construction, which shall include all other work and
40 materials required to complete the building.

41 b. The authority shall advertise and receive (1) separate bids for
42 each of the branches of work specified in subsection a. of this section;
43 or (2) bids for all the work and materials required to complete the
44 school facilities project to be included in a single overall contract, in
45 which case there shall be set forth in the bid the name or names of all
46 subcontractors to whom the bidder will subcontract for the furnishing
47 of any of the work and materials specified in branches (1) through (4)

- 1 in subsection a. of this section; or (3) both.
- 2 c. Contracts shall be awarded as follows: (1) if bids are received in
3 accordance with paragraph (1) of subsection b. of this section, the
4 authority shall determine the responsible bidder for each branch whose
5 bid, conforming to the invitation for bids, will be most advantageous
6 to the authority, price and other factors considered; (2) if bids are
7 received in accordance with paragraph (2) of subsection b. of this
8 section, the authority shall determine the responsible bidder for the
9 single overall contract whose bid, conforming to the invitation for
10 bids, will be the most advantageous to the authority, price and other
11 factors considered; or (3) if bids are received in accordance with
12 paragraph (3) of subsection b. of this section, the authority shall award
13 separate contracts for each branch of work specified in subsection a.
14 of this section if the sum total of the amounts bid by the responsible
15 bidders for each branch, as determined pursuant to paragraph (1) of
16 this subsection, is less than the amount bid by the responsible bidder
17 for all of the work and materials, as determined pursuant to paragraph
18 (2) of this subsection; but if the sum total of the amounts bid by the
19 responsible bidder for each branch, as determined pursuant to
20 paragraph (1) of this subsection is not less than the amount bid by the
21 responsible bidder for all of the work and materials, as determined
22 pursuant to paragraph (2) of this subsection, the authority shall award
23 a single over-all contract to the responsible bidder for all of the work
24 and materials as determined pursuant to paragraph (2) of this
25 subsection.
- 26 d. For the purposes of this section, "other factors" means the
27 evaluation by the authority of the ability of the single contractor or the
28 abilities of the multiple contractors to complete the contract in
29 accordance with its requirements and includes requirements relating to
30 the experience and qualifications of the contractor or contractors and
31 their key personnel in projects of similar type and complexity; the
32 performance of the contractor or contractors on prior contracts with
33 the authority or the State; the experience and capability of the
34 contractor or contractors and their key personnel in respect to any
35 special technologies, techniques or expertise that the project may
36 require; the contractor's understanding of the means and methods
37 needed to complete the project on time and within budget; the
38 timetable to complete the project; the contractor's plan for quality
39 assurance and control; and other similar types of factors. The "other
40 factors" to be considered in evaluating bids and the weights assigned
41 to price and these "other factors" shall be determined by the authority
42 prior to the advertisement for bids for school facilities projects. In its
43 evaluation of bids, the consideration given to price by the authority
44 shall be at least equal to the consideration given to the combination of
45 all "other factors."
- 46 e. The authority shall require from all contractors to which it
47 awards contracts pursuant to P.L. , c. (C.)(now pending before

1 the Legislature as this bill), the delivery of a payment performance
2 bond issued in accordance with N.J.S.2A:44-143 et seq.

3 f. The authority shall adopt regulations to implement this section
4 which shall include, but not be limited to, the procedural requirements
5 for: (1) the evaluation and weighting of price and "other factors" in the
6 awarding of contracts; and (2) the appealing of a prequalification
7 classification and rating, a bid rejection and a contract award
8 recommendation.

9 g. Each evaluation committee selected by the authority to review
10 and evaluate bids shall, at a minimum, contain a representative from
11 the district in which the school facilities project is located if such
12 district elects to participate.³

13
14 ³53. (New section) a. If the authority shall find it necessary in
15 connection with the undertaking of any school facilities project to
16 change the location of any portion of any public highway or road, it
17 may contract with any government agency, or public or private
18 corporation which may have jurisdiction over the public highway or
19 road to cause the public highway or road to be constructed at such
20 locations as the authority shall deem most favorable. The cost of the
21 reconstruction and any damage incurred in changing the location of the
22 highway shall be ascertained and paid by the authority as part of the
23 cost of the school facilities project. Any public highway affected by
24 the construction of any school facilities project may be vacated or
25 relocated by the authority in the manner now provided by law for the
26 vacation or relocation of public roads, and any damages awarded on
27 account thereof shall be paid by the authority as a part of the cost of
28 the school facilities project. In all undertakings authorized by this
29 subsection, the authority shall consult and obtain the approval of the
30 Commissioner of Transportation.

31 b. The authority and its authorized agents and employees may enter
32 upon any lands, waters and premises for the purpose of making
33 surveys, soundings, drillings and examinations as it may deem
34 necessary or convenient for the purposes of this act, all in accordance
35 with due process of law, and this entry shall not be deemed a trespass
36 nor shall an entry for this purpose be deemed an entry under any
37 condemnation proceedings which may be then pending. The authority
38 shall make reimbursement for any actual damages resulting to the
39 lands, waters and premises as a result of these activities.

40 c. The authority shall have the power to make reasonable
41 regulations for the installation, construction, maintenance, repair,
42 renewal, relocation and removal of tracks, pipes, mains, conduits,
43 cables, wires, towers, poles and other equipment and appliances,
44 herein called "public utility facilities," or any public utility as defined
45 in R.S.48:2-13, in, on, along, over or under any school facilities
46 project. Whenever the authority shall determine that it is necessary
47 that any public utility facilities which now are, or hereafter may be,

1 located in, on, along, over or under any school facilities project shall
2 be relocated in the school facilities project, or should be removed from
3 the school facilities project, the public utility owning or operating the
4 facilities shall relocate or remove them in accordance with the order
5 of the authority. The cost and expenses of the relocation or removal,
6 including the cost of installing the facilities in a new location or new
7 locations, and the cost of any lands, or any rights or interests in lands,
8 and any other rights, acquired to accomplish the relocation or removal,
9 shall be ascertained and paid by the authority as a part of the cost of
10 the school facilities project. In case of any relocation or removal of
11 facilities, the public utility owning or operating them, its successors or
12 assigns, may maintain and operate the facilities, with the necessary
13 appurtenances, in the new location or new locations, for as long a
14 period, and upon the same terms and conditions, as it had the right to
15 maintain and operate the facilities in their former location or locations.
16 In all undertakings authorized by this subsection the authority shall
17 consult and obtain the approval of the Board of Public Utilities.³

18

19 ³54. (New section) Notwithstanding the provisions of any law to
20 the contrary, any bonds issued pursuant to P.L. _____, c. _____ (C. _____)(now
21 pending before the Legislature as this bill) shall be fully negotiable
22 within the meaning and for all purposes of Title 12A of the New Jersey
23 Statutes, and each holder or owner of such a bond or other obligation,
24 or of any coupon appurtenant thereto, by accepting the bond or
25 coupon shall be conclusively deemed to have agreed that the bond or
26 coupon is and shall be fully negotiable within the meaning and for all
27 purposes of Title 12A.³

28

29 ³55. Section 22 of P.L.1975, c.291 (C.40:55D-31) is amended to
30 read as follows:

31 22. a. Whenever the planning board shall have adopted any portion
32 of the master plan, the governing body or other public agency having
33 jurisdiction over the subject matter, before taking action necessitating
34 the expenditure of any public funds, incidental to the location,
35 character or extent of such project, shall refer the action involving
36 such specific project to the planning board for review and
37 recommendation in conjunction with such master plan and shall not act
38 thereon, without such recommendation or until 45 days have elapsed
39 after such reference without receiving such recommendation. This
40 requirement shall apply to action by a housing, parking, highway,
41 special district, or other authority, redevelopment agency, school
42 board or other similar public agency, State, county or municipal.

43 b. The planning board shall review and issue findings concerning
44 any long-range facilities plan submitted to the board pursuant to the
45 "Educational Facilities Construction and Financing Act," P.L. _____,
46 c. _____ (C. _____) (now pending before the Legislature as this bill), for the
47 purpose of review of the extent to which the long-range facilities plan

1 is informed by, and consistent with, at least the land use plan element
2 and the housing element contained within the municipal master plan
3 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and
4 such other elements of the municipal master plan as the planning board
5 deems necessary to determine whether the prospective sites for school
6 facilities contained in the long range facilities plan promote more
7 effective and efficient coordination of school construction with the
8 development efforts of the municipality. The planning board shall
9 devote at least one full meeting of the board to presentation and
10 review of the long-range facilities plan prior to adoption of a
11 resolution setting forth the board's findings.³

12 (cf: P.L.1975, c.291, s.22)

13

14 ²[56.] ³[58.²] 56.³ Section 4 of P.L.1997, c.264 (C.26:2H-
15 18.58g) is amended to read as follows:

16 4. Notwithstanding the provisions of any other law to the contrary,
17 commencing July 1, 1998: after the deposit required pursuant to
18 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
19 of revenue collected annually from the cigarette tax imposed pursuant
20 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
21 revenue collected annually from the "Tobacco Products Wholesale
22 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
23 deposited in to the Health Care Subsidy Fund established pursuant to
24 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
25 \$50,000,000 of revenue collected annually from the cigarette tax
26 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
27 [deposited in the School Construction and Renovation Fund as shall
28 be established by law] appropriated annually to the New Jersey
29 ²[Economic Development] ³[Educational Facilities] ²[Economic
30 Development]³ Authority for payment of debt service incurred by the
31 authority for school facilities projects.

32 (cf: P.L.1997, c.264, s.4)

33

34 ²[57. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
35 as follows:

36 4. Tax bracket schedule. a. For the purpose of adding and
37 collecting the tax imposed by this act, or an amount equal as nearly as
38 possible or practicable to the average equivalent thereof, to be
39 reimbursed to the vendor by the purchaser, the following formula shall
40 be in force and effect:

1	Amount of Sale	Amount of Tax
2	\$0.01 to \$0.10	No Tax
3	0.11 to 0.22	\$0.01
4	0.23 to 0.38	0.02
5	0.39 to 0.56	0.03
6	0.57 to 0.72	0.04
7	0.73 to 0.88	0.05
8	0.89 to 1.10	0.06

9
 10 In addition to a tax of \$0.06 on each full dollar, a tax shall be
 11 collected on each part of a dollar in excess of a full dollar, in
 12 accordance with the above formula.

13 b. For charges paid by inserting coins into a coin operated
 14 telecommunications device available to the public the tax shall be
 15 computed to the nearest multiple of five cents of the tax otherwise due
 16 pursuant to subsection a. of this section, except that, if the amount of
 17 the tax is midway between multiples of five cents, the next higher
 18 multiple shall apply.

19 c. For the purpose of adding and collecting the sales and use tax at
 20 the rate imposed pursuant to section 59 of P.L. , c. (C.)
 21 (now pending before the Legislature as this bill) on and after August
 22 1 of a fiscal year in which a certification is made to the Director of the
 23 Division of Taxation pursuant to subsection b. of that section 59 of
 24 P.L. , c. (C.) (now pending before the Legislature as this
 25 bill), or an amount equal as nearly as possible or practicable to the
 26 average equivalent thereof, the director shall promulgate tax collection
 27 formulas for the purpose of collecting the tax for the rate established
 28 pursuant to that section 59 of P.L. , c. (C.) (now pending
 29 before the Legislature as this bill).

30 (cf: P.L.1993, c.10, s.2)]²

31
 32 ²[58. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended
 33 to read as follows:

34 31. Receipts from sales of tangible personal property and services
 35 taxable under any municipal ordinance which was adopted pursuant to
 36 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
 37 1966 are exempt from the tax imposed under the Sales and Use Tax
 38 Act, subject to the following conditions:

39 a. To the extent that the tax that is or would be imposed under
 40 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
 41 imposed by such ordinance, such sales shall not be exempt under this
 42 section; and

43 b. Irrespective of the rate of tax imposed by such ordinance, such
 44 sales shall be exempt only to the extent that the rate of taxation

1 imposed by the ordinance exceeds 6%, except that the combined rate
2 of taxation imposed under the ordinance and under this section shall
3 not exceed ~~[12%]~~ 11% on and after August 1 and through June 30 of
4 a fiscal year in which a certification is made to the Director of the
5 Division of Taxation pursuant to subsection b. of section 59 of P.L.
6 , c. (C.) (now pending before the Legislature as this bill).
7 (cf: P.L.1992, c.11, s.5)]²

8
9 ²[59. (New section) a. The annual appropriations act for each
10 State fiscal year commencing with fiscal year 2001 shall appropriate
11 and distribute during the fiscal year the amount determined by the
12 Department of Education to be the amount of State debt service aid
13 determined pursuant to sections 9 and 10 of P.L. , c. (C.)
14 (now pending before the Legislature as this bill) for the purposes of
15 those sections.

16 b. If the provisions of subsection a. of this section are not met on
17 the effective date of an annual appropriations act for the State fiscal
18 year, or if an amendment or supplement to an annual appropriations
19 act for the State fiscal year should violate the provisions of subsection
20 a. of this section, the Director of the Division of Budget and
21 Accounting in the Department of the Treasury shall, not later than five
22 days after the enactment of the annual appropriations act, or an
23 amendment or supplement thereto, that violates the provisions of
24 subsection a. of this section, certify to the Director of the Division of
25 Taxation that the requirements of subsection a. of this section have not
26 been met.

27 c. Upon certification to the Director of the Division of Taxation
28 pursuant to subsection b. of this section, then, notwithstanding the rate
29 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
30 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
31 law to the contrary, the rate of tax imposed or paid on receipts from
32 sales or use within this State on or after August 1 of that fiscal year
33 through June 30 of that fiscal year shall be 5%.

34 d. The Director of the Division of Taxation, within 5 days of
35 receipt of a certification made pursuant to subsection b. of this section,
36 shall take such action as is necessary to notify all vendors of the rate
37 of tax on or after August 1 of that fiscal year through June 30 of that
38 fiscal year.

39 e. Any sales and use tax erroneously collected or paid at a rate of
40 6% instead of at a rate of 5% on receipts from sales or use within this
41 State on or after August 1 of that fiscal year through June 30 of that
42 fiscal year shall be subject to refund in the manner provided in section
43 20 of P.L.1966, c.30 (C.54:32B-20).]²

44
45 ²[60. (New section) The Director of the Division of Taxation shall
46 promulgate regulations on or before August 1 of a fiscal year in which
47 a certification is made to the Director of the Division of Taxation

1 pursuant to subsection b. of that section 59 of P.L. , c. (C.)
2 (now pending before the Legislature as this bill) to provide tax rate
3 transitional provisions for the imposition of the appropriate rate of tax
4 for: sales made and property delivered or services performed,
5 occupancies pursuant to prior contracts, leases or other arrangements,
6 admission charges made for admissions, certain sales made pursuant
7 to certain contracts either of a fixed price not subject to change or
8 modification, or entered into pursuant to the obligation of a formal
9 written bid which cannot be altered or withdrawn; which involve dates
10 over periods both before and after August 1 of such a fiscal year.]²
11

12 ³[²59.] 57.³ (New section) a. Notwithstanding any provision of
13 this act or any other law or regulation to the contrary, within 90 days
14 of the effective date of this act, a board of education or a board of
15 school estimate, as appropriate, may, through the adoption of a board
16 resolution, establish a capital reserve account. The account shall be
17 established and held in accordance with GAAP and shall be subject to
18 annual audit. The funds in the capital reserve account shall be used to
19 finance the district's long-range facilities plan required pursuant to
20 subsection a. of section 4 of this act and the amount in the account
21 shall not exceed the total amount of local funds required to implement
22 the plan as indicated on the annual QAAR report.

23 b. A board of education or a board of school estimate, as
24 appropriate, may appropriate funds in the district's annual budget for
25 the establishment of the capital reserve account pursuant to subsection
26 a. of this section or to supplement the funds in the account as required
27 to meet the needs of the long-range facilities plan. The district's
28 spending growth limitation as established pursuant to section 5 of
29 P.L.1996, c.138 (C.18A:7F-5) shall be adjusted by the amount of
30 funds appropriated in the budget year to the capital reserve account.

31 c. A board of education may, by resolution of the board: transfer
32 undesignated general fund balance or excess undesignated general fund
33 balance to the capital reserve account at any time during the budget
34 year; transfer funds from the capital reserve account to the appropriate
35 line item account for the funding of capital projects as contained in the
36 district's long-range facilities plan; and transfer funds from the capital
37 reserve account to the debt service account for the purpose of
38 offsetting principal and interest payments for bonded projects which
39 are included in the district's long-range facilities plan.²
40

41 ³[²60.] 58.³ (New section) a. There is hereby created a special
42 fund in the Department of Education which shall be entitled the
43 "County Vocational School District Facilities Rehabilitation Fund."
44 The fund shall be maintained in a separate account and administered
45 by the commissioner to carry out the provisions of this section. The
46 fund shall consist of all moneys appropriated by the State for the
47 purposes of the fund and all interest and investment earnings received

1 on moneys in the fund.

2 b. A county vocational school district may apply to the
3 commissioner for a grant in the maximum amount of \$500,000 to be
4 matched by the district for the purposes of funding health and safety
5 school facilities rehabilitation projects. The grant and matching
6 district funds shall be maintained by the district in a special revenue
7 fund as certified by the district's board of education and its chief
8 financial officer and shall be subject to annual audit. A project funded
9 through the grant fund shall not require the approval of the
10 commissioner pursuant to section 5 of this act.

11 c. Any county vocational school district which receives grant
12 funding pursuant to subsection b. of this section shall not be eligible
13 to receive school facilities aid pursuant to any other provision of this
14 act for a period of five years from the district's receipt of the grant,
15 except that the district may receive debt service aid pursuant to section
16 10 of this act; and any county vocational school district which receives
17 aid under any provision of this act other than section 10, shall not
18 receive a grant pursuant to subsection b. of this section for five years
19 after approval of a project which is otherwise funded under this act.²
20

21 ³[²61.] 59.³ (New section) ³[a.]³ The ³[New Jersey Building
22 Authority] authority³ shall establish a process for the prequalification
23 of ³[persons as bidders] contractors that desire to bid³ on school
24 facilities projects. A ³[person] contractor³ shall not be permitted
25 to bid on ³such³ a school facilities project unless the ³[person]
26 contractor³ has been prequalified pursuant to P.L. , c. (C.)(now
27 pending before the Legislature as this bill).

28 The prequalification process shall apply to general contractors,
29 construction managers, and ³[subcontractors] contractors including
30 those³ in the following areas:

31 (1) plumbing and gas fitting and all work and materials kindred
32 thereto;

33 (2) steam and hot water heating and ventilating apparatus, steam
34 power plants and all work and materials kindred thereto;

35 (3) electrical work; and

36 (4) structural steel and ³[ornamental] miscellaneous³ iron work
37 and materials.

38 ³[b. The building authority shall provide personnel trained and
39 experienced in construction procurement to conduct the
40 prequalification of bidders.²]³

41
42 ³[²62.] 60.³ (New section) a. The prequalification process shall
43 include a requirement that the ³[person] contractor³ proposing to
44 submit bids on a school facilities project submit a statement under oath
45 on a form designated by the ³[building]³ authority. The form shall
46 fully describe and establish the financial ability, responsibility, plant

- 1 and equipment, organization, ownership, relationships and prior
2 experience of the prospective bidder and any other pertinent and
3 material facts as may be deemed necessary by the ³[building]³
4 authority. The submission shall include:
- 5 (1) A certified, audited financial statement or compilation of
6 financial statements ³or other documentation of financial status
7 acceptable to the authority ³ ;
- 8 (2) ³[Proof of all applicable licenses, certifications and
9 registrations as required by law;] Proof of any contractor or trade
10 license required by law for any trade or specialty area in which the
11 contractor is seeking prequalification and a statement as to whether
12 any contractor or trade license has been revoked;³
- 13 ³[(3) Verification of all applicable insurance, including general
14 liability, workers' compensation and unemployment compensation;]³
- 15 ³[(4)] (3)³ A statement as to bonding capacity, which shall be
16 from a surety authorized to issue bid, performance and payment bonds
17 in the State of New Jersey in accordance with N.J.S.2A:44-143
18 through N.J.S.2A:44-147 to the ³[prospective bidder] contractor³ ,
19 and shall indicate aggregate bonding limits;
- 20 ³(4) A list of the names and titles of all individuals who own 10%
21 or more of any class of stock in the corporation or are a 10% or more
22 partner in the firm. If any of the aforementioned stockholders or
23 partners is itself a corporation, or a partnership, that entity shall also
24 provide the information specified herein.³
- 25 (5) Disclosure of any judgements, convictions or criminal
26 indictments for any conduct constituting a crime under local, State or
27 federal law;
- 28 (6) Disclosure of any unsatisfied judgments, injunctions or liens
29 obtained by a governmental agency including, but not limited to,
30 judgements based on taxes owed and fines and penalties assessed by
31 any government agency;
- 32 (7) Disclosure of any determination for violations of federal, State
33 or local laws, rules or regulations, including health laws,
34 unemployment insurance or workers' compensation coverage or claim
35 requirements, the "Employee Retirement Income Security Act of
36 1974" (Pub.L.93-406, 29 U.S.C. s. 1001 et seq.), security laws,
37 environmental laws, safety laws, licensing laws, tax laws and antitrust
38 laws;
- 39 (8) Disclosure of any federal, State or local debarments, non-
40 responsibility findings or denials of prequalification;
- 41 (9) Disclosure of any bankruptcy filings or proceedings;
- 42 (10) A statement as to past performance, which shall give an
43 accurate and complete record of work completed in the past five years
44 by the contractor giving the names of the projects, type of work,
45 location, contract price ³, bid and final contract amount paid³ and the
46 names of the owner and of the architect or engineer in charge for the

1 owner. This statement shall also disclose any labor problems
2 experienced, any failure to complete a contract on schedule. ³[and]³
3 any penalties, judgments, orders or liens imposed by reason of any
4 contract undertaken within the five-year period ³and ³whether the
5 contractor has been defaulted for cause on any project as determined
6 by an unappealed or nonappealable decision³ . This statement shall
7 also indicate the status of any litigation pending against the potential
8 bidder. The contractor shall be required to attach to this statement all
9 performance evaluations in his possession for any work performed by
10 the contractor on any public or private projects;

11 (11) A statement as to organization, which shall demonstrate the
12 adequacy of such organization to undertake a school facilities project.
13 This statement shall include the resumes of the management and
14 professional staff;

15 ³[(12) Information concerning quality control and quality
16 assurance programs;

17 (13) A statement setting forth the written safety and health plan
18 along with documentation that the plan is adhered to and implemented
19 on a project by project basis. Documentation shall also be provided
20 that employee safety training is provided;

21 (14) ³[(12)³ A statement setting forth the ³[prospective bidder's]
22 contractor's³ equipment inventory and technical resources; and

23 ³[(15)]¹³³ A statement on staffing capabilities, including labor
24 sources, staffing plans, turnover rates, and ³[the] ³any³ use of
25 registered apprenticeship programs and journeyman training programs.
26 ³[The statement shall include assurances that all apprentices are
27 registered with the federal Bureau of Apprenticeship and Training in
28 the United States Department of Labor.]³

29 b. After the receipt of the submission provided for in subsection a.
30 of this section, the ³[building]³ authority ³[shall] may³ verify
31 information provided in the ³[prospective bidder's] contractor's ³
32 submission, including applicable license and certificate requirements,
33 federal or State debarments and violations of law. The ³[building]³
34 authority ³[shall] may³ also ³[, to the extent possible,]³ conduct
35 random inquiries or surveys of the ³[prospective bidder's]
36 contractor's³ prior customers.

37 c. Based upon the submission provided for in subsection a. of this
38 section ³[and the performance evaluations conducted pursuant to
39 section 65 of P.L. , c. (C.)(now pending before the Legislature as
40 this bill),] ³ the ³[building]³ authority shall assign a ³[prospective
41 bidder] contractor³ the following ³ [ratings] classification³ and limits
42 for the purpose of determining the types of projects for which a
43 ³[prospective bidder] contractor³ is entitled to bid:

44 ³[(1) a performance rating;

45 ³[(2)] (1)³ a trade ³or work³ classification; and

46 ³[(3)] (2)³ an aggregate rating limit.

1 To effectuate these requirements of the prequalification process, the
2 ³[building]³ authority ³[, in consultation with the New Jersey
3 Division of Property Management and Construction,]³ shall develop
4 rules and regulations for assigning ³[performance ratings, trade]³
5 classifications and aggregate ³[rating]³ limits. ³[These rules and
6 regulations shall be consistent with the provisions set forth in
7 N.J.A.C.17:19-2.6 through N.J.A.C.17:19-2.12 and N.J.A.C.17:19-
8 2.1(b)(1).]³

9 d. The classification shall be made and an immediate notice thereof
10 shall be sent to the ³[prospective bidder] contractor³ by registered
11 or certified mail ³[within a period of eight days after the date of
12 receipt of the submission] or other legally valid methods³ .

13 e. The ³[building]³ authority shall establish procedures to permit
14 ³[prospective bidders] contractors³ to challenge a classification
15 made pursuant to this section.

16 f. The prequalification ³[process] submission³ shall include ³[a
17 requirement that a contractor meet with the county apprenticeship
18 coordinator or the federal Bureau of Apprenticeship and Training
19 representative to review appropriate apprenticeship laws and
20 regulations. An] an³ affidavit which acknowledges receipt of
21 information regarding the appropriate federal Bureau of
22 Apprenticeship and Training apprenticeship laws and regulations as
23 adopted by the State ³[shall be submitted with the form required
24 pursuant to subsection a. of this section. The affidavit shall be signed
25 by the contractor or his official agent, the county apprenticeship
26 coordinator, the federal Bureau of Apprenticeship and Training
27 representative for the State and a Department of Education
28 representative] and information regarding the county apprenticeship
29 coordinators and the federal Bureau of Apprenticeship and
30 Training³.

31 g. The ³[building]³ authority shall maintain a registry of all
32 ³[persons] contractors³ prequalified to bid on school facilities
33 projects. The registry shall include the classification of the bidder
34 ³and aggregate building limit³ .

35 ³[h. For the purposes of this section "responsibility" refers to the
36 apparent ability of the bidder to complete the contract in accordance
37 with its requirements, including but not limited to, requirements
38 pertaining to experience, moral integrity, operating capacity, financial
39 capacity, credit, and workforce, equipment, and facilities
40 availability.²]³

41
42 ³[²63.] 61.³ (New section) a. A ³[person's] contractor's³
43 prequalification classification shall be valid for ³[18] 24³ months. A
44 ³[person] contractor³ shall be reclassified after the ³[18-month] 24-
45 month³ period in order to remain eligible to bid on school facilities

1 projects.

2 b. ³[A person denied prequalification may re-apply after six

3 months.

4 c.]³ Any material changes ³[in a person's operations]³ relevant to

5 the prequalification process shall be reported ³by the contractor³ to

6 the ³[building]³ authority in writing within ³[45] 10³ days. Based on

7 the information provided, the ³[building]³ authority may change the

8 classification or revoke prequalification for cause.²

9

10 ³[^{264.}] 62.³ (New section) a. A mandatory uniform performance

11 evaluation shall be conducted on all school facilities projects

12 ³undertaken by the authority³ . The evaluation shall ³, at a minimum,³

13 include cost, schedule adherence and quality ³[data in a final project

14 report]³ .

15 b. ³[A mandatory uniform performance evaluation shall be

16 conducted on all contractors and subcontractors performing work

17 in the areas set forth in subsection a. of section 61 of P.L. , c. (C.)

18 (now pending before the Legislature as this bill) on school facilities

19 projects. The evaluation shall include cost, schedule adherence,

20 quality data and compliance with the law in a final contractor report.

21 c.]³ A contractor shall be notified of a performance evaluation

22 ³[which would adversely affect the contractor's classification]³ . The

23 contractor shall be afforded an opportunity to respond to an adverse

24 evaluation.

25 ³[d.] c.³ The contractor performance evaluations shall be utilized

26 in ³[reviewing prequalification renewal applications] reviewing bid

27 submissions³ .²

28

29 ³[^{265.}] 63.³ (New section) a. A ³prequalified³ contractor

30 seeking to bid school facilities projects, and any subcontractors

31 required to be named under ³[paragraph (2) of subsection d. of section

32 11 of P.L.1981, c.120 (C.52:18A-78.11)] P.L. , c. (C.) (now

33 pending before the Legislature as this bill)³ shall, as a condition of

34 bidding, submit a sworn contractor certification regarding

35 qualifications and credentials.

36 ³[b. In the contractor certification form, a principal owner or

37 officer of the company shall list the names and titles of all individuals

38 who own 10% or more of any class stock in the corporation or are a

39 10% or more partner in the firm. If any of the aforementioned

40 stockholders or partners is itself a corporation, or a partnership, that

41 entity shall also provide the information specified herein.

42 c.] b.³ In the contractor certification form, a principal owner or

43 officer of the company shall certify that the firm has the following

44 qualifications and credentials:

45 ³[(1) A current, valid contractor classification, or any other form

46 of approval issued by and required by the New Jersey Building

1 Authority, a copy of which shall be attached to the certification form;
2 (2)] (1)³ A current, valid certificate of registration issued pursuant
3 to "The Public Works Contractor Registration Act," P.L.1999, c.238
4 (C.34:11-56.48 et seq.), a copy of which shall be attached to the
5 certification form³, if applicable³ ;
6 ³[(3)] (2)³ A current, valid "Certificate of Authority to perform
7 work in New Jersey" issued by the Department of Treasury, a copy of
8 which shall be attached to the certification form;
9 ³[(4)] (3)³ Any current, valid contractor or trade license required
10 under applicable New Jersey law for any trade or specialty area in
11 which the firm seeks to perform work, a copy of which shall be
12 attached to the certification³ ;
13 (4) During the term of construction of the school facilities project,
14 the contractor will have in place a suitable quality control and quality
15 insurance program and an appropriate safety and health plan³.
16 ³[d. The contractor certification form shall further require that a
17 principal owner or officer of the company certify the following
18 information regarding its qualifications and past performance:
19 (1) The firm has not been suspended or debarred by any federal,
20 State or local government agency in the past three years;
21 (2) The firm has not defaulted for cause on any project, public or
22 private, in the past three years, as determined by a final adjudicated
23 non-appealable decision;
24 (3) The firm has not had any contractor or trade license revoked in
25 the past three years;
26 (4) The firm and its officers, owners and managers have not been
27 convicted of a criminal offense in the past three years.
28 e.] c.³ The contractor certification form shall further require that
29 a principal owner³ [of] or³ officer of the company certify that, at the
30 time that the firm is bidding a project, the amount of its bid proposal
31 and the value of all of its outstanding incomplete contracts does not
32 exceed the firm's existing³ [pre-qualification dollar] aggregate rating³
33 limit³ [, as determined by the Division of Property Management and
34 Construction]³ .
35 ³[f. The contractor certification form required under this section
36 shall be prepared by the Division of Property Management and
37 Construction in consultation with the New Jersey Building
38 Authority.²]³
39
40 ³[²66.] 64.³ (New section) a. The Commissioner of Education,
41 in conjunction with the Commissioner of Labor, shall establish a
42 program to provide additional funding for apprenticeship programs
43 registered by the federal Bureau of Apprenticeship and Training in the
44 United States Department of Labor. There shall be appropriated
45 annually in fiscal year 2001 through fiscal year 2005 the sum of
46 \$3,000,000 to accomplish this purpose.

1 b. The Apprenticeship Committee shall be established in the
2 Department of Education to assist in administering the program. The
3 committee shall be comprised of the following members appointed by
4 the Governor: one public member appointed upon the recommendation
5 of the Speaker of the General Assembly; one public member appointed
6 upon the recommendation of the President of the Senate; a
7 representative from the Department of Labor; a representative from
8 the Department of Education; a county apprenticeship coordinator; a
9 union representative; and a representative from management. The
10 Commissioner of Education shall request the participation of a
11 representative of the federal Bureau of Apprenticeship and Training in
12 the United States Department of Labor as a member of the committee.

13 The ³commissioners of the Department of Education and the
14 Department of Labor, in consultation with the³ committee shall
15 establish guidelines for the distribution of funds under the program,
16 including a provision that requires a majority of the funding to assist
17 apprenticeship programs in urban areas. The guidelines shall also
18 include a list of those types of entities eligible for funding including,
19 but not limited to, county colleges, county vocational schools, unions
20 and other sponsors of apprenticeship programs deemed appropriate.
21 Eligible entities shall be permitted to use the funding provided
22 pursuant to the program to fund student grants. Pursuant to
23 established guidelines, the ³commissioners of the Department of
24 Education and the Department of Labor, in consultation with the³
25 committee shall be responsible for the distribution of funds under the
26 program.²

27
28 ³[²67. (New section) Any decision by the building authority or
29 district that constitutes a denial of a request for prequalification or a
30 finding that a prospective bidder is not a responsible contractor or is
31 not qualified for a specific project, shall not be reversed by any review
32 court unless the determination is found to be arbitrary and
33 capricious.²]³

34
35 ³[²68.] ³65. ³(New section) Any ³[person] contractor³ who
36 willfully makes, or causes to be made, a false, deceptive or fraudulent
37 statement in the ³[submissions] certifications³ required pursuant to
38 ³[section 62 of]³ P.L. , c. (C.)(now pending before the
39 Legislature as this bill), ³[on the contractor certification form
40 required pursuant to section 65 of P.L. , c. (C.)(now pending
41 before the Legislature as this bill) or in the course of any hearing held
42 concerning the prequalification process,]³ shall be guilty of a crime
43 of the fourth degree and shall be permanently disqualified from bidding
44 on all school facilities projects; ³[or] and³ , in the case of an
45 individual or the officer or employee charged with the duty of making
46 the submission for a ³[person, firm, copartnership, association or

1 corporation] contractor³ , he shall be guilty of a disorderly persons
2 offense.²

3
4 ³[²69. (New section) A contractor who submits a bid for a school
5 facilities contract pursuant to this act shall maintain a bona fide office
6 in the State.²]³

7
8 ³[²70.] ³66.³ (New section) A contractor who has been
9 prequalified as a bidder on school facilities projects in accordance with
10 the process established by the ³[building]³ authority pursuant to
11 section ³[61] 59³ of this act shall not be required to undergo any
12 other prequalification process to bid on a school facilities project.²

13
14 ³[²71. (New section) With respect to any contract or agreement
15 entered into by the building authority pursuant to P.L. , c. (C.)(now
16 pending before the Legislature as this bill), 5% of the amount due on
17 each partial payment shall be withheld by the building authority
18 pending the completion of the contract or agreement if the contractor
19 does not have a performance bond. If the contractor does have a
20 performance bond, 2% of the amount due on each partial payment
21 shall be withheld by the building authority when the outstanding
22 balance of the contract exceeds \$500,000 and 5% of the amount due
23 on each partial payment shall be withheld by the building authority
24 when the outstanding balance of the contract is \$500,000 or less.²]³

25
26 ³[²72.] ³67.³ (New section) There is appropriated \$3,000,000
27 from the General Fund to the Department of Education to effectuate
28 the apprentice training program established pursuant to ³[section 66
29 of]³ this act.²

30
31 ³[²73.] ³68.³ (New section) If a contractor on the effective date of
32 this act has a current, valid classification from the Division of
33 Property Management and Construction, it may obtain prequalified
34 status under this act by submitting a short-form application developed
35 by the ³[building]³ authority. A short-form application submitted
36 under this section must include verification of the contractor's current
37 classification ³and aggregate rating limit³ by the Division of Property
38 Management and Construction.

39 Upon such application, the ³[building]³ authority shall prequalify
40 the contractor for the same trade ³or work³ classification and same
41 aggregate rating limit issued by the Division of Property Management
42 and Construction, provided the ³[building]³ authority does not
43 obtain or receive information indicating the contractor has experienced
44 recent performance deficiencies, or otherwise fails to meet the
45 qualification and responsibility standards established by this act.
46 ³Prequalification pursuant to this section shall be valid for such time

1 as determined by the authority.³

2 ³[A contractor denied prequalification under this subsection shall
3 be entitled to reapply after six months and should, upon such re-
4 application, submit sufficient evidence that any performance
5 deficiencies, or other factors supporting a denial of prequalification
6 have been corrected.]²³

7
8 ³[²74.] 69.³ All apprentices shall be registered through the
9 approved federal Bureau of Apprenticeship and Training program.²

10
11 ²[61.]³[75. ²] 70.³ (New section) There is established in the
12 Office of the Attorney General the Unit of Fiscal Integrity in School
13 Construction. The Attorney General or his representative may
14 investigate, examine, and inspect the activities of the authority and
15 districts related to the financing and construction of school facilities
16 and the implementation of the provisions of P.L. , c. (C.) (now
17 pending before the Legislature as this bill). The Attorney General may
18 require the submission of duly verified reports from the authority and
19 districts, which include such information in such form as the Attorney
20 General may require. The Attorney General or his representative may
21 also consult with the authority on issues and procedures related to the
22 exercise of its duties and responsibilities under P.L. , c. (C.) (now
23 pending before the Legislature as this bill). The Legislature shall
24 annually appropriate such funds as may be necessary to finance the
25 operations of the unit.

26
27 ³[²76.] 71.³ (New section) a. In the case of any school facilities
28 project which has a State share of 100%, the ³[building]³ authority
29 may require the use of wrap-up insurance coverage for the project ³[.
30 The building authority shall administer a wrap-up insurance program
31 to provide coverage for school facilities projects]³ and shall establish
32 the terms and requirements for ³[the] any such³ coverage.

33 b. For any school facilities project which has a State share of less
34 than 100%, the ³[building]³ authority, in the case of a project
35 being constructed by the ³[building]³ authority, may require the use
36 of, or the district, in the case of a project being constructed by the
37 district, may elect to purchase, wrap-up insurance coverage for the
38 school facilities project. A district may purchase the coverage on its
39 own or may enter into a joint purchasing agreement with one or more
40 other districts to purchase coverage.

41 c. As used in this section, "wrap-up insurance coverage" means a
42 single insurance and loss control program for all parties involved in the
43 school facilities project, including the owners, administrators,
44 contractors and all tiers of subcontractors, which is controlled and
45 authorized by the owner or financing administrator and applicable to
46 defined construction work sites. Wrap-up insurance coverage

1 ³[shall] may³ include, but not be limited to, workers' compensation
2 and employers' liability, commercial general liability, umbrella/excess
3 liability, builder's risk, architects' and engineers' errors and omissions,
4 liability, environmental liability, and force majeure.²

5

6 ²[62.] ³[77.²] 72.³ This act shall take effect immediately.

(SECOND REPRINT)
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 200

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill No. 200 (Second Reprint) with my recommendations for reconsideration.

A.Summary of Bill

This bill establishes a comprehensive school facilities construction and financing program.

Under the provisions of the bill, the program would be operated through the coordinated efforts of the Department of Education, the New Jersey Building Authority, and the New Jersey Educational Facilities Authority. Any district desiring to undertake a school construction project would be required to apply to the Department of Education for approval of that project. If the project is consistent with the district's long-range facilities plan and the facilities efficiency standards, the district would be informed of its finance and construction options under the program. Consistent with the New Jersey Supreme Court ruling in Abbott v. Burke, Abbott district projects will be fully funded by the State. In addition, all districts will be eligible to receive State funding for the eligible costs of projects in excess of their current CIEFA aid percentage and no district will receive less than 40% State aid.

Abbott districts, level II districts, and districts with a State aid percentage of 60% or greater would be required to use the New Jersey Building Authority for the construction of school facilities projects; these projects would be financed through the Educational Facilities Authority. Districts with a State aid percentage of less than 60% will have the option of constructing projects on their own or having the projects constructed by the New Jersey Building Authority.

The bill also includes provisions to grandfather in certain school facilities projects approved prior to the bill's effective date. Further, the bill requires the New Jersey Building Authority to establish a process to prequalify bidders who intend to submit bids for school

facilities projects. The bill also allows the Legislature to disapprove any school facilities project, beginning on July 1, 2002, for school facilities projects fully funded by the State.

Last, the bill provides that the State's cost for the school construction program may not exceed: \$6,000,000,000 for Abbott district projects fully funded by the State; \$2,500,000,000 for non Abbott projects; and \$100,000,000 for projects in county vocational school districts.

B. Recommended Action

I strongly commend the sponsors of this legislation, the legislative leadership, and the entire Legislature, for recognizing the need to address the school facilities needs in the Abbott school districts, as well as the value of providing a mechanism for the funding and construction of school facilities throughout the State. Through this legislation, the State will not only comply with its constitutional obligation to provide a thorough and efficient education to public school students in the Abbott districts, but will also afford all school districts an opportunity to enhance the learning experience of their students. It is imperative that the children of our State be given an opportunity to learn in safe and secure school facilities.

The school construction program established in this legislation meets the constitutional requirements set forth in the Abbott decision, and will therefore allow the State to move forward in the education of its children without further court intervention. It addresses the needs of school children in every school district throughout the State, whether suburban, rural or urban. And it provides relief to property taxpayers, who would otherwise be required to fund necessary school construction and improvements.

While I support this legislation, I have three primary concerns.

First, we must ensure that the program is affordable. If costs are permitted to expand beyond what is fiscally sound the program will become unsustainable, benefiting no one. Therefore, I recommend modifications to the legislation's square foot construction cost allowance. I believe this cost allowance should include "soft costs." To fund soft costs, such as design and site acquisition costs, separate and apart from this calculation will inflate the total project costs to an unacceptable level. As a manageable offset to including soft costs in the square foot construction cost allowance, I recommend a four

dollar increase in such allowance. In addition, the bill provides that a district may appeal to increase the cost allowance for those projects in which the district believes the allowance to be insufficient. I recommend a 10% cap on the increase that may be awarded following an appeal. This cap will help to contain overall costs while allowing sufficient flexibility in those limited instances in which the \$138 per square foot construction cost allowance is demonstrated to be inadequate. Last, I recommend districts receiving 55% State aid or higher, rather than the 60% currently in the legislation, have their projects constructed by the New Jersey Economic Development Authority. Lowering this percentage will promote economies of scale by allowing the New Jersey Economic Development Authority to achieve greater cost efficiencies by financing and managing the construction of a larger universe of projects.

Second, we must ensure that the program operation and implementation are both efficient and effective. It must be administered effectively to provide the maximum benefit to its ultimate beneficiaries – our children. Therefore, I recommend that the New Jersey Economic Development Authority be designated as the entity responsible for the financing and construction of the school facilities projects to be completed by the State. Under the bill, the New Jersey Building Authority would be responsible for the construction of school facilities projects, while the New Jersey Educational Facilities Authority would be responsible for financing. Centralizing the financing and construction functions in one authority will help ensure efficient implementation of this program. The New Jersey Economic Development Authority has significant experience in financing and constructing major capital projects in the State, and is the agency best suited to undertake the financing and construction of school facilities projects envisioned in this bill.

Furthermore, I recommend that six school facilities projects be designated as demonstration projects to serve as models for other school facilities projects. The location of school facilities in the context of the communities they serve is important to both the educational success of the schools and the development of those communities. In order to promote more effective and efficient use of land, resources and expertise, the planning and construction of schools should be integrated, where possible, into the economic and community development efforts of local governments and community redevelopment

entities. This integration will better assure the future viability of local neighborhoods and communities.

Third, the program must be legally sufficient so that it meets constitutional requirements. Therefore, I recommend the elimination of the provision to allow for Legislative disapproval of school facilities projects that have 100% State funding. The New Jersey Supreme Court has ruled that the State must fund 100% of the cost of necessary facility improvement projects in the Abbott districts in order to comply with the thorough and efficient education provisions of the New Jersey Constitution. I am advised by the Attorney General and my Chief Counsel that legislative disapproval of these projects would be inconsistent with this ruling.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 200 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 8:</u>	Delete "59 through 76" Insert "57 through 71".
<u>Page 3, Section 3, Lines 21-21:</u>	Delete "59 through 76" Insert "57 through 71".
<u>Page 3, Section 3, Line 26:</u>	Delete "\$131" Insert "\$138".
<u>Page 3, Section 3, Line 27:</u>	Delete "1999-2000" replace with "2000-2001".
<u>Page 3, Section 3, Line 28:</u>	Delete "2000-2001" replace with "2001-2002". After "for" Insert "the 2001-2002-2003 school year and".
<u>Page 3, Section 3, Lines 37-38:</u>	Delete ""Building authority" means the New Jersey Building Authority established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.)".
<u>Page 3, Section 3, Line 38:</u>	Insert ""Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1et seq.)".
<u>Page 3, Section 3, Line 39:</u>	Before "Commissioner" Insert ""Community provider" means a private entity which has contracted to provide early childhood education programs for an EPCA district and which (a) is licensed by the Department of Human Services to provide day care services pursuant to P.L.1983, c. 492 (C.30:5B-1 et seq.); and (b) is a tax exempt nonprofit organization. "Community early childhood education facilities project" means a school facilities project consisting of facilities in which

early childhood education programs are provided to 3 or 4-year old children under contract with the ECPA district but which are owned and operated by a community provider.

Page 4, Section 3, Line 1:

Delete "building".

Page 4, Section 3, Line 15:

Insert ""Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of this act;".

Page 4, Section 3, Line 33:

After "costs;" Insert ""ECPA district" means a district that qualifies for early childhood program aid pursuant to section 16 of P.L.1996, c. 138 (C. 18A:7F-16)."

Page 4, Section 3, Line 40:

Before "," insert "or are not authorized as community design features included in final eligible costs pursuant to subsection c. of section 6 of this act".

Page 4, Section 3, Lines 41-42:

Delete in their entirety.

Page 4, Section 3, Line 44:

Before "section" insert "subsection h. of". Before "of" delete "6" and insert "4".

Page 5, Section 3, Line 1:

Delete "building".

Page 5, Section 3, Line 3:

Delete "building".

Page 5, Section 3, Line 9:

Before "and" insert "for demonstration projects, the final eligible costs of the project as determined by the commissioner and reviewed by the authority which may include the cost of community design features determined by the commissioner to be an integral part of the school facility and which do not exceed the facilities efficiency standards, and which were reviewed by the authority and approved by the State Treasurer pursuant to section 6 of this act;".

Page 5, Section 3, Line 10:

Delete "60%" and replace with "55%".

Page 5, Section 3, Line 11:

Delete "building".

Page 6, Section 3, Line 24:

Delete "building".

Page 6, Section 3, Line 27:

Before "and" insert "in the case of a demonstration project, the total costs less the State share as determined pursuant to sections 5 and 6 of this act;".

Page 6, Section 3, Line 28:

After "project" delete "to" and insert "not to be constructed by the authority, but which shall".

Page 7, Section 3, Line 10:

After "act;" insert ""Other allowable costs" means the costs of site development, acquisition of land or other real property interests necessary to effectuate the school facilities project, fees for the

services of design professionals, including architects, engineers, construction managers and other design professionals, legal fees, financing costs and the administrative costs of the authority or the district incurred in connection with the school facilities project;".

Page 7, Section 3, Line 13:

After "of this act" insert "which shall be deemed to include the costs of construction and other allowable costs".

Page 7, Section 3, Line 18:

After ";]" insert ""Redevelopment entity" means a redevelopment entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.);".

Page 7, Section 3, Line 23:

Delete "building".

Page 7, Section 3, Line 24:

Before "or" insert ", a redevelopment entity,".

Page 7, Section 3, Line 27:

Delete "building".

Page 7, Section 3, Line 28:

After ",]" insert "or a redevelopment entity,". After "or" delete "a district" and insert "financed".

Page 8, Section 3, Line 10:

Delete "building".

Page 8, Section 3, Line 11:

Before "construct" insert "or a redevelopment entity".

Page 8, Section 3, Line 29:

Delete "building".

Page 8, Section 3, Line 32:

Before "and" insert "in the case of a demonstration project, the State's proportionate share of the final eligible costs of the project as determined pursuant to sections 5 and 6 of this act;".

Page 8, Section 3, Line 36:

Delete "building".

Page 8, Section 3, Line 37:

Before "or" insert "or a redevelopment entity".

Page 8, Section 3, Line 39:

Delete "building".

Page 8, Section 3, Line 40:

Before "or financed" insert "or a redevelopment entity".

Page 9, Section 4, Line 4:

Delete "October 1" Insert "December 15".

Page 11, Section 4, Line 20:

After ".]" insert "h. The commissioner shall develop, for the March 2002 Report on the Cost of Providing a Thorough and Efficient Education and for subsequent reports, facilities efficiency standards for elementary, middle, and high schools consistent with the core curriculum school delivery assumptions in the report and sufficient for the achievement of the core curriculum content standards, including the provision of required programs in Abbott districts and early childhood

education programs in the districts in which these programs are required by the State. The area allowances per FTE student in each class of the district shall be derived from these facilities efficiency standards.

The facilities efficiency standards developed by the commissioner shall not be construction design standards but rather shall represent the instructional spaces, specialized instructional areas, and administrative spaces that are determined by the commissioner to be educationally adequate to support the achievement of the core curriculum content standards including the provision of required programs in Abbott districts and early childhood education programs in the districts in which these programs are required by the State. A district may design, at its discretion, the educational and other spaces to be included within the school facilities project. The design of the project may eliminate spaces in the facilities efficiency standards, include spaces not in the facilities efficiency standards, or size spaces differently than in the facilities efficiency standards upon a demonstration of the adequacy of the school facilities project to deliver the core curriculum content standards pursuant to paragraph (2) of subsection g. of section 5 of this act.

Within a reasonable period of time after the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill), the commissioner shall publish the facilities efficiency standards developed for the 2000-2001, 2001-2002, and 2002-2003 school years in the New Jersey Register. Within a reasonable period of time after 30 days after publication in the New Jersey Register, the commissioner shall file the facilities efficiency standards with the Office of Administrative Law and those standards shall become effective immediately upon filing with the Office of Administrative Law. During the 30-day period the commissioner shall provide an opportunity for public comment on the proposed facilities efficiency standards.

i. Within 90 days of the commissioner's receipt of a long-range facilities plan for review, the commissioner shall determine whether the plan is fully and accurately completed and whether all information necessary for a decision on the plan has been filed by the district. If the commissioner determines that the plan is complete, the commissioner shall promptly notify the district in writing and shall have 60 days from the date of that notification to determine whether to approve the plan or not. If the commissioner determines that the plan is not complete, the commissioner shall notify the district in writing. The district shall provide to the commissioner whatever information the

commissioner determines is necessary to make the plan accurate and complete. The district shall submit that information to the commissioner, and the commissioner shall have 60 days from the date of receipt of accurate and complete information to determine whether to approve the plan or not.

j. Notwithstanding any provision in subsection i. of this section, if at any time the number of long-range facilities plans filed by school districts with the commissioner and pending review exceeds 20% of the number of school districts in New Jersey, the commissioner may extend by 60 days the deadline for reviewing each plan pending at that time.

k. By March 1, 2002 and every five years thereafter, the commissioner shall recommend to the Legislature criteria to be used in the designation of districts as Abbott districts. The criteria may include, but not be limited to: the number of residents per 1,000 within the municipality or municipalities in which the district is situate who receive TANF; the district's equalized valuation per resident pupil as equalized valuation is defined in section 3 of P.L.1996, c.136 (C.18A:7F-3); the district's income per resident pupil as district income is defined in section 3 of P.L.1996, c.138 (C.18A:7F-3); the population per square mile of the municipality or municipalities in which the district is situate; and the municipal overburden of the municipality or municipalities in which the district is situate as that term is defined by the New Jersey Supreme Court in Abbott v. Burke.

l. By July 1, 2001, the commissioner shall provide the Legislature with recommendations to address the circumstances of districts which are contiguous with two or more Abbott districts. The recommendations shall address the issues of the financing of school facilities projects and the funding of the educational and other programs required within these districts as a result of their unique demographic situation.

By July 1, 2001, the commissioner shall study the Safe Schools Design Guidelines, prepared by the Florida Center for Community Design and Research, which address the issues of school safety and security through the design of school facilities. Based upon the commissioner's study, the commissioner shall issue recommendations to districts on the appropriateness of including the Safe Schools Design Guidelines in the design and construction of school facilities projects. "

Page 11, Section 5, Line 22:

Delete "building".

Page 11, Section 5, Line 23:

Delete "the facilities authority shall".

<u>Page 11, Section 5, Line 25:</u>	Delete "60%" and insert "55%".
<u>Page 11, Section 5, Line 26:</u>	Delete "60%" and insert "55%".
<u>Page 11, Section 5, Lines 27:</u>	Delete "facilities".
<u>Page 11, Section 5, Lines 27-28:</u>	After "undertake the" delete "financing and the building authority undertake the".
<u>Page 11, Section 5, Line 31:</u>	Delete "building".
<u>Page 11, Section 5, Line 37:</u>	Delete "60%" and insert "55%".
<u>Page 11, Section 5, Line 38:</u>	Delete "building". After "entity]" insert "or a redevelopment entity".
<u>Page 12, Section 5, Line 21:</u>	After "costs," delete "shall equal the proposed cost of the project" and insert "for new construction shall be calculated by using the proposed square footage of the building as the approved area for unhoused students".
<u>Page 14, Section 5, Line 7:</u>	Delete "60%" and insert "55%". Delete "building".
<u>Page 14, Section 5, Line 27:</u>	Delete "building".
<u>Page 14, Section 5, Line 30:</u>	Delete "building".
<u>Page 14, Section 5, Line 32:</u>	Delete "building".
<u>Page 14, Section 5, Line 35:</u>	Delete "building".
<u>Page 14, Section 5, Line 37:</u>	After "characteristics" insert ", provided that, notwithstanding anything to the contrary, the commissioner shall not approve an adjustment to the preliminary eligible costs which exceeds 10% of the preliminary eligible costs".
<u>Page 14, Section 5, Line 44:</u>	Delete "building".
<u>Page 15, Section 5, Line 5:</u>	Delete "building".
<u>Page 15, Section 5, Line 8:</u>	Delete "building".
<u>Page 15, Section 5, Line 9:</u>	Delete "building".
<u>Page 15, Section 5, Line 10:</u>	Delete ", schedules". After "specifications" insert "and schedules".
<u>Page 15, Section 5, Line 11:</u>	Delete "building".
<u>Page 15, Section 5, Line 12:</u>	Delete "building".
<u>Page 15, Section 5, Line 13:</u>	Delete "building".
<u>Page 15, Section 5, Line 17:</u>	Delete "building".
<u>Page 15, Section 5, Line 19:</u>	Delete "building".
<u>Page 15, Section 5, Line 25:</u>	Delete "building".
<u>Page 15, Section 5, Line 26:</u>	Delete "building".
<u>Page 15, Section 5, Line 28:</u>	Delete "building".
<u>Page 15, Section 5, Line 29:</u>	Delete "building".

<u>Page 15, Section 5, Line 34:</u>	Delete "building".
<u>Page 15, Section 5, Line 37:</u>	Delete "building".
<u>Page 15, Section 5, Line 41:</u>	Delete "building".
<u>Page 15, Section 5, Line 43:</u>	Delete "building".
<u>Page 16, Section 5, Line 2:</u>	Delete "building".
<u>Page 16, Section 5, Line 6:</u>	Delete "building".
<u>Page 16, Section 5, Line 7:</u>	Delete "building".
<u>Page 16, Section 5, Line 13:</u>	Delete "building".
<u>Page 16, Section 5, Line 18:</u>	Delete "building".
<u>Page 16, Section 5, Line 23:</u>	Delete "building".
<u>Page 16, Section 5, Line 24:</u>	Delete "building".
<u>Page 16, Section 5, Line 26:</u>	Delete "facilities".
<u>Page 16, Section 5, Line 27:</u>	Delete "building".
<u>Page 16, Section 5, Line 28:</u>	Delete "facilities".
<u>Page 16, Section 5, Line 29:</u>	Delete "building".
<u>Page 16, Section 5, Line 30:</u>	Delete "building".
<u>Page 16, Section 5, Line 34:</u>	Delete "building".
<u>Page 16, Section 5, Line 36:</u>	Delete "building".
<u>Page 17, Section 5, Line 8:</u>	Delete "building". Before "shall" insert "or a redevelopment entity".
<u>Page 17, Section 5, Line 31:</u>	Delete "building". After "]" insert "or a redevelopment entity".
<u>Page 17, Section 5, Line 34:</u>	Delete "60%" and insert "55%". Delete "building".
<u>Page 17, Section 5, Line 40:</u>	Delete "building".
<u>Page 17, Section 5, Line 45:</u>	Delete "building".
<u>Page 18, Section 5, Line 1:</u>	Delete "building". Delete "facilities".
<u>Page 18, Section 5, Line 4:</u>	Delete "that have been prequalified by the building authority".
<u>Page 18, Section 5, Line 7:</u>	After "services," Insert "and at the option of the authority"
<u>Page 18, Section 5, Line 8:</u>	Delete "building" After "authority" Delete ", provided that the fees for the architectural".
<u>Page 18, Section 5, Lines 9-10:</u>	Delete in their entirety. Insert "if the authority determines that the assignment would be in the best interest of the school facilities project"
<u>Page 18, Section 5, Lines 14-19:</u>	Delete in their entirety.
<u>Page 18, Section 5, Line 19:</u>	After "s." Insert "Notwithstanding anything

to the contrary contained in P.L. , c. (C.)(now pending before the Legislature as this bill), an ECPA district, at its option, may provide in its long-range facilities plan submitted pursuant to section 4 of this act, for one or more community early childhood education facilities projects. If the district has requested designation of a demonstration project pursuant to section 6 of this act and is eligible to submit a plan for a community early childhood education facilities project pursuant to this section, the district shall be permitted to include the community early childhood education facilities project as part of the demonstration project.

(1) An ECPA district seeking to initiate a community early childhood education facilities project shall apply to the commissioner for approval of the project. The application shall, at a minimum, contain the following information: the name of the community provider; evidence that the community provider is licensed by the Department of Human Services pursuant to P.L.1983, c.492 (c.30:5B-1 et seq.) and is a tax exempt nonprofit organization; evidence that the community provider is or shall provide early childhood education programs for the district; a description of the community early childhood education facilities project; a schematic drawing of the project, or at the option of the district, preliminary plans and specifications; a delineation and description of each of the functional components of the project; identification of those portions of the proposed project which shall be devoted in whole or in part to the provision of early childhood education programs to 3 or 4-year old children from the ECPA district; the estimated cost to complete the project as determined by the district in consultation with the community provider; and whether the facility provides services other than early childhood education programs for 3 and 4-year old children, pursuant to a contract with the ECPA district.

(2) The commissioner shall review the proposed early childhood education facilities project to determine whether it is consistent with the district's long-range facilities plan, whether it will provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operational plan to meet the standards for early childhood education programs established by the department and whether there is a need for increased capacity or to rehabilitate existing space to meet these standards. Only those facilities which are used for 3 or 4-year old children pursuant to a contract with

the ECPA district shall be eligible for approval, provided that facilities which are jointly used by 3 or 4-year old children from the ECPA district and from other districts shall also be eligible for approval.

(3) If the commissioner approves the project, the commissioner shall determine, in consultation with the authority, the cost to complete the approved project, which shall be the reasonable, estimated cost of the renovation or new construction necessary to provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operation plan to meet the standards for early childhood education programs established by the department. For projects initiated by an Abbott district, the State support shall be 100% of such reasonable, estimated cost. For projects initiated by an ECPA district that is not an Abbott district, the State support shall be an amount equal to 115% of the district aid percentage of that ECPA district, of such reasonable, estimated cost. For except that the State support shall not be less than 40% of such reasonable, estimated cost. The commissioner shall issue a final project report to the authority which shall contain a complete description of the project, the actual location of the project, the total square footage of the project together with a breakdown of total square footage by functional component; any other factors to be considered by the authority in undertaking the project; the names and addresses of the people to contact from the district and the community provider; the amount of State support for the project; and the amount of local support required from the community provider to pay for costs, if any, of the project which have not been approved by the commissioner for State support.

(4) Upon submission to the authority of a final project report, the authority shall undertake the financing, acquisition, construction and all other appropriate actions necessary to complete the community early childhood education facilities project, provided, that if there is local support required for the project, such actions shall not commence until the authority receives the local support from the community provider. The authority may, in its discretion, and upon consultation with the commissioner, authorize a community provider to undertake the acquisition, construction and all other appropriate action necessary to complete the project, in which case the authority shall not provide State support until the community

provider provides the local support, if any.

(5) In order to implement the arrangements established for community early childhood education facilities projects, the authority shall enter into an agreement with the district, the commissioner and the community provider containing the terms and conditions determined by the parties to be necessary to effectuate the project.

(6) The authority shall require as a condition of providing State support for any community early childhood education facilities project that the State support must be repaid by the community provider in the event that (a) the commissioner determines that the project is no longer being used for the purposes for which it was intended; or (b) the project is sold, leased or otherwise conveyed to an individual or organization that does not have tax-exempt nonprofit or government status."

Page 20, Section 6, Lines 41-46:

Delete in their entirety.

Page 21, Section 6, Lines 1-46:

Delete in their entirety.

Page 22, Section 6, Lines 1-36:

Delete in their entirety.

Page 22, Section 6, Line 37:

Insert "6. (New section) The provisions of section 5 of P.L. , c. (C.) (now pending before the Legislature as this bill) shall pertain to school facilities projects designated to be demonstration projects except as otherwise provided in this section.

a. For the initial three full fiscal years following the effective date of this act, the State Treasurer may designate up to six school facilities projects which the State Treasurer determines to be in the best interests of the State and of the districts to be demonstration projects pursuant to the provisions of this section.

b. A district and municipality may apply to the authority for the designation of a school facilities project contained in a long-range facilities plan submitted to the commissioner pursuant to section 4 of P.L. , c. (C.) (now pending before the Legislature as this bill) to be a demonstration project to provide for the coordination of local economic development, redevelopment or community development with a school facilities project. The application shall be accompanied by resolutions requesting the designation adopted by the board of education of the district and the governing body of the municipality. The application shall set forth: (1) a plan for carrying out the redevelopment project as a whole, including the construction of the school facilities project; (2) the name of the redevelopment entity to undertake the

project under the "Local Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et seq.); (3) a description of how the project fits into a redevelopment plan adopted or to be adopted by the municipal governing body pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a description of the community design features to be included in the school facilities project.

c. The authority shall evaluate the request to determine whether the school facilities project is suitable for designation as a demonstration project and whether the proposed redevelopment entity is suitable for designation as the entity to construct the demonstration project based upon consideration of the following factors:

(1) whether the demonstration project furthers definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;

(2) whether the demonstration project provides significant social and economic benefits to the municipality, its neighborhoods and residents;

(3) whether the development of the school facilities project is consistent with the local development plan;

(4) the extent to which the school facilities project contains community design features which can be used by the community;

(5) whether the redevelopment entity has the current capacity to construct the demonstration project;

(6) whether the redevelopment entity has the appropriate prior experience in developing similar types of projects; and

(7) whether there exist donations from private entities for the purpose of the demonstration project.

d. The authority's review of the proposed school facilities project for designation as a demonstration project under this section shall commence upon approval by the commissioner of the school facilities project pursuant to section 5 of P.L. , c. (C.) (now pending before the Legislature as this bill). Upon approval by the commissioner of the school facilities project, and recommendation by the authority that the school facilities project be a demonstration project, the recommendation of the authority shall be forwarded to the State Treasurer who shall determine whether the school facilities project should be designated as a demonstration project. At the same time as the authority forwards its recommendation to the State Treasurer, the authority shall forward its recommendation to the Urban Coordinating Council for review pursuant to subsection i. of this section.

e. In addition to the requirements set forth in section 5 of this act, a demonstration project may request inclusion in the final eligible costs of the school facilities project, of all or any portion of the cost of any community design features including any area, rooms, equipment, recreational area or playground included in the school facilities project which are to be used in common by students of the district and by residents of the community, but there shall not be included in the final eligible costs any portion of the cost of any features which are not an integral part of the school building and grounds or exceed the facilities efficiency standards. The commissioner shall approve the inclusion of the community design features as part of the school facilities project if he finds that the inclusion of the community design features as part of the school facilities project would be conducive to the usefulness and success of the project for both the students of the district and the residents of the community. The commissioner may condition his approval upon the adoption by the district of policies suitable for assuring continuing community or educational access to the community design features.

f. The cost of the community design features approved by the commissioner shall be reviewed by the authority. The district shall submit the documentation required by the authority for the authority to make its determination. The authority shall, in its recommendation to the commissioner pursuant to section 5 of this act, include its recommendation with respect to the cost of the community design features. The commissioner shall make the final determination with respect to the inclusion of the cost of community design features in the final eligible costs.

g. The authority shall provide funding for the State's share of the final eligible costs of a school facilities project to be constructed as part of a demonstration project pursuant to an agreement among the authority, the redevelopment entity and the district which shall, in addition to any other terms and conditions, set forth the terms for disbursement of the State share and provide for the monitoring of construction by the authority.

h. Upon completion of a demonstration project by a redevelopment entity, the district shall submit to the commissioner a plan to provide for the maintenance of the project and shall enter into a contract which provides for that maintenance.

i. The Urban Coordinating Council shall review the recommendations of the authority with respect to the demonstration projects and shall advise the authority, redevelopment entity and the district regarding the potential

availability of funding for the demonstration project, including, but not limited to, sources of funds for acquisition, clearance, site remediation, and assemblage of land and the development, redevelopment, construction or rehabilitation of any structure or improvement included in the project.

j. Any district may consult with the Urban Coordinating Council with respect to the potential availability of funding for aspects of the school facilities project, including, but not limited to, sources of funds for acquisition, clearance, site remediation, and assemblage of land and the development, redevelopment, construction or rehabilitation of any structure or improvement included in the project."

- Page 23, Section 7, Line 8: Delete "plus other allowable costs".
- Page 23, Section 7, Line 43: After "for" insert "new".
- Page 24, Section 7, Lines 11-12: Delete "plus other allowable costs".
- Page 24, Section 7, Lines 23-35: Delete in their entirety.
- Page 25, Section 8, Line 28: Delete "136" and replace with "134".
- Page 25, Section 9, Line 43: Delete "60%" insert "55%". Delete "building".
- Page 28, Section 12, Line 43: Delete "building".
- Page 29, Section 13, Line 3: Delete "facilities".
- Page 29, Section 13, Line 5: Before "of" insert ", planning, design, construction management, acquisition, construction, and completion".
- Page 29, Section 13, Line 6: After "projects" delete "and the building authority shall be responsible for".
- Page 29, Section 13, Line 7: Delete in its entirety.
- Page 29, Section 13, Line 8: Delete "construction, and completion of the schools facilities projects".
- Page 29, Section 13, Line 9: Delete "building".
- Page 29, Section 13, Line 10: Delete "building".
- Page 29, Section 13, Line 13: Delete "building".
- Page 29, Section 13, Line 18: Delete "facilities".
- Page 29, Section 13, Line 20: Delete "facilities".
- Page 29, Section 13, Line 23: Delete "facilities".
- Page 29, Section 13, Line 24: Delete "building".
- Page 29, Section 13, Line 25: Delete "building".
- Page 29, Section 13, Line 27: Delete "construction and finance".
- Page 29, Section 13, Line 29: Delete "building". After "financed" delete "by the facilities".
- Page 29, Section 13, Line 30: Delete "authority".

<u>Page 29, Section 13, Line 31:</u>	Delete "building". Delete ", the facilities authority,".
<u>Page 29, Section 13, Line 34:</u>	Delete "building".
<u>Page 29, Section 13, Line 36:</u>	Delete "building".
<u>Page 29, Section 13, Lines 45-46:</u>	Delete in their entirety.
<u>Page 30, Section 13, Lines 1-34:</u>	Delete in their entirety.
<u>Page 30, Section 14, Line 38:</u>	Delete "facilities".
<u>Page 30, Section 14, Line 40:</u>	Delete "N.J.S.18A:72A-1 et seq." and insert "P.L.1974, c.80 (C.34:1B-1 et seq.)".
<u>Page 30, Section 14, Line 46:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 1:</u>	Before "of" insert ", design, construction and maintenance".
<u>Page 31, Section 14, Lines 2-3:</u>	Delete in their entirety.
<u>Page 31, Section 14, Line 4:</u>	Delete "maintenance of school facilities projects".
<u>Page 31, Section 14, Line 18:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 21:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 31, Section 14, Line 23:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 25:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 27:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 30:</u>	Delete "N.J.S.18A:72A-1 et seq." insert "P.L.1974, c.80 (C.34:1B-1 et seq.)".
<u>Page 31, Section 14, Line 31:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 36:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 37:</u>	Delete "facilities".
<u>Page 31, Section 14, Line 46:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 1:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 6:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 10:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 11:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 18:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 25:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 29:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 38:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 40:</u>	Delete "facilities".
<u>Page 32, Section 14, Line 44:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 7:</u>	Delete "facilities".

<u>Page 33, Section 14, Line 9:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 15:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 16:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 17:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 23:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 25:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 26:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 28:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 30:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 32:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 39:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 42:</u>	Delete "facilities".
<u>Page 33, Section 14, Line 46:</u>	Delete "facilities".
<u>Page 34, Section 14, Line 4:</u>	Delete "facilities".
<u>Page 34, Section 14, Line 10:</u>	Delete "facilities authority and the building".
<u>Page 34, Section 14, Lines 12-13:</u>	Delete "facilities authority's or building".
<u>Page 34, Section 14, Line 15:</u>	Delete "facilities".
<u>Page 34, Section 14, Line 18:</u>	Before "of" insert ", planning, design, construction management, acquisition, construction, completion and placing into service and maintenance"
<u>Page 34, Section 14, Line 19:</u>	After "projects" delete "and the building authority's administrative,"
<u>Page 34, Section 14, Lines 20-22:</u>	Delete in their entirety.
<u>Page 34, Section 14, Line 23:</u>	Delete "facilities projects".
<u>Page 34, Section 14, Line 25:</u>	Delete "60%" and insert "55%".
<u>Page 34, Section 14, Line 26:</u>	Delete "building".
<u>Page 34, Section 15, Line 30:</u>	Delete "60%" and insert "55%".
<u>Page 34, Section 15, Line 31:</u>	Delete "building".
<u>Page 34, Section 15, Line 38:</u>	Delete "facilities".
<u>Page 34, Section 15, Line 40:</u>	Delete "facilities".
<u>Page 34, Section 16, Line 46:</u>	Delete "facilities".
<u>Page 35, Section 16, Line 3:</u>	Delete "facilities".
<u>Page 35, Section 16, Line 13:</u>	Delete "facilities".
<u>Page 35, Section 16, Line 15:</u>	Delete "facilities".
<u>Page 35, Section 16, Line 17:</u>	Delete "facilities".
<u>Page 35, Section 16, Line 26:</u>	Delete "facilities".

<u>Page 35, Section 17, Lines 31-32:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 35, Section 17, Line 32:</u>	Delete "among" and insert "between".
<u>Page 35, Section 17, Line 33:</u>	Delete "," insert "and". Delete "facilities authority and the building".
<u>Page 35, Section 17, Line 36:</u>	Delete "facilities".
<u>Page 35, Section 18, Line 45:</u>	Delete "," and insert "and". Delete "facilities".
<u>Page 35, Section 18, Line 46:</u>	Delete "and the building authority".
<u>Page 36, Section 18, Line 8:</u>	Delete "facilities".
<u>Page 36, Section 18, Line 10:</u>	Delete "facilities".
<u>Page 36, Section 18, Line 11:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 36, Section 19, Line 18:</u>	Delete "facilities".
<u>Page 36, Section 19, Line 25:</u>	Delete "facilities".
<u>Page 36, Section 19, Line 27:</u>	Delete "facilities".
<u>Page 36, Section 19, Line 32:</u>	Delete "facilities".
<u>Page 36, Section 19, Line 35:</u>	Delete "facilities".
<u>Page 36, Section 19, Line 38:</u>	Delete "facilities".
<u>Page 36, Section 20, Line 44:</u>	Delete "facilities".
<u>Page 36, Section 20, Line 46:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 5:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 6:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 8:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 9:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 10:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 18:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 19:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 23:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 24:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 26:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 27:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 30:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 32:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 36:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 38:</u>	Delete "facilities".
<u>Page 37, Section 21, Line 43:</u>	Delete "facilities".

<u>Page 37, Section 21, Line 44:</u>	Delete "facilities".
<u>Page 38, Section 22, Lines 3-4:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 38, Section 22, Lines 5-6:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 38, Section 22, Line 7:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 38, Section 22, Line 13:</u>	Delete "facilities".
<u>Page 38, Section 22, Line 17:</u>	Delete "facilities". Delete "and the building authority".
<u>Page 38, Section 22, Line 19:</u>	Delete "facilities".
<u>Page 38, Section 22, Line 37:</u>	Delete "facilities".
<u>Page 38, Section 23, Line 45:</u>	Delete "building".
<u>Page 38, Section 23, Line 46:</u>	Before "or" insert ", a redevelopment entity,".
<u>Page 39, Section 24, Line 18:</u>	Delete "building".
<u>Page 39, Section 24, Line 19:</u>	Delete "building".
<u>Page 39, Section 24, Line 20:</u>	Delete "value" insert "aggregate principal amount". After "bonds" Insert ";notes or other obligations" Delete "facilities".
<u>Page 39, Section 24, Line 22:</u>	After "the" insert "aggregate principal". After "bonds" insert ", notes or other obligations".
<u>Page 39, Section 24, Line 25:</u>	Before "the" insert "the number of demonstration projects approved;".
<u>Page 39, Section 25, Lines 32-33:</u>	Delete "P.L.1999,c.138" Insert "the annual appropriations act".
<u>Page 39, Section 25, Line 37:</u>	Delete "building".
<u>Page 39, Section 25, Lines 39-41:</u>	Delete "for deposit in the School Facilities Construction Fund established pursuant to subsection e. of section 13 of this act".
<u>Page 39, Section 25, Line 41:</u>	Before "." insert "to be used to pay for school facilities projects and the administrative, insurance, and other operating costs of the authority incurred in connection with school facilities projects. In addition, there is appropriated from the General Fund to the Department of Law and Public Safety, Office of the Attorney General, an amount not to exceed \$1,000,000, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, for the Unit of Fiscal Integrity in School Construction, established pursuant to section 70 of this act, and any additional amounts as may be required by the unit, subject to the approval of the Director of the Division of Budget and Accounting and the Joint Budget Oversight Committee".

<u>Page 39, Section 26, Line 46:</u>	Delete "58 through 60" and insert "57 and 58 and 64".
<u>Page 40, Section 26, Line 5:</u>	After "12" insert "and 57 and 58 and 64".
<u>Page 40, Section 26, Line 14:</u>	Delete "facilities".
<u>Page 40, Section 26, Line 16:</u>	Delete "and in consultation with the State Treasurer,".
<u>Page 40, Section 26, Lines 17-18:</u>	Delete "sections 13 through 22 of" After "of this act" Insert "that apply to the authority".
<u>Page 40, Section 26, Line 19:</u>	Delete "facilities".
<u>Page 40, Section 26, Line 21:</u>	Delete "facilities".
<u>Page 40, Section 26, Line 22:</u>	Delete "sections 13".
<u>Page 40, Section 26, Line 23:</u>	Delete "through 22 of". After "act" insert "that apply to the authority".
<u>Page 40, Section 26, Line 25:</u>	Delete "facilities".
<u>Page 40, Section 26, Line 27:</u>	Delete "The building authority shall adopt, pursuant to the".
<u>Page 40, Section 26, Lines 28-39:</u>	Delete in their entirety.
<u>Page 40, Section 26, Line 40:</u>	Delete "d.".
<u>Page 40, Section 27, Lines 44-45:</u>	Delete "facilities authority and the building".
<u>Page 41, Section 27, Lines 1-2:</u>	Delete "facilities authority and the building". Delete "their" and insert "its".
<u>Page 41, Section 27, Line 6:</u>	Delete "facilities authority and the building".
<u>Page 47, Section 36, Line 45:</u>	Before ", and," insert "and in the case of a demonstration project pursuant to sections 5 and 6 of P.L. , c. (C.) (now pending before the Legislature as this bill)".
<u>Page 48, Section 38, Line 26:</u>	Before ", and," insert "and in the case of a demonstration project pursuant to sections 5 and 6 of P.L. , c. (C.) (now pending before the Legislature as this bill)".
<u>Page 49, Section 42, Line 45:</u>	Delete "Building" and insert "Economic Development".
<u>Page 49, Section 42, Line 46:</u>	Before "or" insert "or a redevelopment entity".
<u>Page 50, Section 42, Line 7:</u>	After "2" insert "and in the case of a demonstration project pursuant to sections 5 and 6 of P.L. , c. (C.) (now pending before the Legislature as this bill)".
<u>Page 50, Section 42, Line 11:</u>	Delete "'Building" and insert "Economic Development". Before "or" insert "or a redevelopment entity".

Pages 72-97, Sections 43-57:

Delete in their entirety.

Page 97, After Section 57, Line 15:

Insert "43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read as follows:

2. The Legislature hereby finds and determines that:

a. Department of Labor [and Industry] statistics of recent years indicate a continuing decline in manufacturing employment within the State, which is a contributing factor to the drastic unemployment existing within the State, which far exceeds the national average, thus adversely affecting the economy of the State and the prosperity, safety, health and general welfare of its inhabitants and their standard of living; that there is an urgent need to protect and enhance the quality of the natural environment and to reduce, abate and prevent environmental pollution derived from the operation of industry, utilities and commerce within the State; and that the availability of financial assistance and suitable facilities are important inducements to new and varied employment promoting enterprises to locate in the State, to existing enterprises to remain and expand in the State, and to industry, utilities and commerce to reduce, abate and prevent environmental pollution.

b. The provision of buildings, structures and other facilities to increase opportunity for employment in manufacturing, industrial, commercial, recreational, retail and service enterprises in the State is in the public interest and it is a public purpose for the State to induce and to accelerate opportunity for employment in such enterprises.

c. In order to aid in supplying these needs and to assist in the immediate reduction of unemployment and to provide sufficient employment for the citizens of the State in the future, it is necessary and in the public interest to aid and encourage the immediate commencement of new construction projects of all types, to induce and facilitate the acquisition and installation at an accelerated rate of such devices, equipment and facilities as may be required to reduce, abate and prevent environmental pollution by industry, utilities and commerce.

d. The availability of financial assistance by the State will reduce present unemployment and improve future employment opportunities by encouraging and inducing the undertaking of such construction projects, the location, retaining or expanding of employment promoting enterprises within the State, and the accelerated acquisition and installation of energy saving improvements and pollution control devices, equipment and facilities.

e. In many municipalities in our State substantial and persistent unemployment exists; and many existing residential, industrial, commercial and manufacturing facilities within such municipalities are either obsolete, inefficient, dilapidated or are located without regard to the master plans of such municipalities; and the obsolescence and abandonment of existing facilities will increase with further technological advances, the provision of modern, efficient facilities in other states and the difficulty which many municipalities have in attracting new facilities; and that many existing and planned employment promoting facilities are far from or not easily accessible to the places of residence of substantial numbers of unemployed and underemployed persons.

f. By virtue of their architectural and cultural heritage, their positions as principal centers of communication and transportation and their concentration of productive and energy efficient facilities, many municipalities are capable of ameliorating the conditions of deterioration which impede sound community growth and development; and that building a proper balance of housing, industrial and commercial facilities and increasing the attractiveness of such municipalities to persons of all income levels is essential to restoring such municipalities as desirable places to live, work, shop and enjoy life's amenities; that the accomplishment of these objectives is beyond remedy solely by the regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the powers provided herein, and that the exercise of the powers herein provided is critical to continuing the process of revitalizing such municipalities and will serve an urgent public use and purpose.

The Legislature further determines that in order to aid in remedying the aforesaid conditions and to further and implement the purposes of this act, that there shall be created a body politic and corporate having the powers, duties and functions provided in this act; and that the authority and powers conferred under this act, and the expenditure of moneys pursuant thereto constitute a serving of a valid public purpose; and that the enactment of the provisions hereinafter set forth is in the public interest and for the public benefit and good, and is hereby so declared to be as a matter of express legislative determination.

The Legislature further finds and determines that:

g. It is essential that this and future generations of young people be given the fullest opportunity to learn and develop their intellectual capacities; that institutions of public elementary and

secondary education within the State be provided with the appropriate additional means required to assist these young citizens in achieving the required levels of learning and the complete development of their intellectual abilities; and that the resources of the State be employed to meet the tremendous demand for public elementary and secondary educational opportunities.

h. Public elementary and secondary educational facilities are an integral part of the effort in this State to provide educational opportunities; it is the purpose of P.L. _____, c. _____ (C. _____) (now pending before the Legislature as this bill) to provide a measure of assistance and an alternative method of financing to enable school districts to provide the facilities which are so critically needed; the inventory of public elementary and secondary school buildings and the equipment and capital resources currently available are aging, both chronologically and technologically; and the current funding at the federal, State, and local levels and the current mechanisms for construction of these capital projects are inadequate to meet the demonstrated need for school facilities, and these inadequacies necessitate additional sources of funding and the coordination of construction activities at the State level to meet those needs.

i. While the credit status of New Jersey's school districts is sound, it can be economically more reasonable to finance the costs of developing the educational infrastructure of the State's public elementary and secondary schools by providing for the funding of capital projects through the issuance of bonds, notes or other obligations by the New Jersey Economic Development Authority, to be retired through annual payments made by the State subject to appropriation by the State Legislature, and to provide for the use of the proceeds of those bonds, notes or other obligations to pay for educational infrastructure projects; and such a structure would substantially reduce the costs of financing and provide for a more efficient use of the funds available for the development of the educational infrastructure.

j. The New Jersey Economic Development Authority has substantial and significant experience in undertaking major capital construction projects, has a system of internal controls and procedures to ensure the integrity of construction activities, and is therefore the appropriate entity to undertake the planning, design, construction, and operation of educational infrastructure projects; and by authorizing the New Jersey Economic Development Authority to undertake these activities, there will be achieved economies of scale, better

coordination of resources, more effective financial management and control and increased monitoring and quality control of school district construction. (cf: P.L.1983, c.282, s.1).

44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as follows:

3. As used in this act, unless a different meaning clearly appears from the context:

a. "Authority" means the New Jersey Economic Development Authority, created by section 4 of this act.

b. "Bonds" means bonds or other obligations issued by the authority pursuant to this act [or], "Economic Recovery Bonds or Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or bonds, notes, other obligations and refunding bonds issued by the authority pursuant to P.L.____, c.____ (C.____)(now pending before the Legislature as this bill).

c. "Cost" means the cost of the acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility including water transmission facilities, or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of energy saving improvements or pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development deemed by the authority to be necessary or useful and convenient for any project or school facilities project or in connection therewith; discount on bonds; cost of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the authority or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or school facilities project or part thereof, and also such provision for reserves for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine.

d. "County" means any county of any class.

e. "Development property" means any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment acquired or to be acquired by purchase, gift or otherwise by the authority within an

urban growth zone. f. "Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies, as well as natural persons. "Person" shall include the plural as well as the singular.

g. "Pollution control project" means any device, equipment, improvement, structure or facility, or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or the refinancing thereof in order to facilitate improvements or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, thermal pollution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or his duly authorized representative a certificate stating the opinion that, based upon information, facts and circumstances available to the State Department of Environmental Protection and any other pertinent data, (1) said pollution control facilities do not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority within any political subdivision, and (2) that such facilities, as designed, will be a pollution control project as defined in this act and are in furtherance of the purpose of abating or controlling pollution.

h. "Project" means: (1) (a) acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility, including water transmission facilities or other improvement, whether or not in existence or under construction, (b) purchase and installation of equipment and machinery, (c) acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; and (2) (a) the acquisition, financing, or refinancing of inventory, raw materials, supplies, work in process, or stock in trade, or (b) the financing, refinancing or consolidation of secured or unsecured debt, borrowings, or obligations, or (c) the provision of financing for any other expense incurred

in the ordinary course of business; all of which are to be used or occupied by any person in any enterprise promoting employment, either for the manufacturing, processing or assembly of materials or products, or for research or office purposes, including, but not limited to, medical and other professional facilities, or for industrial, recreational, hotel or motel facilities, public utility and warehousing, or for commercial and service purposes, including, but not limited to, retail outlets, retail shopping centers, restaurant and retail food outlets, and any and all other employment promoting enterprises, including, but not limited to, motion picture and television studios and facilities and commercial fishing facilities, commercial facilities for recreational fishermen, fishing vessels, aquaculture facilities and marketing facilities for fish and fish products and (d) acquisition of an equity interest in, including capital stock of, any corporation; or any combination of the above, which the authority determines will: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State, or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State, or (ii) maintain or increase the tax base of the State or of any political subdivision of the State, or (iv) maintain or diversify and expand employment promoting enterprises within the State; and (3) the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of an energy saving improvement or pollution control project which the authority determines will tend to reduce the consumption in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy or to reduce, abate or prevent environmental pollution within the State; and (4) the acquisition, construction, reconstruction, repair, alteration, improvement, extension, development, financing or refinancing of infrastructure and transportation facilities or improvements related to economic development and of cultural, recreational and tourism facilities or improvements related to economic development and of capital facilities for primary and secondary schools and of mixed use projects consisting of housing and commercial development; and (5) the establishment, acquisition, construction, rehabilitation, improvement, and ownership of port facilities as defined in section 3 of P.L.1997, c.150 (C.34:1B-146). Project may also include: (i) reimbursement to any person for costs in connection with any project, or the refinancing of any project or portion thereof, if determined by the authority as

necessary and in the public interest to maintain employment and the tax base of any political subdivision and will facilitate improvements thereto or the completion thereof, and (ii) development property and any construction, reconstruction, improvement, alteration, equipment or maintenance or repair, or planning and designing in connection therewith. For the purpose of carrying out mixed use projects consisting of both housing and commercial development, the authority may enter into agreements with the New Jersey Housing and Mortgage Finance Agency for loan guarantees for any such project in accordance with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for that purpose shall allocate to the New Jersey Housing and Mortgage Finance Agency, under such agreements, funding available pursuant to subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project shall not include a school facilities project.

i. "Revenues" means receipts, fees, rentals or other payments to be received on account of lease, mortgage, conditional sale, or sale, and payments and any other income derived from the lease, sale or other disposition of a project, moneys in such reserve and insurance funds or accounts or other funds and accounts, and income from the investment thereof, established in connection with the issuance of bonds or notes for a project or projects, and fees, charges or other moneys to be received by the authority in respect of projects or school facilities projects and contracts with persons.

j. "Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

k. "Energy saving improvement" means the construction, purchase and installation in a building devoted to industrial or commercial purposes of any of the following, designed to reduce the amount of energy from nonrenewable sources needed for heating and cooling that building: insulation, replacement burners, replacement high efficiency heating and air conditioning units, including modular boilers and furnaces, water heaters, central air conditioners with or without heat recovery to make hot water for industrial or commercial purposes or in office buildings, and any solar heating or cooling system improvement, including any system which captures solar radiation to heat a fluid which passes over or through the collector element of that system and then transfers that fluid to a point within the system where the heat is withdrawn from the fluid for direct usage or storage. These systems shall include, but not necessarily be limited to, systems incorporating flat plate, evacuated tube or

focusing solar collectors.

The foregoing list shall not be construed to be exhaustive, and shall not serve to exclude other improvements consistent with the legislative intent of this amendatory act.

l. "Urban growth zone" means any area within a municipality receiving State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) or a municipality certified by the Commissioner of Community Affairs to qualify under such law in every respect except population, which area has been so designated pursuant to an ordinance of the governing body of such municipality.

m. "District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.).

n. "Local unit" means a county, municipality, board of education or any other political entity authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law.

o. "Refunding bonds" means bonds, notes or other obligations issued to refinance bonds previously issued by the authority pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now pending before the Legislature as this bill).

p. "School facilities project means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

q. "School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

(cf: P.L.1997, c.150, s.22).

45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read as follows:

a. There is hereby established in, but not of, the Department of [Commerce and Economic Development] the Treasury a public body corporate and politic, with corporate succession, to be known as the "New Jersey Economic Development Authority." The authority is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The authority shall consist of the Commissioner of Banking, the [Commissioner of Commerce and Economic Development] Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, the Commissioner of Labor, the Commissioner of Education, and the State Treasurer, who shall be members ex officio, and [six] eight public members appointed by the Governor [with the advice and consent of the Senate, of which one] as follows: two public [member] members (who shall not be [a legislator] legislators) shall be appointed by the Governor upon recommendation of the Senate President [and one]; two public [member] members (who shall not be [a legislator] legislators) shall be appointed by the Governor upon recommendation of the Speaker of the General Assembly; and four public members shall be appointed by the Governor, all for terms of three years. [The first two public member positions on the authority that are or become vacant on or after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of the Governor upon the recommendation of the Senate President and the Speaker of the General Assembly, respectively.] Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only. In the event the authority shall by resolution determine to accept the declaration of an urban growth zone by any municipality, the mayor or other chief executive officer of such municipality shall ex officio be a member of the authority for the purpose of participating and voting on all matters pertaining to such urban growth zone. The Governor shall appoint [with the advice and consent of the Senate,] three alternate members of the authority, of which one alternate member (who shall not be a legislator) shall be appointed by

the Governor upon the recommendation of the Senate President, and one alternate member (who shall not be a legislator) shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly; and one alternate member shall be appointed by the Governor, all for terms of three years. [The first two alternate member positions on the authority that are or become vacant on or after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of the Governor upon the recommendation of the Senate President and the Speaker of the General Assembly, respectively.] The chairperson may authorize an alternate member, in order of appointment, to exercise all of the powers, duties and responsibilities of such member, including, but not limited to, the right to vote on matters before the authority.

Each alternate member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. An alternate member shall be eligible for reappointment. Any vacancy in the alternate membership occurring other than by the expiration of a term shall be filled in the same manner as the original appointment but for the unexpired term only. Any reference to a member of the authority in this act shall be deemed to include alternate members unless the context indicates otherwise.

The terms of office of the members and alternate members of the authority appointed by the Governor who are serving on the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) shall expire upon the appointment by the Governor of eight public members and three alternate members. The initial appointments of the eight public members shall be as follows: the two members appointed upon the recommendation of the President of the Senate and the two members appointed upon the recommendation of the Speaker of the General Assembly shall serve terms of three years; two members shall serve terms of two years; and two members shall serve terms of one year. The initial appointments of the alternate members shall be as follows: the alternate member appointed upon the recommendation of the President of the Senate shall serve a term of three years; the alternate member appointed upon the recommendation of the Speaker of the General Assembly shall serve a term of two years; and one alternate member shall serve a term of one year. No member shall be appointed who is holding elected office.

c. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the

Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

d. [The Commissioner of Commerce and Economic Development may, at his discretion, serve as the chairperson of the authority or may appoint one of the six public members of the authority as chairperson. Any such designation or appointment shall be made in writing and shall be delivered to the authority and to the Governor and shall continue in effect until revoked or amended by a writing delivered to the authority and the Governor.] A chairperson shall be appointed by the Governor from the public members. The members of the authority shall elect from their remaining number a vice chairperson and a treasurer thereof. The authority shall employ an executive director who shall be its secretary and chief executive officer. The powers of the authority shall be vested in the members thereof in office from time to time and [six] seven members of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the authority at any meeting thereof by the affirmative vote of at least [six] seven members of the authority. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the authority.

e. Each member of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member in such form and amount as may be prescribed by the Director of the Division of Budget and Accounting in the Department of the Treasury. Such bonds shall be filed in the office of the Secretary of State. At all times thereafter the members and treasurer of the authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the authority.

f. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have forfeited or shall forfeit his office or employment or any benefits or emoluments thereof by reason of his acceptance of the office of ex officio member of the authority or his services therein.

g. Each ex officio member of the authority may designate an officer or employee of his department to represent

him at meetings of the authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended by writing delivered to the authority.

h. The authority may be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority, all property, funds and assets thereof shall be vested in the State.

i. A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at such meeting by the authority shall have force or effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the copy of the minutes shall have been so delivered, unless during such 10-day period the Governor shall approve the same in which case such action shall become effective upon such approval. If, in that 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and void and of no effect. The powers conferred in this subsection i. upon the Governor shall be exercised with due regard for the rights of the holders of bonds and notes of the authority at any time outstanding, and nothing in, or done pursuant to, this subsection i. shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or notes or for the benefit, protection or security of the holders thereof.

j. On or before March 31 in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and cause a copy thereof to be filed with the Secretary of State and the Director of the Division of Budget and Accounting in the Department of the Treasury.

k. The Director of the Division of Budget and Accounting in the Department of the Treasury and his legally authorized

representatives are hereby authorized and empowered from time to time to examine the accounts, books and records of the authority including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating thereto and to its financial standing.

l. No member, officer, employee or agent of the authority shall be interested, either directly or indirectly, in any project or school facilities project, or in any contract, sale, purchase, lease or transfer of real or personal property to which the authority is a party.
(cf: P.L.1995, c.227).

46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the Eminent Domain Act of 1971, P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project or school facilities project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project or the school facilities project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project;

g. To sell, convey or lease to any person all or any portion of a project or school

facilities project, for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, school facilities project or revenues, whenever it shall find such action to be in furtherance of the purposes of this act and P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill);

i. To grant options to purchase or renew a lease for any of its projects or school facilities projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of the act and P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill), with the terms and conditions thereof;

k. In connection with any application for assistance under this act or P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of this act and P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act and P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in this act and P.L. ____, c. ____ (C. ____)(now pending before the Legislature as this bill);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a

project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority to carry out the purposes of the act and P.L. , c. (C.)(now pending before the Legislature as this bill), and to fix and pay their compensation from funds available to the authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by this act and P.L. , c. (C.)(now pending before the Legislature as this bill) under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the act and P.L. , c. (C.)(now pending before the Legislature as this bill);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the

establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality; and

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.)[.];

z. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the authority to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now pending before the Legislature as this bill), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts and any other entity which may be required in order to carry out the provisions of P.L. , c. (C.)(now pending before the Legislature as this bill);

aa. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L. , c. (C.)(now pending before the Legislature as this bill);

bb. To make and contract to make loans or leases and to make grants to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L. , c. (C.)(now pending before the Legislature as this bill);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement,

or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, construction and placing into service and maintenance of school facilities projects.
(cf: P.L.1996, c.26, s.16).

47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to read as follows:

1. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of construction contracts undertaken in connection with [Authority financial assistance] any of its projects or school facilities projects. The prevailing wage rate shall be the rate determined by the Commissioner of Labor [and Industry] pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).
(cf: P.L.1979, c.303, s.1).

48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to read as follows:

4. a. The New Jersey Economic Development Authority shall adopt rules and regulations to establish an affirmative action program for the hiring of minority workers employed in the performance of construction contracts undertaken in connection with any of its projects [receiving Authority assistance] and school facilities projects, and to expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for those contracts, consistent with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the proper enforcement and administration of such rules and regulations.

b. Within 180 days of the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill), but before adoption of its rules and regulations concerning its affirmative action program, the authority shall submit the proposed rules and regulations to the presiding officers and the standing committees on State government of both houses of the Legislature for their review.

(cf: P.L.1979, c.303, s.4).

49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read as follows:

15. The exercise of the powers granted by this act and P.L. , c. (C.)(now pending before the Legislature as this bill) shall constitute the performance of an essential governmental function and the authority shall not be required to pay any taxes or assessments upon or in respect of a project or school facilities project, or any property or moneys of the authority, and the authority, its projects and school facilities projects, property and moneys and any bonds and notes issued under the provisions of this act and P.L. , c. (C.)(now pending before the Legislature as this bill), their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the State except for transfer, inheritance and estate taxes and by any political subdivision of the State; provided, that any person occupying a project whether as lessee, vendee or otherwise shall, as long as title thereto shall remain in the authority, pay to the political subdivision in which such project is located a payment in lieu of taxes which shall equal the taxes on real and personal property, including water and sewer service charges or assessments, which such person would have been required to pay had it been the owner of such property during the period for which such payment is made and neither the authority nor its projects, properties, money or bonds and notes shall be obligated, liable or subject to lien of any kind for the enforcement, collection or payment thereof. If and to the extent the proceedings under which the bonds authorized to be issued under the provisions of this act so provide, the authority may agree to cooperate with such person occupying a project, in connection with any administrative or judicial proceedings for determining the validity or amount of such payments and may agree to appoint or designate and reserve the right in and for such person to take all action which the authority may lawfully take in respect of such payments and all matters relating thereto, provided such person shall bear and pay all costs and expenses of the authority thereby incurred at the request of such person or by reason of any such action taken by such person in behalf of the authority. If such person occupying a project has paid the amounts in lieu of taxes required by this section to be paid such person shall not be required to pay any such taxes as to which a payment in lieu thereof has been made to the State or to any political subdivision, any other statute to

the contrary notwithstanding.
(cf: P.L.1974, c.80, s.15).

50. (New section) In the exercise of powers granted by P.L. , c. (C.)(now pending before the Legislature as this bill) in connection with any school facilities project, any and all claims, damages, losses, liabilities or costs that the authority may incur shall be payable only from the amounts made available to the authority pursuant to that act. In connection with any agreement or contract entered into by the authority relating to any school facilities project, there shall be no recovery against the authority for punitive or consequential damages arising out of contract nor shall there be any recovery against the authority for claims based upon implied warranties or upon contracts implied in law.

51. (New section) a. No municipality shall modify or change the drawings, plans or specifications for the construction, reconstruction, rehabilitation, alteration or improvement of any school facilities project of the authority, or the construction, plumbing, heating, lighting or other mechanical branch of work necessary to complete the work in question, nor to require that any person, firm or corporation employed on any such work shall perform the work in any other or different manner than that provided by the drawings, plans and specifications, nor to require that any person, firm or corporation obtain any other or additional authority, approval, permit or certificate from the municipality in relation to the work being done, and the doing of the work by any person, firm or corporation in accordance with the terms of the drawings, plans, specifications or contracts shall not subject the person, firm or corporation to any liability or penalty, civil or criminal, other than as may be stated in the contracts or incidental to the proper enforcement thereof; nor shall any municipality require the authority or any person, firm, partnership or corporation which leases or purchases the school facilities project for lease or purchase to a State agency, to obtain any other or additional authority, approval, permit, certificate or certificate of occupancy from the municipality as a condition of owning, using, maintaining, operating or occupying any school facilities project acquired, constructed, reconstructed, rehabilitated, altered or improved by the authority or by any subsidiary thereof. The foregoing provisions shall not preclude any municipality from exercising the right of inspection for the purpose of requiring compliance by any school facilities project with local requirements

for operation and maintenance affecting the health, safety and welfare of the occupants thereof, provided that the compliance does not require changes, modifications or additions to the original construction of the school facilities project.

b. Each municipality in which any school facilities project of the authority is located shall provide for the school facilities project, whether then owned by the authority, any subsidiary, any State agency or any person, firm, partnership or corporation, police, fire, sanitation, health protection and other municipal services of the same character and to the same extent as those provided for other residents of the municipality.

c. In carrying out any school facilities project, the authority may enter into contractual agreements with local government agencies with respect to the furnishing of any community, municipal or public facilities or services necessary or desirable for the school facilities project, and any local government agency may enter into these contractual agreements with the authority and do all things necessary to carry out its obligations.

52. (New section) a. In undertaking any school facilities projects where the cost of construction, reconstruction, rehabilitation or improvement will exceed \$25,000, the authority may prepare, or cause to be prepared, separate plans and specifications for: (1) The plumbing and gas fitting and all work and materials kindred thereto, (2) The steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto, (3) The electrical work, (4) Structural steel and miscellaneous iron work and materials, and (5) All general construction, which shall include all other work and materials required to complete the building.

b. The authority shall advertise and receive (1) separate bids for each of the branches of work specified in subsection a. of this section; or (2) bids for all the work and materials required to complete the school facilities project to be included in a single overall contract, in which case there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials specified in branches (1) through (4) in subsection a. of this section; or (3) both.

c. Contracts shall be awarded as follows: (1) if bids are received in accordance with paragraph (1) of subsection b. of this section, the authority shall determine the responsible bidder for each branch whose bid, conforming to the invitation for bids, will be most advantageous to the authority, price and other factors considered; (2) if bids are received in

accordance with paragraph (2) of subsection b. of this section, the authority shall determine the responsible bidder for the single overall contract whose bid, conforming to the invitation for bids, will be the most advantageous to the authority, price and other factors considered; or (3) if bids are received in accordance with paragraph (3) of subsection b. of this section, the authority shall award separate contracts for each branch of work specified in subsection a. of this section if the sum total of the amounts bid by the responsible bidders for each branch, as determined pursuant to paragraph (1) of this subsection, is less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection; but if the sum total of the amounts bid by the responsible bidder for each branch, as determined pursuant to paragraph (1) of this subsection is not less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection the authority shall award a single over-all contract to the responsible bidder for all of the work and materials as determined pursuant to paragraph (2) of this subsection.

d. For the purposes of this section, "other factors" means the evaluation by the authority of the ability of the single contractor or the abilities of the multiple contractors to complete the contract in accordance with its requirements and includes requirements relating to the experience and qualifications of the contractor or contractors and their key personnel in projects of similar type and complexity; the performance of the contractor or contractors on prior contracts with the authority or the State; the experience and capability of the contractor or contractors and their key personnel in respect to any special technologies, techniques or expertise that the project may require; the contractor's understanding of the means and methods needed to complete the project on time and within budget; the timetable to complete the project; the contractor's plan for quality assurance and control; and other similar types of factors. The "other factors" to be considered in evaluating bids and the weights assigned to price and these "other factors" shall be determined by the authority prior to the advertisement for bids for school facilities projects. In its evaluation of bids, the consideration given to price by the authority shall be at least equal to the consideration given to the combination of all "other factors".

e. The authority shall require from all contractors to which it awards contracts

pursuant to P.L. , c. (C.)(now pending before the Legislature as this bill), the delivery of a payment and performance bond issued in accordance with N.J.S. 2A:44-143 et seq.

f. The authority shall adopt regulations to implement this section which shall include, but not be limited to, the procedural requirements for: (1) the evaluation and weighting of price and "other factors" in the awarding of contracts; and (2) the appealing of a prequalification classification and rating, a bid rejection and a contract award recommendation.

g. Each evaluation committee selected by the authority to review and evaluate bids shall, at a minimum, contain a representative from the district in which the school facilities project is located if such district elects to participate.

53. (New section) a. If the authority shall find it necessary in connection with the undertaking of any school facilities project to change the location of any portion of any public highway or road, it may contract with any government agency, or public or private corporation which may have jurisdiction over the public highway or road to cause the public highway or road to be constructed at such locations as the authority shall deem most favorable. The cost of the reconstruction and any damage incurred in changing the location of the highway shall be ascertained and paid by the authority as part of the cost of the school facilities project. Any public highway affected by the construction of any school facilities project may be vacated or relocated by the authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the authority as a part of the cost of the school facilities project. In all undertakings authorized by this subsection, the authority shall consult and obtain the approval of the Commissioner of Transportation.

b. The authority and its authorized agents and employees may enter upon any lands, waters and premises for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this act, all in accordance with due process of law, and this entry shall not be deemed a trespass nor shall an entry for this purpose be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual

damages resulting to the lands, waters and premises as a result of these activities. c. The authority shall have the power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, herein called "public utility facilities," or any public utility as defined in R.S.48:2-13, in, on, along, over or under any school facilities project. Whenever the authority shall determine that it is necessary that any public utility facilities which now are, or hereafter may be, located in, on, along, over or under any school facilities project shall be relocated in the school facilities project, or should be removed from the school facilities project, the public utility owning or operating the facilities shall relocate or remove them in accordance with the order of the authority. The cost and expenses of the relocation or removal, including the cost of installing the facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the authority as a part of the cost of the school facilities project. In case of any relocation or removal of facilities, the public utility owning or operating them, its successors or assigns, may maintain and operate the facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate the facilities in their former location or locations. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the Board of Public Utilities.

54. (New section) Notwithstanding the provisions of any law to the contrary, any bonds issued pursuant to P.L. , c. (C.)(now pending before the Legislature as this bill) shall be fully negotiable within the meaning and for all purposes of Title 12A of the New Jersey Statutes, and each holder or owner of such a bond or other obligation, or of any coupon appurtenant thereto, by accepting the bond or coupon shall be conclusively deemed to have agreed that the bond or coupon is and shall be fully negotiable within the meaning and for all purposes of Title 12A.

55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to read as follows:

22. a. Whenever the planning board

shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar public agency, State, county or municipal.

b. The planning board shall review and issue findings concerning any long-range facilities plan submitted to the board pursuant to the "Educational Facilities Construction and Financing Act," P.L.

, c. (C.) (now pending before the Legislature as this bill), for the purpose of review of the extent to which the long-range facilities plan is informed by, and consistent with, at least the land use plan element and the housing element contained within the municipal master plan adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and such other elements of the municipal master plan as the planning board deems necessary to determine whether the prospective sites for school facilities contained in the long range facilities plan promote more effective and efficient coordination of school construction with the development efforts of the municipality. The planning board shall devote at least one full meeting of the board to presentation and review of the long-range facilities plan prior to adoption of a resolution setting forth the board's findings.

(cf: P.L.1975, c.291, s.22).".

Page 97, Section 58, Line 16:

Delete "58." and replace with "56."

Page 97, Section 58, Line 31:

Delete "Educational Facilities" and replace with "Economic Development"

Page 100, Section 59, Line 12:

Delete "59." and replace with "57."

Page 100, Section 60, Line 41:

Delete "60." and replace with "58."

Page 101, Section 61, Line 21:

Delete "61." and replace with "59.". Delete "a.". Delete "New Jersey Building Authority". Insert "authority".

Page 101, Section 61, Line 22:

After "of" delete "persons as bidders". Insert "contractors that desire to bid".

Page 101, Section 61, Line 23:

Delete "person" and replace with "contractor". After "on" insert "such".

<u>Page 101, Section 61, Line 24:</u>	Delete “person” and replace with “contractor”.
<u>Page 101, Section 61, Line 28:</u>	Delete “subcontractors” and replace with “contractors”. Before “in” insert “including those”.
<u>Page 101, Section 61, Line 34:</u>	Delete “ornamental” and replace with “miscellaneous”.
<u>Page 101, Section 61, Lines 35-37:</u>	Delete in their entirety.
<u>Page 101, Section 62, Line 39:</u>	Delete “62.” and replace with “60.”
<u>Page 101, Section 62, Line 40:</u>	Delete “person” and replace with “contractor”.
<u>Page 101, Section 62, Line 42:</u>	Delete “building”.
<u>Page 101, Section 62, Line 46:</u>	Delete “building”.
<u>Page 102, Section 62, Line 1:</u>	After “statements” insert “or other documentation of financial status acceptable to the authority”.
<u>Page 102, Section 62, Line 2:</u>	After “(2)” delete in its entirety.
<u>Page 102, Section 62, Line 3:</u>	Delete in its entirety Insert “Proof of any contractor or trade license required by law for any trade or specialty area in which the contractor is seeking prequalification and a statement as to whether any contractor or trade license has been revoked;”.
<u>Page 102, Section 62, Lines 4-5:</u>	Delete in their entirety.
<u>Page 102, Section 62, Line 6:</u>	Delete “(4)” and replace with “(3)”.
<u>Page 102, Section 62, Line 9:</u>	Delete “prospective bidder” Insert “contractor”.
<u>Page 102, Section 62, Line 10:</u>	After “limits;” insert “(4) A list of the names and titles of all individuals who own 10% or more of any class of stock in the corporation or are a 10% or more partner in the firm. If any of the aforementioned stockholders or partners is itself a corporation, or a partnership, that entity shall also provide the information specified herein.”
<u>Page 102, Section 62, Line 31:</u>	After “price” insert “, bid and final contract amount paid”.
<u>Page 102, Section 62, Line 34:</u>	Delete “and”.
<u>Page 102, Section 62, Line 36:</u>	After “period” insert “and whether the contractor has been defaulted for cause on any project as determined by a unappealed or nonappealable decision”.

<u>Page 102, Section 62, Lines 45-47:</u>	Delete in their entirety.
<u>Page 103, Section 62, Lines 1-3:</u>	Delete in their entirety.
<u>Page 103, Section 62, Line 4:</u>	Delete “(14)” and replace with “(12)”. Delete “prospective bidder’s” and replace with “contractor’s”.
<u>Page 103, Section 62, Line 6:</u>	Delete “(15)” and replace with “(13)”.
<u>Page 103, Section 62, Line 7:</u>	After “and” delete “the” and replace with “any”.
<u>Page 103, Section 62, Line 8:</u>	Delete “The statement shall”.
<u>Page 103, Section 62, Lines 9-11:</u>	Delete in their entirety.
<u>Page 103, Section 62, Line 13:</u>	Delete “building”. After “authority” delete “shall” and replace with “may”.
<u>Page 103, Section 62, Line 14:</u>	After “the” delete “prospective bidder’s” and replace with “contractor’s”.
<u>Page 103, Section 62, Line 16:</u>	Delete “building”. After “authority” delete “shall” and replace with “may”. Delete “, to the extent”.
<u>Page 103, Section 62, Line 17:</u>	Delete “possible,”. After “the” delete “prospective”.
<u>Page 103, Section 62, Line 18:</u>	Delete “bidder’s” and replace with “contractor’s”.
<u>Page 103, Section 62, Line 20:</u>	After "section" Delete "and the performance evaluations conducted pursuant to section".
<u>Page 103, Section 62, Line 21:</u>	Delete in its entirety.
<u>Page 103, Section 62, Line 22:</u>	Delete “building” Delete “prospective bidder” and replace with “contractor”.
<u>Page 103, Section 62, Line 23:</u>	Delete "ratings" replace with "classification".
<u>Page 103, Section 62, Line 24:</u>	Delete “prospective bidder” and replace with “contractor”.
<u>Page 103, Section 62, Line 25:</u>	Delete in its entirety.
<u>Page 103, Section 62, Line 26:</u>	Delete “2” and replace with “1”. After “trade” insert “or work”.
<u>Page 103, Section 62, Line 27:</u>	Delete “3” and replace with “2”.
<u>Page 103, Section 62, Line 29:</u>	Delete “building”. After “authority” delete in its entirety.
<u>Page 103, Section 62, Line 30:</u>	Delete “Property Management and Construction,”
<u>Page 103, Section 62, Line 31:</u>	Delete “performance ratings, trade”

<u>Page 103, Section 62, Lines 32-34:</u>	After “aggregate” delete “rating”. After “limits.” delete in their entirety.
<u>Page 103, Section 62, Line 36:</u>	Delete “prospective bidder” and replace with “contractor”. After “mail” insert “or other legally valid methods”.
<u>Page 103, Section 62, Line 37:</u>	Delete in its entirety.
<u>Page 103, Section 62, Line 38:</u>	Delete “submission”.
<u>Page 103, Section 62, Line 39:</u>	Delete “building”.
<u>Page 103, Section 62, Line 40:</u>	Delete “prospective bidders” and replace with “contractors”.
<u>Page 103, Section 62, Line 42:</u>	Delete "process" replace with "submission" After “include” delete “a requirement that a”.
<u>Page 103, Section 62, Lines 43-44:</u>	Delete in their entirety.
<u>Page 103, Section 62, Line 45:</u>	Delete “review appropriate apprenticeship laws and regulations. An” and replace with “an”.
<u>Page 104, Section 62, Line 1:</u>	Delete "shall be submitted with the form". Insert "and information regarding the county apprenticeship coordinators and the federal Bureau of Apprenticeship and Training."
<u>Page 104, Section 62, Lines 2-5:</u>	Delete in their entirety.
<u>Page 104, Section 62, Line 6:</u>	Delete "representative"
<u>Page 104, Section 62, Line 7:</u>	Delete “g” and replace with “f”. Delete “building”. Delete “persons” and replace with “contractors”.
<u>Page 104, Section 62, Line 9:</u>	After “bidder” insert “and aggregate building limit”.
<u>Page 104, Section 62, Lines 10-14:</u>	Delete in their entirety.
<u>Page 104, Section 63, Line 16:</u>	Delete “63.” and replace with “61.”. Delete “person’s” and replace with “contractor’s”.
<u>Page 104, Section 63, Line 17:</u>	Delete "18" and replace with "24" Delete “person” and replace with “contractor”.
<u>Page 104, Section 63, Line 18:</u>	Delete "18" and replace with "24".
<u>Page 104, Section 63, Line 20:</u>	After “b.” delete in its entirety.
<u>Page 104, Section 63, Line 21:</u>	Delete “c.”. Delete “in a person’s operations”.
<u>Page 104, Section 63, Line 22:</u>	After “reported” insert “by the contractor”. Delete “building”.
<u>Page 104, Section 63, Line 23:</u>	Delete "45" and replace with "10".

<u>Page 104, Section 63, Line 24:</u>	Delete "building".
<u>Page 104, Section 64, Line 27:</u>	Delete "64." and replace with "62."
<u>Page 104, Section 64, Line 28:</u>	After "projects" Insert "undertaken by the authority"
<u>Page 104, Section 64, Line 29:</u>	After "shall" insert ", at a minimum,". Delete "data in".
<u>Page 104, Section 64, Line 30:</u>	Delete in its entirety.
<u>Page 104, Section 64, Lines 31-36:</u>	After "b." delete in their entirety.
<u>Page 104, Section 64, Lines 37-38:</u>	Delete "c." Delete "which would adversely affect the contractor's classification".
<u>Page 104, Section 64, Lines 40-41:</u>	Delete "d." and replace with "c.". After "in" insert "reviewing bid submissions" and delete "reviewing prequalification renewal applications".
<u>Page 104, Section 64, Line 43:</u>	Delete "65" Insert "63" After "A" Insert "prequalified".
<u>Page 104, Section 65, Line 45:</u>	Delete in its entirety and insert "P.L. , c. (C.) (now pending before the Legislature as this bill)".
<u>Page 104, Section 65, Line 46:</u>	Delete "(C.52:18A-78.11)".
<u>Page 105, Section 65, Lines 1-6:</u>	Delete in their entirety.
<u>Page 105, Section 65, Line 7:</u>	Delete "c." and replace with "b."
<u>Page 105, Section 65, Lines 10-12:</u>	Delete in their entirety.
<u>Page 105, Section 65, Line 13:</u>	Replace "(2)" with "(1)".
<u>Page 105, Section 65, Line 16:</u>	After "form" insert ", if applicable".
<u>Page 105, Section 65, Line 17:</u>	Replace "(3)" with "(2)".
<u>Page 105, Section 65, Line 20:</u>	Replace "(4)" with "(3)".
<u>Page 105, Section 65, Line 23:</u>	Delete "." Insert ";(4) During the term of construction of the school facilities project, the contractor will have in place a suitable quality control and quality insurance program and an appropriate safety and health plan."
<u>Page 105, Section 65, Lines 24-35:</u>	Delete in their entirety.
<u>Page 105, Section 65, Line 36:</u>	Delete "e." and replace with "c."
<u>Page 105, Section 65, Line 37:</u>	After "owner" delete "of" insert "or"
<u>Page 105, Section 65, Line 40:</u>	Replace "pre-qualification dollar" with "aggregate rating"; delete ", as determined by the".

<u>Page 105, Section 65, Line 41:</u>	Delete "Division of Property Management and Construction".
<u>Page 105, Section 65, Lines 42-44:</u>	Delete in their entirety.
<u>Page 105, Section 66, Line 46:</u>	Delete "66." and replace with "64."
<u>Page 106, Section 66, Line 18:</u>	Before "committee" insert "commissioners of the Department of Education and the Department of Labor, in consultation with the".
<u>Page 106, Section 66, Line 26:</u>	Before "committee" insert "commissioners of the Department of Education and the Department of Labor, in consultation with the".
<u>Page 106, Section 67, Lines 29-33:</u>	Delete in their entirety.
<u>Page 106, Section 68, Line 35:</u>	Delete "68." and replace with "65.". Replace "person" with "contractor".
<u>Page 106, Section 68, Line 37:</u>	Replace "submissions" with "certifications"; delete "section 62 of".
<u>Page 106, Section 68, Line 38:</u>	Delete "on the contractor".
<u>Page 106, Section 68, Lines 39-40:</u>	Delete in their entirety.
<u>Page 106, Section 68, Line 41:</u>	Delete "any hearing held concerning the prequalification process,".
<u>Page 106, Section 68, Line 43:</u>	Replace "or" with "and".
<u>Page 106, Section 68, Line 45:</u>	Delete "person, firm, copartnership, association" and insert "contractor".
<u>Page 106, Section 68, Line 46:</u>	Delete "or corporation".
<u>Page 107, Section 69, Lines 1-3:</u>	Delete in their entirety.
<u>Page 107, Section 70, Line 5:</u>	Delete "70." and replace with "66."
<u>Page 107, Section 70, Line 7:</u>	Delete "building". Delete "61" and replace with "59".
<u>Page 107, Section 71, Lines 11-21:</u>	Delete in their entirety.
<u>Page 107, Section 71, Line 23:</u>	Delete "72." and replace with "67."
<u>Page 107, Section 71, Line 25:</u>	Delete "section 66 of".
<u>Page 107, Section 73, Line 28:</u>	Delete "73." and replace with "68."
<u>Page 107, Section 73, Line 32:</u>	Delete "building".
<u>Page 107, Section 73, Line 34:</u>	After "classification" insert "and aggregate rating limit".

- Page 107, Section 73, Line 36: Delete “building”.
- Page 107, Section 73, Line 37: After “trade” insert “or work”.
- Page 107, Section 73, Line 39: Delete “building”.
- Page 107, Section 73, Line 42: After “act.” insert “Prequalification pursuant to this section shall be valid for such time as determined by the authority.”.
- Page 107, Section 73, Lines 43-47: Delete in their entirety.
- Page 108, Section 74, Lines 1: Delete “74.” and replace with “69.”.
- Page 108, Section 75, Line 4: Delete “75.” and replace with “70.”.
- Page 108, Section 76, Line 20: Delete “76.” and replace with “71.”.
- Page 108, Section 76, Line 21: Delete “building”.
- Page 108, Section 76, Line 22: Delete “. The building”.
- Page 108, Section 76, Line 23: Delete in its entirety.
- Page 108, Section 76, Line 24: Delete “coverage for school facilities projects”.
- Page 108, Section 76, Line 25: Delete “the” Insert “any such”.
- Page 108, Section 76, Line 27: Delete “building”.
- Page 108, Section 76, Line 28: Delete “building”.
- Page 108, Section 76, Line 39: Replace “shall” with “may”.
- Page 108, Section 77, Line 45: Delete “77.” and replace with “72.”.

Respectfully,

/s/ Christine Todd Whitman

Governor

[seal]

Attest:

/s/ Robert E. Fabricant

Chief Counsel to the Governor

Title 18A.
Chapter 7G.
Educational Facilities
Construction and
Financing.
§§1-30,57-66,
68-71 -
C.18A:7G-1
to 18A:7G-44
§§50-54 -
C.34:1B-5.5
to 34:1B-5.9
§67 - Approp.

P.L. 2000, CHAPTER 72, *approved July 18, 2000*
Senate Committee Substitute (*Third Reprint*) for
Senate, No. 200

1 **AN ACT** concerning the construction and financing of public school
2 facilities, revising parts of the statutory law and making an
3 appropriation.
4

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

8 1. (New section) Sections 1 through 30 ²and ³[59 through 76²
9 57 through 71³ of this act shall be known and may be cited as the
10 “Educational Facilities Construction and Financing Act.”
11

12 2. (New section) The Legislature finds and declares that:

13 a. The Constitution of the State of New Jersey requires the
14 Legislature to provide for the maintenance and support of a thorough
15 and efficient system of free public schools and this legislative
16 responsibility includes ensuring that students are educated in physical
17 facilities that are safe, healthy, conducive to learning ²[and located as
18 far as possible in economically and socially viable communities]².

19 b. Inadequacies in the quality, utility, and safety of educational
20 facilities have arisen among local school districts of this State. In
21 order to ensure that the Legislature’s constitutional responsibility for
22 adequate educational facilities is met, there is a need to establish an
23 efficiency standard for educational facilities at the elementary, middle,
24 and secondary school levels which will assure that the core curriculum
25 content standards are taught to all of the children of the State in a
26 setting which facilitates and promotes that learning.

27 c. Educational infrastructure inadequacies are greatest in the

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:

¹ Senate floor amendments adopted May 18, 2000.

² Assembly AAP committee amendments adopted June 1, 2000.

³ Senate amendments adopted in accordance with Governor's recommendations June 29, 2000.

1 Abbott districts where maintenance has been deferred and new
2 construction has not been initiated due to concerns about cost. To
3 remedy the facilities inadequacies of the Abbott districts, the State
4 must promptly engage in a facilities needs assessment and fund the
5 entire cost of repairing, renovating, and constructing the new school
6 facilities determined by the Commissioner of Education to be required
7 to meet the school facilities efficiency standards in the Abbott districts.
8 In other districts, the State must also identify need in view of
9 anticipated growth in school population, and must contribute to the
10 cost of the renovation and construction of new facilities to ensure the
11 provision of a thorough and efficient education in those districts.

12 d. While providing that the educational infrastructure meets the
13 requirements of a thorough and efficient education, the State must also
14 protect the interests of taxpayers who will bear the burden of this
15 obligation. Design of school facilities should incorporate maximum
16 operating efficiencies and new technologies to advance the energy
17 efficiency of school facilities and the efficiency of other school
18 building systems, construction should be achieved in as efficient a
19 manner as possible, and a mechanism to assure proper maintenance of
20 new facilities should be established and implemented, in order to
21 reduce the overall cost of the program and to preserve this
22 infrastructure investment.

23 ²[e. At the same time, the location of school facilities in the
24 context of the communities which they serve is important to both the
25 educational success of the schools and the development of those
26 communities. It is highly desirable, particularly in urban communities
27 where the State has indicated a particular concern respecting local
28 development efforts, that the planning and construction of schools be
29 integrated where possible into the economic and community
30 development efforts of local governments and community
31 redevelopment entities in order to promote more effective and efficient
32 use of land, resources and expertise and to better assure the future
33 viability of local neighborhoods and communities.]²

34

35 3. (New section) As used in sections 1 through 30 ²and ³[59
36 through 76²] 57 through 71³ of this act, unless the context clearly
37 requires a different meaning:

38 "Abbott district" means an Abbott district as defined in section 3
39 of P.L.1996, c.138 (C.18A:7F-3);

40 "Area cost allowance" means ³[\$131] \$138³ per square foot for
41 the school year ³[1999-2000] 2000-2001³ and shall be inflated by an
42 appropriate cost index for the ³[2000-2001] 2001-2002³ school year.
43 For ³the 2001-2002-2003 school year and³ subsequent school years,
44 the area cost allowance shall be as established in the biennial Report
45 on the Cost of Providing a Thorough and Efficient Education and
46 inflated by an appropriate cost index for the second year to which the

1 report applies. The area cost allowance used in determining
2 preliminary eligible costs of school facilities projects shall be that of
3 the year of application for approval of the project;

4 ²["Authority" means the New Jersey Economic Development
5 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.)]

6 ³["Building authority" means the New Jersey Building Authority
7 established pursuant to P.L.1981, c.120 (C.52:18A-78.1 et seq.)²]

8 "Authority means the New Jersey Economic Development
9 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et
10 seq.)³ ;

11 ³"Community provider" means a private entity which has
12 contracted to provide early childhood education programs for an
13 ECPA district and which (a) is licensed by the Department of Human
14 Services to provide day care services pursuant to P.L.1983, c.492
15 (C.30:5B-1 et seq.); and (b) is a tax exempt nonprofit organization;

16 "Community early childhood education facilities project" means a
17 school facilities project consisting of facilities in which early childhood
18 education programs are provided to 3 or 4-year old children under
19 contract with the ECPA district but which are owned and operated by
20 a community provider;³

21 "Commissioner" means the Commissioner of Education;

22 "Core curriculum content standards" means the standards
23 established pursuant to the provisions of subsection a. of section 4 of
24 P.L.1996, c.138 (C.18A:7F-4);

25 "Cost index" means the average annual increase, expressed as a
26 decimal, in actual construction cost factors for the New York City and
27 Philadelphia areas during the second fiscal year preceding the budget
28 year as determined pursuant to regulations promulgated by the
29 ³[²building²]³ authority pursuant to section 26 of this act;

30 "Debt service" means and includes payments of principal and
31 interest upon school bonds issued to finance the acquisition of school
32 sites and the purchase or construction of school facilities, additions to
33 school facilities, or the reconstruction, remodeling, alteration,
34 modernization, renovation or repair of school facilities, including
35 furnishings, equipment, architect fees and the costs of issuance of such
36 obligations and shall include payments of principal and interest upon
37 school bonds heretofore issued to fund or refund such obligations, and
38 upon municipal bonds and other obligations which the commissioner
39 approves as having been issued for such purposes. Debt service
40 pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.),
41 P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177
42 (C.18A:58-33.2 et seq.) is excluded;

43 ²["Demonstration project" means a school facilities project
44 selected by the State Treasurer for construction by a redevelopment
45 entity pursuant to section 6 of this act;]²

46 ³"Demonstration project" means a school facilities project selected

1 by the State Treasurer for construction by a redevelopment entity
2 pursuant to section 6 of this act;³

3 "District" means a local or regional school district established
4 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
5 Statutes, a county special services school district established pursuant
6 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
7 county vocational school district established pursuant to article 3 of
8 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
9 operated school district established pursuant to P.L.1987, c.399
10 (C.18A:7A-34 et seq.);

11 "District aid percentage" means the number expressed as a
12 percentage derived from dividing the district's core curriculum
13 standards aid calculated pursuant to section 15 of P.L.1996, c.138
14 (C.18A:7F-15) as of the date of the commissioner's determination of
15 preliminary eligible costs by the district's T & E budget calculated
16 pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-
17 13) as of the date of the commissioner's determination of preliminary
18 eligible costs;

19 ³"ECPA district" means a district that qualifies for early childhood
20 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-
21 16);³

22 "Excess costs" means the additional costs, if any, which shall be
23 borne by the district, of a school facilities project which result from
24 design factors that are not required to meet the facilities efficiency
25 standards and not approved pursuant to paragraph (1) of subsection
26 g. of section 5 of this act ²[or are not authorized as community design
27 features included in final eligible costs pursuant to subsection c. of
28 section 6 of this act]² ³or are not authorized as community design
29 features included in final eligible costs pursuant to subsection c. of
30 section 6 of this act³;

31 ³[²Facilities authority" means the New Jersey Educational
32 Facilities Authority created pursuant to N.J.S.18A:72A-1 et seq.;]³

33 "Facilities efficiency standards" means the standards developed by
34 the commissioner pursuant to ²[subsection h. of]² ³subsection h. of³
35 section ²[4] ³[⁶] ⁴ of this act;

36 "Final eligible costs" means for school facilities projects to be
37 constructed by the ³[²building²]³ authority, the final eligible costs of
38 the school facilities project as determined by the commissioner, in
39 consultation with the ³[²building²]³ authority, pursuant to section 5
40 of this act; ²[for demonstration projects, the final eligible costs of the
41 project as determined by the commissioner and reviewed by the
42 authority which may include the cost of community design features
43 determined by the commissioner to be an integral part of the school
44 facility and which were reviewed by the authority and approved by the
45 State Treasurer pursuant to section 6 of this act;]² ³for

1 demonstration projects, the final eligible costs of the project as
2 determined by the commissioner and reviewed by the authority which
3 may include the cost of community design features determined by the
4 commissioner to be an integral part of the school facility and which do
5 not exceed the facilities efficiency standards, and which were reviewed
6 by the authority and approved by the State Treasurer pursuant to
7 section 6 of this act;³ and for districts whose district aid percentage
8 is less than ³[60%] 55%³ and which elect not to have the
9 ³[²building²]³ authority construct a school facilities project, final
10 eligible costs as determined pursuant to paragraph (1) of subsection h.
11 of section 5 of this act;

12 "FTE" means a full-time equivalent student which shall be
13 calculated as follows: in districts that qualify for early childhood
14 program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16),
15 each student in grades kindergarten through 12 shall be counted at
16 100% of the actual count of students, and each preschool student
17 approved by the commissioner to be served in the district shall be
18 counted at 50% or 100% of the actual count of preschool students for
19 an approved half-day or full-day program, respectively; in districts that
20 do not qualify for early childhood program aid pursuant to section 16
21 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through
22 12 shall be counted at 100% of the actual count of students, in the
23 case of districts which operate a half-day kindergarten program each
24 kindergarten student shall be counted at 50% of the actual count of
25 kindergarten students, in the case of districts which operate a full-day
26 kindergarten program or which currently operate a half-day
27 kindergarten program but propose to build facilities to house a full-
28 day kindergarten program each kindergarten student shall be counted
29 at 100% of the actual count of kindergarten students, and preschool
30 students shall not be counted. In addition, each preschool
31 handicapped child who is entitled to receive a full-time program
32 pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual
33 count of these students in the district;

34 "Functional capacity" means the number of students that can be
35 housed in a building in order to have sufficient space for it to be
36 educationally adequate for the delivery of programs and services
37 necessary for student achievement of the core curriculum content
38 standards. Functional capacity is determined by dividing the existing
39 gross square footage of a school building by the minimum area
40 allowance per FTE student pursuant to subsection b. of section 8 of
41 this act for the grade level students contained therein. The difference
42 between the projected enrollment determined pursuant to subsection
43 a. of section 8 of this act and the functional capacity is the unhoused
44 students that are the basis upon which the additional costs of space to
45 provide educationally adequate facilities for the entire projected
46 enrollment are determined. The existing gross square footage for the

1 purposes of defining functional capacity is exclusive of existing spaces
2 that are not contained in the facilities efficiency standards but which
3 are used to deliver programs and services aligned to the core
4 curriculum content standards, used to provide support services directly
5 to students, or other existing spaces that the district can demonstrate
6 would be structurally or fiscally impractical to convert to other uses
7 contained in the facilities efficiency standards;

8 "Lease purchase payment" means and includes payment of
9 principal and interest for lease purchase agreements in excess of five
10 years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to
11 the effective date of P.L. , c. (C.) (now pending before the
12 Legislature as this bill) to finance the purchase or construction of
13 school facilities, additions to school facilities, or the reconstruction,
14 remodeling, alteration, modernization, renovation or repair of school
15 facilities, including furnishings, equipment, architect fees and issuance
16 costs. Approved lease purchase agreements in excess of five years
17 shall be accorded the same accounting treatment as school bonds;

18 "Level II district" means a district which is directed by the
19 commissioner to enter level II monitoring pursuant to the provisions
20 of section 14 of P.L.1975, c.212 (C.18A:7A-14);

21 "Local share" means, in the case of a school facilities project to be
22 constructed by the ³[²building²]³ authority, the total costs less the
23 State share as determined pursuant to section 5 of this act; ²[in the
24 case of a demonstration project, the total costs less the State share as
25 determined pursuant to section 6 of this act;]² ³in the case of a
26 demonstration project, the total costs less the State share as
27 determined pursuant to sections 5 and 6 of this act;³ and in the case
28 of a school facilities project ³[to] not to be constructed by the
29 authority, but which shall ³ be financed pursuant to section 15 of this
30 act, the total costs less the State share as determined pursuant to that
31 section;

32 "Local unit" means a county, municipality, board of education or
33 any other political subdivision or instrumentality authorized to
34 construct, operate and maintain a school facilities project and to
35 borrow money for those purposes pursuant to law;

36 "Local unit obligations" means bonds, notes, refunding bonds,
37 refunding notes, lease obligations and all other obligations of a local
38 unit which are issued or entered into for the purpose of paying for all
39 or a portion of the costs of a school facilities project, including
40 moneys payable to the authority;

41 "Long-range facilities plan" means the plan required to be
42 submitted to the commissioner by a district pursuant to section 4 of
43 this act;

44 "Maintenance" means expenditures which are approved for repairs
45 and replacements for the purpose of keeping a school facility open and
46 safe for use or in its original condition, including repairs and

1 replacements to a school facility's heating, lighting, ventilation,
2 security and other fixtures to keep the facility or fixtures in effective
3 working condition. Maintenance shall not include contracted custodial
4 or janitorial services, expenditures for the cleaning of a school facility
5 or its fixtures, the care and upkeep of grounds or parking lots, and the
6 cleaning of, or repairs and replacements to, movable furnishings or
7 equipment, or other expenditures which are not required to maintain
8 the original condition over the school facility's useful life. Approved
9 maintenance expenditures shall be as determined by the commissioner
10 pursuant to regulations to be adopted by the commissioner pursuant
11 to section 26 of this act;

12 ³"Other allowable costs" means the costs of site development,
13 acquisition of land or other real property interests necessary to
14 effectuate the school facilities project, fees for the services of design
15 professionals, including architects, engineers, construction managers
16 and other design professionals, legal fees, financing costs and the
17 administrative costs of the authority or the district incurred in
18 connection with the school facilities project.³

19 "Preliminary eligible costs" means the initial eligible costs of a
20 school facilities project as calculated pursuant to the formulas set forth
21 in section 7 of this act ³which shall be deemed to include the costs of
22 construction and other allowable costs³;

23 ²["Redevelopment entity" means a redevelopment entity
24 authorized by a municipal governing body to implement plans and
25 carry out redevelopment projects in the municipality pursuant to the
26 "Local Redevelopment and Housing Law," P.L.1992, c.79
27 (C.40A:12A-1 et seq);]² ³"Redevelopment entity" means a
28 redevelopment entity authorized by a municipal governing body to
29 implement plans and carry out redevelopment projects in the
30 municipality pursuant to the "Local Redevelopment and Housing
31 Law," P.L.1992, c.79 (C.40A:12A-1 et seq);³

32 "Report on the Cost of Providing a Thorough and Efficient
33 Education" or "Report" means the report issued by the commissioner
34 pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

35 "School bonds" means, in the case of a school facilities project
36 which is to be constructed by the ³[²building²]³ authority ²[,
37 a redevelopment entity,]² ³a redevelopment entity,³ or a district
38 under section 15 of this act, bonds, notes or other obligations issued
39 by a district to finance the local share; and, in the case of a school
40 facilities project which is not to be constructed by the ³[²building²]³
41 authority²[,² ³or a redevelopment entity,³
42 or³[a district] financed³ under section 15 of this act, bonds, notes or
43 other obligations issued by a district to finance the total costs;

44 "School enrollment" means the number of FTE students other than
45 evening school students, including post-graduate students and post-
46 secondary vocational students, who, on the last school day prior to

1 October 16 of the current school year, are recorded in the registers of
2 the school;

3 "School facility" means and includes any structure, building or
4 facility used wholly or in part for academic purposes by a district, but
5 shall exclude athletic stadiums, grandstands, and any structure,
6 building or facility used solely for school administration;

7 "School facilities project" means the acquisition, demolition,
8 construction, improvement, repair, alteration, modernization,
9 renovation, reconstruction or maintenance of all or any part of a
10 school facility or of any other personal property necessary for, or
11 ancillary to, any school facility, and shall include fixtures, furnishings
12 and equipment, and shall also include, but is not limited to, site
13 acquisition, site development, the services of design professionals,
14 such as engineers and architects, construction management, legal
15 services, financing costs and administrative costs and expenses
16 incurred in connection with the project;

17 "Special education services pupil" means a pupil receiving specific
18 services pursuant to chapter 46 of Title 18A of the New Jersey
19 Statutes;

20 "State aid" means State municipal aid and State school aid;

21 "State debt service aid" means for school bonds issued for school
22 facilities projects approved by the commissioner after the effective
23 date of P.L. , c. (C.) (now pending before the Legislature as this
24 bill) of districts which elect not to have the ³[²building²]³ authority
25 ²[or a redevelopment entity]² ³or a redevelopment entity³ construct
26 the project or which elect not to finance the project under section 15
27 of this act, the amount of State aid determined pursuant to section 9
28 of this act; and for school bonds or certificates of participation issued
29 for school facilities projects approved by the commissioner prior to the
30 effective date of P.L. , c. (C.) (now pending before the
31 Legislature as this bill) the amount of State aid determined pursuant
32 to section 10 of this act;

33 "State municipal aid" means business personal property tax
34 replacement revenues, State urban aid and State revenue sharing, as
35 these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or
36 other similar forms of State aid payable to the local unit and to the
37 extent permitted by federal law, federal moneys appropriated or
38 apportioned to the municipality or county by the State;

39 "State school aid" means the funds made available to school
40 districts pursuant to sections 15 and 17 of P.L.1996, c.138
41 (C.18A:7F-15 and 17);

42 "State share" means the State's proportionate share of the final
43 eligible costs of a school facilities project to be constructed by the
44 ³[²building²]³ authority as determined pursuant to section 5 of this
45 act; ²[in the case of a demonstration project, the State's proportionate
46 share of the final eligible costs of the project as determined pursuant

1 to sections 5 and 6 of this act;]² ³ in the case of a demonstration
2 project, the State's proportionate share of the final eligible costs of the
3 project as determined pursuant to sections 5 and 6 of this act;³ and in
4 the case of a school facilities project to be financed pursuant to section
5 15 of this act, the State share as determined pursuant to that section;
6 "Total costs" means, in the case of a school facilities project which
7 is to be constructed by the ³[²building²]³ authority ²[or a
8 redevelopment entity]² ³or a redevelopment entity³ or financed
9 pursuant to section 15 of this act, the final eligible costs plus excess
10 costs if any; and in the case of a school facilities project which is not
11 to be constructed by the ³[²building²]³ authority [²or a
12 redevelopment entity]² ³or a redevelopment entity³ or financed
13 pursuant to section 15 of this act, the total cost of the project as
14 determined by the district ²[;].²

15
16 4. (New section) a. Beginning in the 1999-2000 school year and
17 in every school year thereafter ending with a "0" or a "5", each district
18 shall prepare and submit to the commissioner a long-range facilities
19 plan that details the district's school facilities needs and the district's
20 plan to address those needs for the ensuing five years. The long-range
21 facilities plan shall incorporate the facilities efficiency standards and
22 shall be filed with the commissioner no later than ³[October 1]
23 December 15³, 2000 and no later than October 1 of the other filing
24 years for approval in accordance with those standards. For those
25 Abbott districts that have submitted long-range facilities plans to the
26 commissioner prior to the effective date of P.L. , c. (C) (now
27 pending before the Legislature as this bill), this subsection shall not be
28 read to require an additional filing by October 1, 2000.

29 b. Notwithstanding any other law or regulation to the contrary, an
30 application for a school facilities project pursuant to section 5 of this
31 act shall not be approved unless the district has filed a long-range
32 facilities plan that is consistent with the application and the plan has
33 been approved by the commissioner; except that prior to October 1,
34 2000, the commissioner may approve an application if the project is
35 necessary to protect the health or safety of occupants of the school
36 facility, or is related to required early childhood education programs,
37 or is related to a school facility in which the functional capacity is less
38 than 90% of the facilities efficiency standards based on current school
39 enrollment, or the district received bids on the school facilities project
40 prior to the effective date of P.L. , c. (C.) (now pending before
41 the Legislature as this bill) and the district demonstrates that further
42 delay will negatively affect the cost of the project.

43 c. An amendment to a long-range facilities plan may be submitted
44 at any time to the commissioner for review and approval.

45 d. Each long-range facilities plan shall include a cohort survival
46 methodology or other methodology approved by the commissioner,

1 accompanied by a certification by a qualified demographer retained by
2 the district that serves as the basis for identifying the capacity and
3 program needs detailed in the long-range facilities plan.

4 e. The long-range facilities plan shall include an educational
5 adequacy inventory of all existing school facilities in the district, the
6 identification of all deficiencies in the district's current inventory of
7 school facilities, which includes the identification of those deficiencies
8 that involve emergent health and safety concerns, and the district's
9 proposed plan for future construction and renovation. The long-range
10 facilities plan submissions shall conform to the guidelines, criteria and
11 format prescribed by the commissioner.

12 f. Each district shall determine the number of "unhoused students"
13 for the ensuing five-year period calculated pursuant to the provisions
14 of section 8 of this act.

15 g. Each district shall submit the long-range facilities plan to the
16 planning board of the municipality or municipalities in which the
17 district is situate for the planning board's review and findings
18 ²[pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31)]².

19 ²[h. The commissioner shall develop, for the March 2002 Report
20 on the Cost of Providing a Thorough and Efficient Education and for
21 subsequent reports, facilities efficiency standards for elementary,
22 middle, and high schools consistent with the core curriculum school
23 delivery assumptions in the report and sufficient for the achievement
24 of the core curriculum content standards, and for the provision of
25 required programs in Abbott districts and early childhood education
26 programs in the districts in which these programs are required by the
27 State. The area allowances per FTE student in each class of the
28 district shall be derived from these facilities efficiency standards.

29 The facilities efficiency standards developed by the commissioner
30 shall not be construction design standards but rather shall represent the
31 instructional spaces, specialized instructional areas, and administrative
32 spaces that are determined by the commissioner to be educationally
33 adequate to support the achievement of the core curriculum content
34 standards and for the provision of required programs in Abbott
35 districts and early childhood education programs in the districts in
36 which these programs are required. A district may design, at its
37 discretion, the educational and other spaces to be included within the
38 school facilities project. The design of the project may eliminate
39 spaces in the facilities efficiency standards, include spaces not in the
40 facilities efficiency standards, or size spaces differently than in the
41 facilities efficiency standards upon a demonstration of the adequacy of
42 the school facilities project to deliver the core curriculum content
43 standards pursuant to paragraph (2) of subsection g. of section 5 of
44 this act.

45 Within a reasonable period of time after the effective date of P.L.,
46 c. (C.) (now pending before the Legislature as this bill), the

1 commissioner shall publish the facilities efficiency standards developed
2 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
3 New Jersey Register. Within a reasonable period of time after 30 days
4 after publication in the New Jersey Register, the commissioner shall
5 file the facilities efficiency standards with the Office of Administrative
6 Law and those standards shall become effective immediately upon
7 filing with the Office of Administrative Law. During the 30-day
8 period the commissioner shall provide an opportunity for public
9 comment on the proposed facilities efficiency standards.

10 i. Within 90 days of the commissioner's receipt of a long-range
11 facilities plan for review, the commissioner shall determine whether the
12 plan is fully and accurately completed and whether all information
13 necessary for a decision on the plan has been filed by the district. If
14 the commissioner determines that the plan is complete, the
15 commissioner shall promptly notify the district in writing and shall
16 have 60 days from the date of that notification to determine whether
17 to approve the plan or not. If the commissioner determines that the
18 plan is not complete, the commissioner shall notify the district in
19 writing. The district shall provide to the commissioner whatever
20 information the commissioner determines is necessary to make the plan
21 accurate and complete. The district shall submit that information to
22 the commissioner, and the commissioner shall have 60 days from the
23 date of receipt of accurate and complete information to determine
24 whether to approve the plan or not.

25 j. Notwithstanding any provision of subsection i. of this section,
26 if at any time the number of long-range facilities plans filed by school
27 districts with the commissioner and pending review exceeds 20% of
28 the number of school districts in New Jersey, the commissioner may
29 extend by 60 days the deadline for reviewing each plan pending at that
30 time.

31 k. By July 1, 2001, the commissioner shall provide the Legislature
32 with recommendations to address the circumstances of districts which
33 are contiguous with two or more Abbott districts. The
34 recommendations shall address the issues of the financing of school
35 facilities projects and the funding of the educational and other
36 programs required within these districts as a result of their unique
37 demographic situation.]²

38 ³h. The commissioner shall develop, for the March 2002 Report
39 on the Cost of Providing a Thorough and Efficient Education and for
40 subsequent reports, facilities efficiency standards for elementary,
41 middle, and high schools consistent with the core curriculum school
42 delivery assumptions in the report and sufficient for the achievement
43 of the core curriculum content standards, including the provision of
44 required programs in Abbott districts and early childhood education
45 programs in the districts in which these programs are required by the
46 State. The area allowances per FTE student in each class of the

1 district shall be derived from these facilities efficiency standards.

2 The facilities efficiency standards developed by the commissioner
3 shall not be construction design standards but rather shall represent the
4 instructional spaces, specialized instructional areas, and administrative
5 spaces that are determined by the commissioner to be educationally
6 adequate to support the achievement of the core curriculum content
7 standards including the provision of required programs in Abbott
8 districts and early childhood education programs in the districts in
9 which these programs are required by the State. A district may design,
10 at its discretion, the educational and other spaces to be included within
11 the school facilities project. The design of the project may eliminate
12 spaces in the facilities efficiency standards, include spaces not in the
13 facilities efficiency standards, or size spaces differently than in the
14 facilities efficiency standards upon a demonstration of the adequacy of
15 the school facilities project to deliver the core curriculum content
16 standards pursuant to paragraph (2) of subsection g. of section 5 of
17 this act.

18 Within a reasonable period of time after the effective date of
19 P.L. , c. (C.) (now pending before the Legislature as this bill), the
20 commissioner shall publish the facilities efficiency standards developed
21 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
22 New Jersey Register. Within a reasonable period of time after 30 days
23 after publication in the New Jersey Register, the commissioner shall
24 file the facilities efficiency standards with the Office of Administrative
25 Law and those standards shall become effective immediately upon
26 filing with the Office of Administrative Law. During the 30-day
27 period the commissioner shall provide an opportunity for public
28 comment on the proposed facilities efficiency standards.

29 i. Within 90 days of the commissioner's receipt of a long-range
30 facilities plan for review, the commissioner shall determine whether the
31 plan is fully and accurately completed and whether all information
32 necessary for a decision on the plan has been filed by the district. If
33 the commissioner determines that the plan is complete, the
34 commissioner shall promptly notify the district in writing and shall
35 have 60 days from the date of that notification to determine whether
36 to approve the plan or not. If the commissioner determines that the
37 plan is not complete, the commissioner shall notify the district in
38 writing. The district shall provide to the commissioner whatever
39 information the commissioner determines is necessary to make the plan
40 accurate and complete. The district shall submit that information to
41 the commissioner, and the commissioner shall have 60 days from the
42 date of receipt of accurate and complete information to determine
43 whether to approve the plan or not.

44 j. Notwithstanding any provision in subsection i. of this section,
45 if at any time the number of long-range facilities plans filed by school
46 districts with the commissioner and pending review exceeds 20% of

1 the number of school districts in New Jersey, the commissioner may
2 extend by 60 days the deadline for reviewing each plan pending at that
3 time.

4 k. By March 1, 2002 and every five years thereafter, the
5 commissioner shall recommend to the Legislature criteria to be used
6 in the designation of districts as Abbott districts. The criteria may
7 include, but not be limited to: the number of residents per 1,000 within
8 the municipality or municipalities in which the district is situate who
9 receive TANF; the district's equalized valuation per resident pupil as
10 equalized valuation is defined in section 3 of P.L.1996, c.138
11 (C.18A:7F-3); the district's income per resident pupil as district
12 income is defined in section 3 of P.L.1996, c.138 (C.18A:7F-3); the
13 population per square mile of the municipality or municipalities in
14 which the district is situate; and the municipal overburden of the
15 municipality or municipalities in which the district is situate as that
16 term is defined by the New Jersey Supreme Court in Abbott v. Burke.

17 l. By July 1, 2001, the commissioner shall provide the Legislature
18 with recommendations to address the circumstances of districts which
19 are contiguous with two or more Abbott districts. The
20 recommendations shall address the issues of the financing of school
21 facilities projects and the funding of the educational and other
22 programs required within these districts as a result of their unique
23 demographic situation.

24 m. By July 1, 2001, the commissioner shall study the Safe Schools
25 Design Guidelines, prepared by the Florida Center for Community
26 Design and Research, which address the issues of school safety and
27 security through the design of school facilities. Based upon the
28 commissioner's study, the commissioner shall issue recommendations
29 to districts on the appropriateness of including the Safe Schools
30 Design Guidelines in the design and construction of school facilities
31 projects.³

32

33 5. (New section) a. The ³[²building²]³ authority shall construct
34 and ³[²the facilities authority shall²]³ finance the school facilities
35 projects of Abbott districts, level II districts, and districts with a
36 district aid percentage equal to or greater than ³[60%] ³55%³.

37 b. Any district whose district aid percentage is less than ³[60%]
38 55%³ may elect to have the ³[²facilities²]³ authority undertake the
39 ³[²financing and the building authority undertake the²]³ construction
40 of a school facilities project in the district and the State share shall be
41 determined pursuant to this section. In the event that the district
42 elects not to have the ³[²building²]³ authority undertake the
43 construction of the project, State support for the project shall be
44 determined pursuant to section 9 or section 15 of this act, as
45 applicable.

46 c. Notwithstanding any provision of N.J.S.18A:18A-16 to the

1 contrary, the procedures for obtaining approval of a school facilities
2 project shall be as set forth in this act; provided that any district
3 whose district aid percentage is less than ³[60%] 55%³, which elects
4 not to have the ³[²building²]³ authority ²[or a redevelopment
5 entity]² ³or a redevelopment entity³ undertake the construction of the
6 project, shall also be required to comply with the provisions of
7 N.J.S.18A:18A-16.

8 d. Any district seeking to initiate a school facilities project shall
9 apply to the commissioner for approval of the project. The application
10 shall, at a minimum, contain the following information: a description
11 of the school facilities project; a schematic drawing of the project or,
12 at the option of the district, preliminary plans and specifications; a
13 delineation and description of each of the functional components of the
14 project; the number of unhoused students to be housed in the project;
15 the area allowances per FTE student as calculated pursuant to section
16 8 of this act; and the estimated cost to complete the project as
17 determined by the district.

18 e. The commissioner shall review each proposed school facilities
19 project to determine whether it is consistent with the district's long-
20 range facilities plan and whether it complies with the facilities
21 efficiency standards and the area allowances per FTE student derived
22 from those standards. The commissioner shall make a decision on a
23 district's application within 90 days from the date he determines that
24 the application is fully and accurately completed and that all
25 information necessary for a decision has been filed by the district, or
26 from the date of the last revision made by the district. If the
27 commissioner is not able to make a decision within 90 days, he shall
28 notify the district in writing explaining the reason for the delay and
29 indicating the date on which a decision on the project will be made,
30 provided that the date shall not be later than 60 days from the
31 expiration of the original 90 days set forth in this subsection. If the
32 decision is not made by the subsequent date indicated by the
33 commissioner, then the project shall be deemed approved and the
34 preliminary eligible costs ³[shall equal the proposed cost of the
35 project] for new construction shall be calculated by using the
36 proposed square footage of the building as the approved area for
37 unhoused students³.

38 f. If the commissioner determines that the school facilities project
39 complies with the facilities efficiency standards and the district's long-
40 range facilities plan and does not exceed the area allowance per FTE
41 student derived from those standards, the commissioner shall calculate
42 the preliminary eligible costs of the project pursuant to the formulas
43 set forth in section 7 of this act; except that in the case of a county
44 special services school district or a county vocational school district,
45 the commissioner shall calculate the preliminary eligible costs to equal
46 the amount determined by the board of school estimate and approved

1 by the board of chosen freeholders pursuant to section 14 of P.L.1971,
2 c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

3 g. If the commissioner determines that the school facilities project
4 is inconsistent with the facilities efficiency standards or exceeds the
5 area allowances per FTE student derived from those standards, the
6 commissioner shall notify the district.

7 (1) The commissioner shall approve area allowances in excess of
8 the area allowances per FTE student derived from the facilities
9 efficiency standards if the board of education or State district
10 superintendent, as appropriate, demonstrates that school facilities
11 needs related to required programs cannot be addressed within the
12 facilities efficiency standards and that all other proposed spaces are
13 consistent with those standards. The commissioner shall approve area
14 allowances in excess of the area allowances per FTE student derived
15 from the facilities efficiency standards if the additional area allowances
16 are necessary to accommodate centralized facilities to be shared
17 among two or more school buildings within the district and the
18 centralized facilities represent a more cost effective alternative.

19 (2) The commissioner may waive a facilities efficiency standard if
20 the board of education or State district superintendent, as appropriate,
21 demonstrates to the commissioner's satisfaction that the waiver will
22 not adversely affect the educational adequacy of the school facility,
23 including the ability to deliver the programs and services necessary to
24 enable all students to achieve the core curriculum content standards.

25 (3) To house the district's central administration, a district may
26 request an adjustment to the approved areas for unhoused students of
27 2.17 square feet for each FTE student in the projected total district
28 school enrollment if the proposed administrative offices will be housed
29 in a school facility and the district demonstrates either that the existing
30 central administrative offices are obsolete or that it is more practical
31 to convert those offices to instructional space. To the extent that
32 existing administrative space will continue to be used for
33 administrative purposes, the space shall be included in the formulas set
34 forth in section 7 of this act.

35 If the commissioner approves excess facilities efficiency standards
36 or additional area allowances pursuant to paragraphs (1), (2), or (3)
37 of this subsection, the commissioner shall calculate the preliminary
38 eligible costs based upon the additional area allowances or excess
39 facilities efficiency standards pursuant to the formulas set forth in
40 section 7 of this act. In the event that the commissioner does not
41 approve the excess facilities efficiency standards or additional area
42 allowances, the district may either: modify its submission so that the
43 school facilities project meets the facilities efficiency standards; or pay
44 for the excess costs.

45 (4) The commissioner shall approve spaces in excess of, or
46 inconsistent with, the facilities efficiency standards, hereinafter

1 referred to as nonconforming spaces, upon a determination by the
2 district that the spaces are necessary to comply with State or federal
3 law concerning individuals with disabilities. A district may apply for
4 additional State aid for nonconforming spaces that will permit pupils
5 with disabilities to be educated to the greatest extent possible in the
6 same buildings or classes with their nondisabled peers. The
7 nonconforming spaces may: (a) allow for the return of pupils with
8 disabilities from private facilities; (b) permit the retention of pupils
9 with disabilities who would otherwise be placed in private facilities; (c)
10 provide space for regional programs in a host school building that
11 houses both disabled and nondisabled pupils; and (d) provide space for
12 the coordination of regional programs by a county special services
13 school district, educational services commission, jointure commission,
14 or other agency authorized by law to provide regional educational
15 services in a school building that houses both disabled and nondisabled
16 pupils. A district's State support ratio shall be adjusted to equal the
17 lesser of the sum of its district aid percentage as defined in section 3
18 of this act plus 0.25, or 100% for any nonconforming spaces approved
19 by the commissioner pursuant to this paragraph.

20 h. Upon approval of a school facilities project and determination
21 of the preliminary eligible costs:

22 (1) In the case of a district whose district aid percentage is
23 less than ³[60%] 55%³ and which has elected not to have the
24 ³[²building²]³ authority undertake the construction of the school
25 facilities project, the commissioner shall notify the district whether the
26 school facilities project is approved and, if so approved, the
27 preliminary eligible costs and the excess costs, if any. Following the
28 determination of preliminary eligible costs and the notification of
29 project approval, the district may appeal to the commissioner for an
30 increase in those costs if the detailed plans and specifications
31 completed by a design professional for the school facilities project
32 indicate that the cost of constructing that portion of the project which
33 is consistent with the facilities efficiency standards and does not
34 exceed the area allowances per FTE student exceeds the preliminary
35 eligible costs as determined by the commissioner for the project by
36 10% or more. The district shall file its appeal within 30 days of the
37 preparation of the plans and specifications. If the district chooses not
38 to file an appeal, then the final eligible costs shall equal the preliminary
39 eligible costs.

40 The appeal shall outline the reasons why the preliminary eligible
41 costs calculated for the project are inadequate and estimate the amount
42 of the adjustment which needs to be made to the preliminary eligible
43 costs. The commissioner shall forward the appeal information to the
44 ³[²building²]³ authority for its review and recommendation. If the
45 additional costs are the result of factors that are within the control of
46 the district or are the result of design factors that are not required to

1 meet the facilities efficiency standards, the ³[²building²]³ authority
2 shall recommend to the commissioner that the preliminary eligible
3 costs be accepted as the final eligible costs. If the ³[²building²]³
4 authority determines the additional costs are not within the control of
5 the district or are the result of design factors required to meet the
6 facilities efficiency standards, the ³[²building²]³ authority shall
7 recommend to the commissioner a final eligible cost based on its
8 experience for districts with similar characteristics ³, provided that,
9 notwithstanding anything to the contrary, the commissioner shall not
10 approve an adjustment to the preliminary eligible costs which exceeds
11 10% of the preliminary eligible costs³. The commissioner shall make
12 a determination on the appeal within 30 days of its receipt. If the
13 commissioner does not approve an adjustment to the school facilities
14 project's preliminary eligible costs, the commissioner shall issue his
15 findings in writing on the reasons for the denial and on why the
16 preliminary eligible costs as originally calculated are sufficient.

17 (2) In all other cases, the commissioner shall promptly prepare and
18 submit to the ³[²building²]³ authority a preliminary project report
19 which shall consist, at a minimum, of the following information: a
20 complete description of the school facilities project; the actual
21 location of the project; the total square footage of the project
22 together with a breakdown of total square footage by functional
23 component; the preliminary eligible costs of the project; the project's
24 priority ranking determined pursuant to subsection m. of this section;
25 any other factors to be considered by the ³[²building²]³ authority in
26 undertaking the project; and the name and address of the person from
27 the district to contact in regard to the project.

28 i. Upon receipt by the ³[²building²]³ authority of the preliminary
29 project report, the ³[²building²]³ authority, upon consultation with
30 the district, shall prepare detailed plans ³[, schedules]³ and
31 specifications ³and schedules³ which contain the ³[²building²]³
32 authority's estimated cost and schedule to complete the school
33 facilities project. The ³[²building²]³ authority shall transmit to the
34 commissioner the ³[²building²]³ authority's recommendations in
35 regard to the project which shall, at a minimum, contain the detailed
36 plans and specifications; whether the school facilities project can be
37 completed within the preliminary eligible costs; and any other factors
38 which the ³[²building²]³ authority determines should be considered
39 by the commissioner.

40 (1) In the event that the ³[²building²]³ authority determines that
41 the school facilities project can be completed within the preliminary
42 eligible costs: the final eligible costs shall be deemed to equal the
43 preliminary eligible costs; the commissioner shall be deemed to have
44 given final approval to the project; and the preliminary project report
45 shall be deemed to be the final project report delivered to the

1 ³[²building²]³ authority pursuant to subsection j. of this section.

2 (2) In the event that the ³[²building²]³ authority determines that
3 the school facilities project cannot be completed within the preliminary
4 eligible costs, prior to the submission of the ³[²building²]³ authority's
5 recommendations to the commissioner, the ³[²building²]³ authority
6 shall, in consultation with the district and the commissioner, determine
7 whether changes can be made in the project which will result in a
8 reduction in costs while at the same time meeting the facilities
9 efficiency standards approved by the commissioner.

10 (a) If the ³[²building²]³ authority determines that changes in the
11 school facilities project are possible so that the project can be
12 accomplished within the scope of the preliminary eligible costs while
13 still meeting the facilities efficiency standards, the ³[²building²]³
14 authority shall so advise the commissioner, whereupon the
15 commissioner shall: calculate the final eligible costs to equal the
16 preliminary eligible costs; give final approval to the project with the
17 changes noted; and issue a final project report to the ³[²building²]³
18 authority pursuant to subsection j. of this section.

19 (b) If the ³[²building²]³ authority determines that it is not
20 possible to make changes in the school facilities project so that it can
21 be completed within the preliminary eligible costs either because the
22 additional costs are the result of factors outside the control of the
23 district or the additional costs are required to meet the facilities
24 efficiency standards, the ³[²building²]³ authority shall recommend
25 to the commissioner that the preliminary eligible costs be increased
26 accordingly, whereupon the commissioner shall: calculate the final
27 eligible costs to equal the sum of the preliminary eligible costs plus the
28 increase recommended by the ³[²building²]³ authority; give final
29 approval to the project; and issue a final project report to the
30 ³[²building²]³ authority pursuant to subsection j. of this section.

31 (c) If the additional costs are the result of factors that are within
32 the control of the district or are the result of design factors that are
33 not required to meet the facilities efficiency standards or approved
34 pursuant to paragraph (1) of subsection g. of this section, the
35 ³[²building²]³ authority shall recommend to the commissioner that
36 the preliminary eligible costs be accepted, whereupon the
37 commissioner shall: calculate the final eligible costs to equal the
38 preliminary eligible costs and specify the excess costs which are to be
39 borne by the district; give final approval to the school facilities project;
40 and issue a final project report to the ³[²building²]³ authority
41 pursuant to subsection j. of this section; provided that the
42 commissioner may approve final eligible costs which are in excess of
43 the preliminary eligible costs if, in his judgment, the action is
44 necessary to meet the educational needs of the district.

45 (d) For a school facilities project constructed by the

1 ³[²building²]³ authority, the ³[²building²]³ authority shall be
 2 responsible for any costs of construction, but only from the proceeds
 3 of bonds issued by the ³[²facilities²]³ authority pursuant to this act,
 4 which exceed the amount originally projected by the ³[²building²]³
 5 authority and approved for financing by the ³[²facilities²]³ authority,
 6 provided that the excess is the result of an underestimate of labor or
 7 materials costs by the ³[²building²]³ authority. After receipt by the
 8 ³[²building²]³ authority of the final project report, the district shall be
 9 responsible only for the costs associated with changes, if any, made
 10 at the request of the district to the scope of the school facilities
 11 project.

12 j. The ³[²building²]³ authority shall not commence the
 13 acquisition or construction of a school facilities project unless the
 14 commissioner transmits to the ³[²building²]³ authority a final project
 15 report and the district complies with the approval requirements for the
 16 local share, if any, pursuant to section 11 of this act. The final project
 17 report shall contain all of the information contained in the preliminary
 18 project report and, in addition, shall contain: the final eligible costs;
 19 the excess costs, if any; the total costs which equals the final eligible
 20 costs plus excess costs, if any; the State share; and the local share.

21 k. For the Abbott districts, the State share shall be 100% of the
 22 final eligible costs. For all other districts, the State share shall be an
 23 amount equal to 115% of the district aid percentage; except that the
 24 State share shall not be less than 40% of the final eligible costs.

25 ²If any district which is included in district factor group A or B,
 26 other than an Abbott district, is having difficulty financing the local
 27 share of a school facilities project, the district may apply to the
 28 commissioner to receive 100% State support for the project and the
 29 commissioner may request the approval of the Legislature to increase
 30 the State share of the project to 100%.²

31 l. The local share for school facilities projects constructed by the
 32 ³[²building²]³ authority ²[or a redevelopment entity]² ³or a
 33 redevelopment entity³ shall equal the final eligible costs plus any
 34 excess costs less the State share.

35 m. The commissioner shall establish, in consultation with the
 36 Abbott districts, a priority ranking of all school facilities projects in the
 37 Abbott districts based upon his determination of critical need, and shall
 38 establish priority categories for all school facilities projects in non-
 39 Abbott districts. The commissioner shall rank projects from Tier I to
 40 Tier IV in terms of critical need according to the follow prioritization:

41 Tier I: health and safety, including electrical system upgrades;
 42 required early childhood education programs; unhoused students/class
 43 size reduction as required to meet the standards of the
 44 "Comprehensive Educational Improvement and Financing Act of
 45 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

1 Tier II: educational adequacy - specialized instructional spaces,
2 media centers, cafeteriums, and other non-general classroom spaces
3 contained in the facilities efficiency standards; special education spaces
4 to achieve the least restrictive environment;

5 Tier III: technology projects; regionalization or consolidation
6 projects;

7 Tier IV: other local objectives.

8 n. The provisions of the "Public School Contracts Law,"
9 N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities
10 project constructed by a district but shall not be applicable to projects
11 constructed by the ³[²building²]³ authority ²[or a redevelopment
12 entity]² ³or a redevelopment entity³ pursuant to the provisions of this
13 act.

14 o. In the event that a district whose district aid percentage is less
15 than ³[60%] 55%³ elects not to have the ³[²building²]³ authority
16 undertake construction of a school facilities project, any proceeds of
17 school bonds issued by the district for the purpose of funding the
18 project which remain unspent upon completion of the project shall be
19 used by the district to reduce the outstanding principal amount of the
20 school bonds.

21 p. Upon completion by the ³[²building²]³ authority of a school
22 facilities project, if the cost of construction and completion of the
23 project is less than the total costs, the district shall be entitled to
24 receive a portion of the local share based on a pro rata share of the
25 difference based on the ratio of the State share to the local share.

26 q. The ³[²building²]³ authority shall determine the cause of any
27 costs of construction which exceed the amount originally projected by
28 the ³[²building²]³ authority and approved for financing by the
29 ³[²facilities²]³ authority.

30 r. In the event that a district has engaged architectural services
31 ³[that have been prequalified by the ²building² authority]³ to prepare
32 the documents required for initial proposal of a school facilities
33 project, the district shall, if permitted by the terms of the district's
34 contract for architectural services, ³and at the option of the authority³
35 assign the contract for architectural services to the ³[²building²]³
36 authority ³[, provided that the fees for the architectural services shall
37 not exceed the fees normally paid by the ²building² authority for such
38 services] if the authority determines that the assignment would be in
39 the best interest of the school facilities project³.

40 s. ²[The commissioner may authorize the authority to provide
41 funds to Abbott districts prior to the approval of a school facilities
42 project to enable an Abbott district to finance site acquisition and
43 preliminary design work.] ³[Beginning on July 1, 2002, the
44 commissioner shall periodically submit to the Legislature a list which
45 includes any school facilities project which has a State share of 100%

1 and the final eligible costs of the project. If the Legislature does not
2 disapprove the school facilities project by the adoption of a concurrent
3 resolution within 45 days, the project shall be deemed authorized.²]
4 Notwithstanding anything to the contrary contained in P.L. , c.
5 (C.)(now pending before the Legislature as this bill), an ECPA
6 district, at its option, may provide in its long-range facilities plan
7 submitted pursuant to section 4 of this act, for one or more community
8 early childhood education facilities projects. If the district has
9 requested designation of a demonstration project pursuant to section
10 6 of this act and is eligible to submit a plan for a community early
11 childhood education facilities project pursuant to this section, the
12 district shall be permitted to include the community early childhood
13 education facilities project as part of the demonstration project.

14 (1) An ECPA district seeking to initiate a community early
15 childhood education facilities project shall apply to the commissioner
16 for approval of the project. The application shall, at a minimum,
17 contain the following information: the name of the community
18 provider; evidence that the community provider is licensed by the
19 Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-
20 1 et seq.) and is a tax exempt nonprofit organization; evidence that the
21 community provider is or shall provide early childhood education
22 programs for the district; a description of the community early
23 childhood education facilities project; a schematic drawing of the
24 project, or at the option of the district, preliminary plans and
25 specification; a delineation and description of each of the functional
26 components of the project; identification of those portions of the
27 proposed project which shall be devoted in whole or in part to the
28 provision of early childhood education programs to 3 or 4-year old
29 children from the ECPA district; the estimated cost to complete the
30 project as determined by the district in consultation with the
31 community provider; and whether the facility provides services other
32 than early childhood education programs for 3 and 4-year old children,
33 pursuant to a contract with the ECPA district.

34 (2) The commissioner shall review the proposed early childhood
35 education facilities project to determine whether it is consistent with
36 the district's long-range facilities plan, whether it will provide a facility
37 which is structurally adequate and safe and capable of providing a
38 program which will enable preschool children being served pursuant
39 to the ECPA district's approved early childhood education operational
40 plan to meet the standards for early childhood education programs
41 established by the department and whether there is a need for
42 increased capacity or to rehabilitate existing space to meet these
43 standards. Only those facilities which are used for 3 or 4-year old
44 children pursuant to a contract with the ECPA district shall be eligible
45 for approval, provided that facilities which are jointly used by 3 or 4-
46 year old children from the ECPA district and from other districts shall

1 also be eligible for approval.

2 (3) If the commissioner approves the project, the commissioner
3 shall determine, in consultation with the authority, the cost to
4 complete the approved project, which shall be the reasonable,
5 estimated cost of the renovation or new construction necessary to
6 provide a facility which is structurally adequate and safe and capable
7 of providing a program which will enable preschool children being
8 served pursuant to the ECPA district's approved early childhood
9 education operation plan to meet the standards for early childhood
10 education programs established by the department. For projects
11 initiated by an Abbott district, the State support shall be 100% of
12 such reasonable, estimated cost. For projects initiated by an ECPA
13 district that is not an Abbott district, the State support shall be an
14 amount equal to 115% of the district aid percentage of that ECPA
15 district, of such reasonable, estimated cost. for except that the State
16 support shall not be less than 40% of such reasonable, estimated cost.
17 The commissioner shall issue a final project report to the authority
18 which shall contain a complete description of the project, the actual
19 location of the project, the total square footage of the project together
20 with a breakdown of total square footage by functional component;
21 any other factors to be considered by the authority in undertaking the
22 project; the names and addresses of the people to contact from the
23 district and the community provider; the amount of State support for
24 the project; and the amount of local support required from the
25 community provider to pay for costs, if any, of the project which have
26 not been approved by the commissioner for State support.

27 (4) Upon submission to the authority of a final project report, the
28 authority shall undertake the financing, acquisition, construction and
29 all other appropriate actions necessary to complete the community
30 early childhood education facilities project, provided, that if there is
31 local support required for the project, such actions shall not commence
32 until the authority receives the local support from the community
33 provider. The authority may, in its discretion, and upon consultation
34 with the commissioner, authorize a community provider to undertake
35 the acquisition, construction and all other appropriate action necessary
36 to complete the project, in which case the authority shall not provide
37 State support until the community provider provides the local support,
38 if any.

39 (5) In order to implement the arrangements established for
40 community early childhood education facilities projects, the authority
41 shall enter into an agreement with the district, the commissioner and
42 the community provider containing the terms and conditions
43 determined by the parties to be necessary to effectuate the project.

44 (6) The authority shall require as a condition of providing State
45 support for any community early childhood education facilities project
46 that the State support must be repaid by the community provider in the

1 event that (a) the commissioner determines that the project is no
2 longer being used for the purposes for which it was intended; or (b)
3 the project is sold, leased or otherwise conveyed to an individual or
4 organization that does not have tax exempt nonprofit or government
5 status.³

6
7 ²[6. (New section) The provisions of section 5 of P.L. , c. (C.)
8 (now pending before the Legislature as this bill) shall pertain to school
9 facilities projects designated to be demonstration projects except as
10 otherwise provided in this section.

11 a. For the initial three full fiscal years following the effective date
12 of this act, the State Treasurer may designate up to six school facilities
13 projects which the State Treasurer determines to be in the best
14 interests of the State and of the districts to be demonstration projects
15 pursuant to the provisions of this section.

16 b. A district and municipality may apply to the authority for the
17 designation of a school facilities project contained in a long-range
18 facilities plan submitted to the commissioner pursuant to section 4 of
19 P.L. , c. (C.) (now pending before the Legislature as this bill)
20 to be a demonstration project to provide for the coordination of local
21 economic development, redevelopment or community development
22 with a school facilities project. The application shall be accompanied
23 by substantively, parallel resolutions requesting the designation
24 adopted by the board of education of the district and the governing
25 body of the municipality. The application shall set forth: (1) a plan
26 for carrying out the redevelopment project as a whole, including the
27 construction of the school facilities project; (2) the name of the
28 redevelopment entity to undertake the project under the "Local
29 Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et
30 seq.); (3) a description of how the project fits into a redevelopment
31 plan adopted or to be adopted by the municipal governing body
32 pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a
33 description of the community design features to be included in the
34 school facilities project.

35 c. The authority shall evaluate the request to determine whether
36 the school facilities project is suitable for designation as a
37 demonstration project and whether the proposed redevelopment entity
38 is suitable for designation as the entity to construct the demonstration
39 project based upon consideration of the following factors:

40 (1) whether the demonstration project furthers definite local
41 objectives as to appropriate land uses, density of population, and
42 improved traffic and public transportation, public utilities, recreational
43 and community facilities and other public improvements;

44 (2) whether the demonstration project provides significant social
45 and economic benefits to the municipality, its neighborhoods and
46 residents;

1 (3) whether the development of the school facilities project is
2 consistent with the local development plan;

3 (4) the extent to which the school facilities project contains
4 community design features which can be used by the community;

5 (5) whether the redevelopment entity has the current capacity to
6 construct the demonstration project;

7 (6) whether the redevelopment entity has the appropriate prior
8 experience in developing similar types of projects; and

9 (7) whether there exist donations from private entities for the
10 purpose of the demonstration project.

11 d. The authority's review of the proposed school facilities project
12 for designation as a demonstration project under this section shall
13 commence upon approval by the commissioner of the school facilities
14 project pursuant to section 5 of P.L. , c. (C.) (now pending
15 before the Legislature as this bill). Upon approval by the
16 commissioner of the school facilities project, and recommendation by
17 the authority that the school facilities project be a demonstration
18 project, the recommendation of the authority shall be forwarded to the
19 State Treasurer who shall determine whether the school facilities
20 project should be designated as a demonstration project. At the same
21 time as the authority forwards its recommendation to the State
22 Treasurer, the authority shall forward its recommendation to the
23 Urban Coordinating Council for review pursuant to subsection i. of
24 this section.

25 e. In addition to the requirements set forth in section 5 of this
26 act, a demonstration project may request inclusion in the final eligible
27 costs of the school facilities project, of all or any portion of the cost
28 of any community design features including any area, rooms,
29 equipment, recreational area or playground included in the school
30 facilities project which are to be used in common by students of the
31 district and by residents of the community, but there shall not be
32 included in the final eligible costs any portion of the cost of any
33 features which are not an integral part of the school building and
34 grounds and are not related to the advancement of the educational
35 success of district students. The commissioner shall approve the
36 inclusion of the community design features as part of the school
37 facilities project if he finds that the inclusion of the community design
38 features as part of the school facilities project would be conducive to
39 the usefulness and success of the project for both the students of the
40 district and the residents of the community. The commissioner may
41 condition his approval upon the adoption by the district of policies
42 suitable for assuring continuing community or educational access to
43 the community design features.

44 f. The cost of the community design features approved by the
45 commissioner shall be reviewed by the authority. The district shall
46 submit the documentation required by the authority for the authority

1 to make its determination. The authority shall, in its recommendation
2 to the commissioner pursuant to section 5 of this act, include its
3 recommendation with respect to the cost of the community design
4 features. The commissioner shall make the final determination with
5 respect to the inclusion of the cost of community design features in the
6 final eligible costs.

7 g. The authority shall provide funding for the State's share of the
8 final eligible costs of a school facilities project to be constructed as
9 part of a demonstration project pursuant to an agreement among the
10 authority, the redevelopment entity and the district which shall, in
11 addition to any other terms and conditions, set forth the terms for
12 disbursement of the State share and provide for the monitoring of
13 construction by the authority.

14 h. Upon completion of a demonstration project by a
15 redevelopment entity, the district shall submit to the commissioner a
16 plan to provide for the maintenance of the project and shall enter into
17 a contract which provides for that maintenance.

18 i. The Urban Coordinating Council shall review the
19 recommendations of the authority with respect to the demonstration
20 projects and shall advise the authority, redevelopment entity and the
21 district regarding the potential availability of funding for the
22 demonstration project, including, but not limited to, sources of funds
23 for acquisition, clearance, site remediation, and assemblage of land and
24 the development, redevelopment, construction or rehabilitation of any
25 structure or improvement included in the project.]]²

26
27 ³[²6. (New section) a. The commissioner shall develop, for the
28 March 2002 Report on the Cost of Providing a Thorough and Efficient
29 Education and for subsequent reports, facilities efficiency standards for
30 elementary, middle, and high schools consistent with the core
31 curriculum school delivery assumptions in the report and sufficient for
32 the achievement of the core curriculum content standards, and for the
33 provision of required programs in Abbott districts and early childhood
34 education programs in the districts in which these programs are
35 required by the State. The area allowances per FTE student in each
36 class of the district shall be derived from these facilities efficiency
37 standards.

38 The facilities efficiency standards developed by the commissioner
39 shall not be construction design standards but rather shall represent the
40 instructional spaces, specialized instructional areas, and administrative
41 spaces that are determined by the commissioner to be educationally
42 adequate to support the achievement of the core curriculum content
43 standards and for the provision of required programs in Abbott
44 districts and early childhood education programs in the districts in
45 which these programs are required. A district may design, at its
46 discretion, the educational and other spaces to be included within the

1 school facilities project. The design of the project may eliminate
2 spaces in the facilities efficiency standards, include spaces not in the
3 facilities efficiency standards, or size spaces differently than in the
4 facilities efficiency standards upon a demonstration of the adequacy of
5 the school facilities project to deliver the core curriculum content
6 standards pursuant to paragraph (2) of subsection g. of section 5 of
7 this act.

8 Within a reasonable period of time after the effective date of P.L.,
9 c. (C.) (now pending before the Legislature as this bill), the
10 commissioner shall publish the facilities efficiency standards developed
11 for the 2000-2001, 2001-2002, and 2002-2003 school years in the
12 New Jersey Register. Within a reasonable period of time after 30 days
13 after publication in the New Jersey Register, the commissioner shall
14 file the facilities efficiency standards with the Office of Administrative
15 Law and those standards shall become effective immediately upon
16 filing with the Office of Administrative Law. During the 30-day
17 period the commissioner shall provide an opportunity for public
18 comment on the proposed facilities efficiency standards.

19 b. Within 90 days of the commissioner's receipt of a long-range
20 facilities plan for review, the commissioner shall determine whether the
21 plan is fully and accurately completed and whether all information
22 necessary for a decision on the plan has been filed by the district. If
23 the commissioner determines that the plan is complete, the
24 commissioner shall promptly notify the district in writing and shall
25 have 60 days from the date of that notification to determine whether
26 to approve the plan or not. If the commissioner determines that the
27 plan is not complete, the commissioner shall notify the district in
28 writing. The district shall provide to the commissioner whatever
29 information the commissioner determines is necessary to make the plan
30 accurate and complete. The district shall submit that information to
31 the commissioner, and the commissioner shall have 60 days from the
32 date of receipt of accurate and complete information to determine
33 whether to approve the plan or not.

34 c. Notwithstanding any provision in subsection b. of this section,
35 if at any time the number of long-range facilities plans filed by school
36 districts with the commissioner and pending review exceeds 20 % of
37 the number of school districts in New Jersey, the commissioner may
38 extend by 60 days the deadline for reviewing each plan pending at that
39 time.

40 d. By July 1, 2001 and every five years thereafter, the
41 Commissioner of Education shall recommend to the Legislature
42 criteria to be used in the designation of districts as Abbott districts.
43 The criteria may include, but not be limited to: the number of residents
44 per 1,000 within the municipality or municipalities in which the district
45 is situate who receive TANF; the district's equalized valuation per
46 resident pupil as equalized valuation is defined in section 3 of

1 P.L.1996, c.136 (C.18A:7F-3); the district's income per resident pupil
2 as district income is defined in section 3 of P.L.1996, c.138
3 (C.18A:7F-3); the population per square mile of the municipality or
4 municipalities in which the district is situate; and the municipal
5 overburden of the municipality or municipalities in which the district
6 is situate as that term is defined by the New Jersey Supreme Court in
7 Abbott v. Burke.

8 e. By July 1, 2001, the commissioner shall provide the Legislature
9 with recommendations to address the circumstances of districts which
10 are contiguous with two or more Abbott districts. The
11 recommendations shall address the issues of the financing of school
12 facilities projects and the funding of the educational and other
13 programs required within these districts as a result of their unique
14 demographic situation.

15 f. By July 1, 2001, the commissioner shall study the Safe Schools
16 Design Guidelines, prepared by the Florida Center for Community
17 Design and Research, which address the issues of school safety and
18 security through the design of school facilities. Based upon his study,
19 the commissioner shall issue recommendations to districts on the
20 appropriateness of including the Safe Schools Design Guidelines in the
21 design and construction of school facilities projects.^{2]}³

22
23 ³6. (New section) The provisions of section 5 of P.L. , c. (C.)
24 (now pending before the Legislature as this bill) shall pertain to school
25 facilities projects designated to be demonstration projects except as
26 otherwise provided in this section.

27 a. For the initial three full fiscal years following the effective date
28 of this act, the State Treasurer may designate up to six school facilities
29 projects which the State Treasurer determines to be in the best
30 interests of the State and of the districts to be demonstration projects
31 pursuant to the provisions of this section.

32 b. A district and municipality may apply to the authority for the
33 designation of a school facilities project contained in a long-range
34 facilities plan submitted to the commissioner pursuant to section 4 of
35 P.L. , c. (C.) (now pending before the Legislature as this bill)
36 to be a demonstration project to provide for the coordination of local
37 economic development, redevelopment or community development
38 with a school facilities project. The application shall be accompanied
39 by resolutions requesting the designation adopted by the board of
40 education of the district and the governing body of the municipality.
41 The application shall set forth: (1) a plan for carrying out the
42 redevelopment project as a whole, including the construction of the
43 school facilities project; (2) the name of the redevelopment entity to
44 undertake the project under the "Local Redevelopment and Housing
45 Law" P.L.1992, c.79 (C.40A:12A-1 et seq.); (3) a description of how
46 the project fits into a redevelopment plan adopted or to be adopted by

1 the municipal governing body pursuant to section 7 of P.L.1992, c.79
2 (C.40A:12A-7); and (4) a description of the community design
3 features to be included in the school facilities project.

4 c. The authority shall evaluate the request to determine whether
5 the school facilities project is suitable for designation as a
6 demonstration project and whether the proposed redevelopment entity
7 is suitable for designation as the entity to construct the demonstration
8 project based upon consideration of the following factors:

9 (1) whether the demonstration project furthers definite local
10 objectives as to appropriate land uses, density of population, and
11 improved traffic and public transportation, public utilities, recreational
12 and community facilities and other public improvements;

13 (2) whether the demonstration project provides significant social
14 and economic benefits to the municipality, its neighborhoods and
15 residents;

16 (3) whether the development of the school facilities project is
17 consistent with the local development plan;

18 (4) the extent to which the school facilities project contains
19 community design features which can be used by the community;

20 (5) whether the redevelopment entity has the current capacity to
21 construct the demonstration project;

22 (6) whether the redevelopment entity has the appropriate prior
23 experience in developing similar types of projects; and

24 (7) whether there exist donations from private entities for the
25 purpose of the demonstration project.

26 d. The authority's review of the proposed school facilities project
27 for designation as a demonstration project under this section shall
28 commence upon approval by the commissioner of the school facilities
29 project pursuant to section 5 of P.L. , c. (C.) (now pending
30 before the Legislature as this bill). Upon approval by the
31 commissioner of the school facilities project, and recommendation by
32 the authority that the school facilities project be a demonstration
33 project, the recommendation of the authority shall be forwarded to the
34 State Treasurer who shall determine whether the school facilities
35 project should be designated as a demonstration project. At the same
36 time as the authority forwards its recommendation to the State
37 Treasurer, the authority shall forward its recommendation to the
38 Urban Coordinating Council for review pursuant to subsection i. of
39 this section.

40 e. In addition to the requirements set forth in section 5 of this act,
41 a demonstration project may request inclusion in the final eligible costs
42 of the school facilities project, of all or any portion of the cost of any
43 community design features including any area, rooms, equipment,
44 recreational area or playground included in the school facilities project
45 which are to be used in common by students of the district and by
46 residents of the community, but there shall not be included in the final

1 eligible costs any portion of the cost of any features which are not an
2 integral part of the school building and grounds or exceed the facilities
3 efficiency standards. The commissioner shall approve the inclusion of
4 the community design features as part of the school facilities project
5 if he finds that the inclusion of the community design features as part
6 of the school facilities project would be conducive to the usefulness
7 and success of the project for both the students of the district and the
8 residents of the community. The commissioner may condition his
9 approval upon the adoption by the district of policies suitable for
10 assuring continuing community or educational access to the
11 community design features.

12 f. The cost of the community design features approved by the
13 commissioner shall be reviewed by the authority. The district shall
14 submit the documentation required by the authority for the authority
15 to make its determination. The authority shall, in its recommendation
16 to the commissioner pursuant to section 5 of this act, include its
17 recommendation with respect to the cost of the community design
18 features. The commissioner shall make the final determination with
19 respect to the inclusion of the cost of community design features in the
20 final eligible costs.

21 g. The authority shall provide funding for the State's share of the
22 final eligible costs of a school facilities project to be constructed as
23 part of a demonstration project pursuant to an agreement among the
24 authority, the redevelopment entity and the district which shall, in
25 addition to any other terms and conditions, set forth the terms for
26 disbursement of the State share and provide for the monitoring of
27 construction by the authority.

28 h. Upon completion of a demonstration project by a
29 redevelopment entity, the district shall submit to the commissioner a
30 plan to provide for the maintenance of the project and shall enter into
31 a contract which provides for that maintenance.

32 i. The Urban Coordinating Council shall review the
33 recommendations of the authority with respect to the demonstration
34 projects and shall advise the authority, redevelopment entity and the
35 district regarding the potential availability of funding for the
36 demonstration project, including, but not limited to, sources of funds
37 for acquisition, clearance, site remediation, and assemblage of land and
38 the development, redevelopment, construction or rehabilitation of any
39 structure or improvement included in the project.

40 j. Any district may consult with the Urban Coordinating Council
41 with respect to the potential availability of funding for aspects of the
42 school facilities project, including, but not limited to, sources of funds
43 for acquisition, clearance, site remediation, and assemblage of land and
44 the development, redevelopment, construction or rehabilitation of any
45 structure or improvement included in the project.³

1 7. (New section) a. Preliminary eligible costs for construction of
2 new school facilities and additions to school facilities, characterized by
3 an increase in the square footage of the school facility, shall be
4 approved only if necessary for reasons of unhoused students.
5 Unhoused students are the number of students to be housed in a
6 school building, but which cannot be housed in an existing building
7 without additional space or a new building in order to maintain
8 educational adequacy; or which are temporarily being housed in space
9 that was originally designed or intended for instruction in specialized
10 areas including, but not limited to, science, art, music, other hands-on
11 ²learning² experiences and comprehensive health and physical
12 education. Unhoused students are calculated by subtracting the
13 projected enrollment for a school building from its functional capacity.

14 Preliminary eligible costs for construction of new school facilities
15 and additions to school facilities pursuant to this subsection shall be
16 calculated as follows:

17 Preliminary eligible costs = $AU \times C$ ³[plus other allowable costs]³

18 where

19 AU is the approved area for unhoused students; and

20 C is the area cost allowance.

21 b. Preliminary eligible costs shall be approved for a rehabilitation
22 project which means the reconstruction, remodeling, alteration,
23 modernization, renovation or repair of school facilities but only for the
24 purpose of keeping the school building functional for its original
25 purpose or for new purposes that can be accomplished without
26 increasing the gross square footage of the original facility.

27 Preliminary eligible costs for rehabilitation projects pursuant to this
28 subsection shall be calculated as follows:

29 Preliminary eligible costs = estimated actual costs.

30 All school facilities shall be deemed suitable for rehabilitation
31 unless a pre-construction evaluation undertaken by the district
32 demonstrates to the satisfaction of the commissioner that the structure
33 might pose a risk to the safety of the occupants even after
34 rehabilitation, or that rehabilitation is not cost-effective. Whenever a
35 district determines to undertake new construction rather than a
36 rehabilitation project, the district shall undertake a preconstruction
37 evaluation to determine whether, because of health and safety or
38 efficiency, it would be more feasible to replace rather than renovate
39 the school facility. When the district demonstrates to the satisfaction
40 of the commissioner that replacement is more feasible, the district shall
41 be authorized to have the school facility replaced rather than renovated
42 and the preliminary eligible costs shall be determined pursuant to
43 subsection a. of this section. The estimated costs of a rehabilitation
44 project shall contain only those costs necessary for compliance with
45 the Uniform Construction Code, health and safety, and educational
46 adequacy as determined pursuant to the facilities efficiency standards

1 and paragraph (1) of subsection g. of section 5 of this act.

2 c. When construction done in lieu of rehabilitation projects
3 qualifies as new construction, the approved area for unhoused students
4 shall be determined by the commissioner, with consideration of the
5 existing school facilities in the district.

6 d. Preliminary eligible costs for ³new³ construction done in lieu of
7 rehabilitation projects which does not meet the requirements of
8 subsection b. of this section shall be determined in accordance with the
9 methodology for aiding rehabilitation projects, with the preliminary
10 eligible costs determined pursuant to subsection b. of this section.

11 e. Preliminary eligible costs for purchase of an existing facility to
12 be used as a school facility shall be determined in accordance with the
13 methodology for new construction, with preliminary eligible costs
14 determined pursuant to subsection a. of this section.

15 f. Notwithstanding the provisions of subsections a. and b. of this
16 section, preliminary eligible costs for any addition or reconstruction,
17 remodeling, alteration, modernization, renovation or repair made to a
18 purchased facility within five years of purchase shall be determined as
19 follows:

20 Preliminary eligible costs = (ACP-PC) x (C/CP) ³[plus other
21 allowable costs]³

22 where

23 ACP is the preliminary eligible costs for the facilities purchase
24 pursuant to subsection e. of this section;

25 PC is the purchase cost for the facility;

26 C is the area cost allowance at the time of application for the
27 renovation; and

28 CP is the area cost allowance at the time of purchase of the
29 facility.

30 Preliminary eligible costs so calculated shall not be less than
31 zero.

32 ³[g. Other allowable costs shall include the costs of site
33 development, acquisition of land or other real property interests
34 necessary to effectuate the school facilities project, fees for the
35 services of design professionals, including architects, engineers,
36 construction managers and other design professionals, legal fees, and
37 the costs associated with financing the school facilities project. Other
38 allowable costs for school facilities projects to be undertaken by the
39 authority shall be determined by the authority. Other allowable costs
40 for school facilities projects to be undertaken by a district ²[or, in the
41 case of a demonstration project, by a redevelopment entity]² shall be
42 equal to the actual costs unless the commissioner, in consultation with
43 the authority, determines these costs to be unreasonable in light of the
44 experience of similarly situated districts.]³

45
46 8. (New section) a. The number of unhoused students shall be

1 calculated as the number of FTE students who are projected to be
2 enrolled in preschool handicapped, preschool, kindergarten, grades 1
3 through 12, and special education services pupil educational programs
4 provided in a district within five years, which are in excess of the
5 functional capacity of the district's current school facilities or the
6 functional capacity of the school facilities which will be available
7 within five years other than the school facilities for which the
8 preliminary eligible costs are determined, based upon the district's
9 long-range facilities plan. The determination of unhoued capacity
10 shall separately consider projected enrollments and functional
11 capacities at the early childhood and elementary (preschool through
12 grade 5), middle (grades 6 through 8), and high school (grades 9
13 through 12) levels. For the purpose of calculating the district's
14 unhoued students, special education services students shall be
15 considered part of the grade level to which the students' chronological
16 age corresponds. In the event that the commissioner approves a
17 school facilities project which involves the construction of a new
18 school facility to replace an existing school facility, which shall
19 accommodate both the unhoued students and the students in the
20 existing school facility, the calculation of the number of unhoued
21 students shall include the number of students currently attending the
22 existing facility which is to be replaced.

23 b. Approved area for unhoued students (AU) shall be determined
24 according to the following formula:

25 $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$

26 where

27 UEC, UE, UM, UH are the numbers of unhoued students in the
28 early childhood, elementary, middle, and high school enrollment
29 categories, respectively; and

30 SEC, SE, SM, SH are the area allowances per FTE student in
31 preschool and kindergarten, grades 1 through 5, grades 6 through 8,
32 and grades 9 through 12, respectively. Area allowances shall be
33 determined based on the grade level of a student regardless of the
34 grade configurations used in the school buildings of the district.

35 The minimum area allowance per FTE student shall be as follows:

36	Preschool through grade 5	125 sq. ft.
37	Grades 6 through 8	³ [136] <u>134</u> ³
38	sq. ft.	
39	Grades 9 through 12	151 sq. ft.

40

41 The commissioner, in consultation with the State Treasurer and the
42 Commissioner of the Department of Community Affairs, shall adopt
43 regulations that establish a process for the consideration of special
44 circumstances, in addition to those provided in section 5 of this act, in
45 which the area allowances per FTE student established pursuant to this
46 subsection may be adjusted. Any decision made by the commissioner

1 pursuant to those regulations shall be made in consultation with the
2 State Treasurer and the Commissioner of the Department of
3 Community Affairs.

4
5 9. (New section) a. State debt service aid for capital
6 investment in school facilities for a district whose district aid
7 percentage is less than ³[60%] 55%³ and which elects not to have the
8 ¹[building]¹ ³[²building²]³ authority construct a school facilities
9 project or to finance the project under section 15 of this act, shall be
10 distributed upon a determination of preliminary eligible costs by the
11 commissioner, according to the following formula:

12 Aid is the sum of A for each issuance of school bonds issued for a
13 school facilities project approved by the commissioner after the
14 effective date of P.L. , c. (C.) (now pending before the
15 Legislature as this bill)

16 where

17 $A = B \times AC/P \times (DAP \times 1.15) \times M$, with $AC/P = 1$

18 whenever AC/P would otherwise yield a number greater than one,

19 and where:

20 B is the district's debt service for the individual issuance for the
21 fiscal year;

22 AC is the preliminary eligible costs determined pursuant to section
23 7 of this act;

24 P is the principal of the individual issuance plus any other funding
25 sources approved for the school facilities project;

26 DAP is the district's district aid percentage as defined pursuant to
27 section 3 of this act; and

28 M is a factor representing the degree to which a district has
29 fulfilled maintenance requirements for a school facilities project
30 determined pursuant to subsection b. of this section.

31 For county special services school districts, DAP shall be that of
32 the county vocational school district in the same county.
33 Notwithstanding any provision of this subsection to the contrary, State
34 debt service aid shall not be less than 40% of the preliminary eligible
35 ²[cost] costs².

36 b. The maintenance factor (M) shall be 1.0 except when one of the
37 following conditions applies, in which case the maintenance factor
38 shall be as specified:

39 (1) Effective ten years from the date of the enactment of P.L. ,
40 c. (C.) (now pending before the Legislature as this bill), the
41 maintenance factor for aid for reconstruction, remodeling, alteration,
42 modernization, renovation or repair, or for an addition to a school
43 facility, shall be zero for all school facilities projects for which the
44 district fails to demonstrate over the ten years preceding issuance a net
45 investment in maintenance of the related school facility of at least 2%
46 of the replacement cost of the school facility, determined pursuant to

1 subsection b. of section 7 of this act using the area cost allowance of
 2 the year ten years preceding the year in which the school bonds are
 3 issued.

4 (2) For new construction, additions, and school facilities aided
 5 under subsection b. of section 7 of this act supported by financing
 6 issued for projects approved by the commissioner after the effective
 7 date of P.L. , c. (C.) (now pending before the Legislature as
 8 this bill), beginning in the fourth year after occupancy of the school
 9 facility, the maintenance factor shall be reduced according to the
 10 following schedule for all school facilities projects for which the
 11 district fails to demonstrate in the prior fiscal year an investment in
 12 maintenance of the related school facility of at least two-tenths of 1 %
 13 of the replacement cost of the school facility, determined pursuant to
 14 subsection b. of section 7 of this act.

15

16 Maintenance Percentage	Maintenance Factor (M)
17 .199% - .151%	75%
18 .150% - .100%	50%
19 Less than .100%	Zero

20

21 (3) Within one year of the enactment of P.L. , c. (C.) (now
 22 pending before the Legislature as this bill), the commissioner shall
 23 promulgate rules requiring districts to develop a long-range
 24 maintenance plan and specifying the expenditures that qualify as an
 25 appropriate investment in maintenance for the purposes of this
 26 subsection.

27 c. Any district which obtained approval from the commissioner
 28 since September 1, 1998 and prior to the effective date of P.L. , c.
 29 (C.) (now pending before the Legislature as this bill) of the
 30 educational specifications for a school facilities project or obtained
 31 approval from the Department of Community Affairs or the
 32 appropriately licensed municipal code official since September 1, 1998
 33 of the final construction plans and specifications, and the district has
 34 issued debt, may elect to have the final eligible costs of the project
 35 determined pursuant to section 5 of this act and to receive debt service
 36 aid under this section or under section 10 of this act.

37 Any district which received approval from the commissioner for a
 38 school facilities project at any time prior to the effective date of P.L.,
 39 c. (C.) (now pending before the Legislature as this bill), and has
 40 not issued debt, other than short term notes, may submit an
 41 application pursuant to section 5 of this act to have the final eligible
 42 costs of the project determined pursuant to that section and to have
 43 the authority construct the project; or, at its discretion, the district
 44 may choose to receive debt service aid under this section or under
 45 section 10 of this act or to receive a grant under section 15 of this act.

46 ¹For the purposes of this subsection, the "issuance of debt" shall

1 include lease purchase agreements in excess of five years.¹

2

3 10. (New section) For each issuance of school bonds or
4 certificates of participation issued for a school facilities project
5 approved by the commissioner prior to the effective date of P.L. , c.
6 (C.) (now pending before the Legislature as this bill):

7 Aid is the sum of A

8 where

9 $A = B \times \text{CCSAID/TEBUD}$

10 and where

11 B is the district's total debt service or lease purchase payment for
12 the individual issuance for the fiscal year ²[, provided that for the
13 purpose of determining debt service or lease purchase payment under
14 this section the cost of site acquisition may be included]²;

15 CCSAID is the district's core curriculum standards aid amount
16 determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15);
17 and

18 TEBUD is the district's T&E budget determined pursuant to
19 section 13 of P.L.1996, c.138(C.18A:7F-13).

20 For county special services school districts, CCSAID/TEBUD shall
21 be that of the county vocational school district in the same county.

22

23 11. (New section) A school facilities project shall not be
24 constructed unless the local share of the project, if any, is approved
25 in accordance with the provisions for the approval of capital projects
26 pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and
27 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

28

29 12. (New section) A district, other than a State-operated school
30 district, that sought approval pursuant to section 11 of this act of a
31 school facilities project without excess costs but failed to receive that
32 approval, and within the three years prior to that, sought and failed to
33 receive approval of that school facilities project with or without excess
34 costs, may submit the project to the commissioner and request that the
35 commissioner approve the project and authorize the issuance of school
36 bonds for the local share of the project. Upon receipt of the request,
37 the commissioner shall review the school facilities project and
38 determine whether the project is necessary for the provision of a
39 thorough and efficient system of education in the district. If the
40 commissioner concludes that the project is necessary, the
41 commissioner may approve the project without excess costs and
42 authorize the issuance of school bonds to fund the local share. In
43 addition to the amount of taxes determined by the legal voters of the
44 district at the annual school election, the secretary of the board of
45 education shall certify the amount required for the repayment of the
46 interest and principal of the bonds required to fund the local share

1 amount approved by the commissioner in the same manner required
2 for interest and debt redemption charges pursuant to N.J.S.18A:22-33,
3 and the amount so certified shall be included in the taxes assessed,
4 levied and collected in the municipality or municipalities comprising
5 the school district for those purposes.

6 Any school facilities project authorized pursuant to this section
7 shall be constructed by the ³[²building²]³ authority. Nothing in this
8 section shall preclude a State-operated school district from using the
9 process established pursuant to section 2 of P.L.1991, c.139
10 (C.18A:7A-46.2) to obtain the approval of the commissioner to
11 undertake a school facilities project.

12

13 13. (New section) a. The ³[²facilities²]³ authority shall be
14 responsible for the financing ²[, planning, design, construction
15 management, acquisition, construction, and completion]² ³, planning,
16 design, construction management, acquisition, construction, and
17 completion³ of school facilities projects ³[and the building authority
18 shall be responsible for the planning, design, construction
19 management, acquisition, construction, and completion of school
20 facilities projects]² ³. Upon submission to the ³[²building²]³ authority
21 of a final project report, the ³[²building²]³ authority shall undertake
22 the acquisition, construction, and all other appropriate actions
23 necessary to complete the project. When the final eligible costs of a
24 school facilities project are less than or equal to \$500,000, the
25 ³[²building²]³ authority may, in its discretion, authorize a district to
26 undertake the acquisition, construction and all other appropriate
27 actions necessary to complete the project and enter into a grant
28 agreement with the district for the payment of the State share.

29 b. The ³[²facilities²]³ authority shall undertake the financing of
30 school facilities projects pursuant to the provisions of this act. The
31 ³[²facilities²]³ authority may, in its discretion and upon consultation
32 with the district, finance only the State share of the school facilities
33 project or the State share and the local share of the project. In the
34 event that the ³[²facilities²]³ authority finances only the State share
35 of a project, the ³[²building²]³ authority shall not commence
36 acquisition or construction of the project until the ³[²building²]³
37 authority receives the local share from the district.

38 c. In order to implement the ³[²construction and finance²]³
39 arrangements established for school facilities projects which are to be
40 constructed by the ³[²building²]³ authority and financed ³[²by the
41 facilities authority]² ³ pursuant to this section, a district shall enter into
42 an agreement with the ³[²building²]³ authority ³[²the facilities
43 authority]² ³ and the commissioner containing the terms and
44 conditions determined by the parties to be necessary to effectuate the

1 project.

2 d. Upon completion by the ³[²building²]³ authority of a school
3 facilities project, the district shall enter into an agreement with the
4 ³[²building²]³ authority to provide for the maintenance of the project
5 by the district. In the event that the school facilities project is
6 constructed by a district, upon the completion of the project, the
7 district shall submit to the commissioner a plan to provide for the
8 maintenance of the project by the district. Any agreement or plan shall
9 contain, in addition to any other terms and provisions, a requirement
10 for the establishment of a maintenance reserve fund, the funding levels
11 of which shall be as set forth in regulations adopted by the
12 commissioner pursuant to section 26 of this act.

13 ³[²e. There is hereby established a separate fund entitled the
14 "School Facilities Construction Fund." This fund shall be maintained
15 by the building authority separate and apart from any other funds of
16 the building authority and may be held in depositaries as may be
17 selected by the building authority and invested and reinvested as other
18 funds in the custody of the building authority, subject to the approval
19 of the State Treasurer. All interest or other income or earnings
20 derived from the investment or reinvestment of moneys in the fund
21 shall be credited to the fund. Any grants, contributions, donations and
22 reimbursements \from federal aid programs and from other public or
23 private sources as may be used lawfully for the purposes of this act
24 shall also be held in the fund, but shall be expended in accordance with
25 any conditions or requirements attached thereto. The moneys in the
26 fund are specifically dedicated and shall be applied to the cost of
27 school facilities projects undertaken by the building authority pursuant
28 to this act. The fund shall be credited with the proceeds of bonds
29 issued pursuant to section 14 of this act; any moneys appropriated or
30 otherwise made available to it by the Legislature; net earnings received
31 from the investment or deposit of monies in the fund, and any other
32 moneys which the building authority determines to deposit therein.

33 f. Upon the issuance by the facilities authority of bonds pursuant
34 to section 14 of this act, the proceeds of the bonds less costs of
35 issuance shall be transferred to the building authority for deposit into
36 the School Facilities Construction Fund.

37 g. In order to implement the arrangements provided for in this act,
38 the State Treasurer, the facilities authority, the building authority and
39 the commissioner are hereby authorized to enter into one or more
40 contracts. The contracts shall provide, in addition to other terms and
41 conditions, for the payment by the facilities authority to the building
42 authority pursuant to subsection f. of this section in order for the
43 building authority to carry out its responsibilities as set forth in this
44 act. The contract or contracts shall be on terms and conditions as
45 determined by the parties, provided that the incurrence of any
46 obligations of the State under the contract or contracts, if any, shall be

1 subject to and dependent upon appropriations being made from time
 2 to time by the Legislature for the purposes of this act.²³

3
 4 14. (New section) Notwithstanding any other provisions of law
 5 to the contrary:

6 a. The ³[²facilities²]³ authority shall have the power, pursuant to
 7 the provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
 8 ³[N.J.S.18A:72A-1 et seq.²] P.L.1974, c.80 (C.34:1B-1 et seq.)³, to
 9 issue bonds and refunding bonds, incur indebtedness and borrow
 10 money secured, in whole or in part, by monies received pursuant to
 11 sections 17, 18 and 19 of this act for the purposes of: financing all or
 12 a portion of the costs of school facilities projects and any costs
 13 related to the issuance thereof, including, but not limited to, the
 14 administrative, insurance, operating and other expenses of the
 15 ³[²facilities²]³ authority to undertake the financing ²[, design,
 16 construction and maintenance]² ³, design, construction and
 17 maintenance³ of school facilities projects ³[²and the administrative,
 18 insurance and operating expenses of the building authority to
 19 undertake the design, construction and maintenance of school facilities
 20 projects²]³; lending moneys to local units to pay the costs of all or a
 21 portion of school facilities projects and any costs related to the
 22 issuance thereof; funding the grants to be made pursuant to section 15
 23 of this act; and financing the acquisition of school facilities projects to
 24 permit the refinancing of debt by the district pursuant to section 16 of
 25 this act. ²The aggregate principal amount of the bonds, notes or other
 26 obligations issued by the facilities authority shall not exceed:
 27 \$100,000,000 for the State share of costs for county vocational
 28 school district school facilities projects; \$6,000,000,000 for the State
 29 share of costs for Abbott district school facilities projects; and
 30 \$2,500,000,000 for the State share of costs for school facilities
 31 projects in all other districts. This limitation shall not include any
 32 bonds, notes or other obligations issued for refunding purposes.²

33 The ³[²facilities²]³ authority may establish reserve funds to further
 34 secure bonds and refunding bonds issued pursuant to this section and
 35 may issue bonds to pay for the administrative, insurance and operating
 36 costs of the ³[²facilities²]³ authority ³[²and the building authority²]³
 37 in carrying out the provisions of this act. In addition to its bonds and
 38 refunding bonds, the ³[²facilities²]³ authority shall have the power to
 39 issue subordinated indebtedness, which shall be subordinate in lien to
 40 the lien of any or all of its bonds or refunding bonds as the
 41 ³[²facilities²]³ authority may determine.

42 b. The ³[²facilities²]³ authority shall issue the bonds or refunding
 43 bonds in such manner as it shall determine in accordance with the
 44 provisions of this act and ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
 45 ³[N.J.S.18A:72A-1 et seq.²] P.L.1974, c.80 (C.34:1B-1 et seq.)³;

1 provided that notwithstanding any other law to the contrary, no
2 resolution adopted by the ³[²facilities²]³ authority authorizing the
3 issuance of bonds or refunding bonds pursuant to this section shall be
4 adopted or otherwise made effective without the approval in writing
5 of the State Treasurer; and refunding bonds issued to refund bonds
6 issued pursuant to this section shall be issued on such terms and
7 conditions as may be determined by the ³[²facilities²]³ authority and
8 the State Treasurer. The ³[²facilities²]³ authority may, in any
9 resolution authorizing the issuance of bonds or refunding bonds issued
10 pursuant to this section, pledge the contract with the State Treasurer
11 provided for pursuant to section 18 of this act, or any part thereof, or
12 may pledge all or any part of the repayments of loans made to local
13 units pursuant to section 19 of this act for the payment or redemption
14 of the bonds or refunding bonds, and covenant as to the use and
15 disposition of money available to the authority for payment of the
16 bonds and refunding bonds. All costs associated with the issuance of
17 bonds and refunding bonds by the ³[²facilities²]³ authority for the
18 purposes set forth in this act may be paid by the ³[²facilities²]³
19 authority from amounts it receives from the proceeds of the bonds or
20 refunding bonds, and from amounts it receives pursuant to sections
21 17, 18, and 19 of this act. The costs may include, but shall not be
22 limited to, any costs relating to the issuance of the bonds or refunding
23 bonds, administrative costs of the ³[²facilities²]³ authority attributable
24 to the making and administering of loans and grants to fund school
25 facilities projects, and costs attributable to the agreements entered into
26 pursuant to subsection d. of this section.

27 c. Each issue of bonds or refunding bonds of the ³[²facilities²]³
28 authority shall be special obligations of the ³[²facilities²]³ authority
29 payable out of particular revenues, receipts or funds, subject only to
30 any agreements with the holders of bonds or refunding bonds, and may
31 be secured by other sources of revenue, including, but not limited to,
32 one or more of the following:

33 (1) Pledge of the revenues and other receipts to be derived from
34 the payment of local unit obligations and any other payment made to
35 the ³[²facilities²]³ authority pursuant to agreements with any local
36 unit, or a pledge or assignment of any local unit obligations, and the
37 rights and interest of the authority therein;

38 (2) Pledge of rentals, receipts and other revenues to be derived
39 from leases or other contractual arrangements with any person or
40 entity, public or private, including one or more local units, or a pledge
41 or assignment of those leases or other contractual arrangements and
42 the rights and interests of the ³[²facilities²]³ authority therein;

43 (3) Pledge of all moneys, funds, accounts, securities and other
44 funds, including the proceeds of the bonds;

45 (4) Pledge of the receipts to be derived from payments of State

1 aid to the ³[²facilities²]³ authority pursuant to section 21 of this act;

2 (5) Pledge of the contract or contracts with the State Treasurer
3 pursuant to section 18 of this act;

4 (6) Pledge of any sums remitted to the local unit by donation from
5 any person or entity, public or private, subject to the approval of the
6 State Treasurer;

7 (7) A mortgage on all or any part of the property, real or personal,
8 comprising a school facilities project then owned or thereafter to be
9 acquired, or a pledge or assignment of mortgages made to the
10 ³[²facilities²]³ authority by any person or entity, public or private,
11 including one or more local units and rights and interests of the
12 ³[²facilities²]³ authority therein; and

13 (8) The receipt of any grants, reimbursements or other payments
14 from the federal government.

15 d. The resolution authorizing the issuance of bonds or refunding
16 bonds pursuant to this section may also provide for the ³[²facilities²]³
17 authority to enter into any revolving credit agreement, agreement
18 establishing a line of credit or letter of credit, reimbursement
19 agreement, interest rate exchange agreement, currency exchange
20 agreement, interest rate floor or cap, options, puts or calls to hedge
21 payment, currency, rate, spread or similar exposure or similar
22 agreements, float agreements, forward agreements, insurance
23 contracts, surety bonds, commitments to purchase or sell bonds,
24 purchase or sale agreements, or commitments or other contracts or
25 agreements and other security agreements approved by the
26 ³[²facilities²]³ authority in connection with the issuance of the bonds
27 or refunding bonds pursuant to this section. In addition, the
28 ³[²facilities²]³ authority may, in anticipation of the issuance of the
29 bonds or the receipt of appropriations, grants, reimbursements or other
30 funds, including, without limitation, grants from the federal
31 government for school facilities projects, issue notes, the principal of
32 or interest on which, or both, shall be payable out of the proceeds of
33 notes, bonds or other obligations of the ³[²facilities²]³ authority or
34 appropriations, grants, reimbursements or other funds or revenues of
35 the ³[²facilities²]³ authority.

36 e. The ³[²facilities²]³ authority is authorized to engage, subject
37 to the approval of the State Treasurer and in such manner as the State
38 Treasurer shall determine, the services of financial advisors and
39 experts, placement agents, underwriters, appraisers, and other
40 advisors, consultants and agents as may be necessary to effectuate the
41 financing of school facilities projects.

42 f. Bonds and refunding bonds issued by the ³[²facilities²]³
43 authority pursuant to this section shall be special and limited
44 obligations of the ³[²facilities²]³ authority payable from, and secured
45 by, funds and moneys determined by the ³[²facilities²]³ authority in

1 accordance with this section. Notwithstanding any other provision of
 2 law or agreement to the contrary, any bonds and refunding bonds
 3 issued by the ³[²facilities²]³ authority pursuant to this section shall
 4 not be secured by the same property as bonds and refunding bonds
 5 issued by the ³[²facilities²]³ authority to finance projects other than
 6 school facilities projects. Neither the members of the ³[²facilities²]³
 7 authority nor any other person executing the bonds or refunding bonds
 8 shall be personally liable with respect to payment of interest and
 9 principal on these bonds or refunding bonds. Bonds or refunding
 10 bonds issued pursuant to this section shall not be a debt or liability of
 11 the State or any agency or instrumentality thereof, except as otherwise
 12 provided by this subsection, either legal, moral or otherwise, and
 13 nothing contained in this act shall be construed to authorize the
 14 ³[²facilities²]³ authority to incur any indebtedness on behalf of or in
 15 any way to obligate the State or any political subdivision thereof, and
 16 all bonds and refunding bonds issued by the ³[²facilities²]³ authority
 17 shall contain a statement to that effect on their face.

18 g. The State hereby pledges and covenants with the holders of any
 19 bonds or refunding bonds issued pursuant to this act that it will not
 20 limit or alter the rights or powers vested in the ³[²facilities²]³
 21 authority by this act, nor limit or alter the rights or powers of the
 22 State Treasurer in any manner which would jeopardize the interest of
 23 the holders or any trustee of the holders, or inhibit or prevent
 24 performance or fulfillment by the ³[²facilities²]³ authority or the State
 25 Treasurer with respect to the terms of any agreement made with the
 26 holders of the bonds or refunding bonds or agreements made pursuant
 27 to subsection d. of this section; except that the failure of the
 28 Legislature to appropriate moneys for any purpose of this act shall not
 29 be deemed a violation of this section.

30 h. The ³[²facilities authority and the building²]³ authority may
 31 charge to and collect from local units, districts, the State and any other
 32 person, any fees and charges in connection with the ³[²facilities
 33 authority's or building²]³ authority's actions undertaken with respect
 34 to school facilities projects, including, but not limited to, fees and
 35 charges for the ³[²facilities²]³ authority's administrative, organization,
 36 insurance, operating and other expenses incident to the financing ²[
 37 planning, design, construction management, acquisition, construction,
 38 completion and placing into service and maintenance]^{2 3}, planning,
 39 design, construction management, acquisition, construction,
 40 completion and placing into service and maintenance³ of school
 41 facilities projects ³[²and the building authority's administrative,
 42 organization, insurance, operating and other expenses incident to the
 43 planning, design, construction management, acquisition, construction,
 44 completion and placing into service and maintenance of school
 45 facilities projects²]³. Notwithstanding any provision of this act to the

1 contrary, no Level II district or a district whose district aid percentage
2 is greater than or equal to ³[60%] 55%³ but less than 100% shall be
3 responsible for the payment of any fees and charges related to the
4 ³[²building²]³ authority's operating expenses.

5
6 15. (New section) In the case of a district whose district aid
7 percentage is less than ³[60%] 55%³ and which elects not to have the
8 ³[²building²]³ authority undertake the construction of the school
9 facilities project, for any project approved by the commissioner after
10 the effective date of this act, the district may elect to receive a one-
11 time grant for the State share of the project rather than annual debt
12 service aid under section 9 of this act. The State share payable to the
13 district shall equal the product of the project's final eligible costs and
14 115% of the district aid percentage or 40%, whichever is greater. The
15 ³[²facilities²]³ authority shall provide grant funding for the State's
16 share of the final eligible costs of a school facilities project pursuant
17 to an agreement between the district and the ³[²facilities²]³ authority
18 which shall, in addition to other terms and conditions, set forth the
19 terms of disbursement of the State share. The funding of the State
20 share shall not commence until the district secures financing for the
21 local share.

22
23 16. (New section) In addition to the other powers and duties
24 which have been granted to the ³[²facilities²]³ authority, whenever
25 any local unit finances the construction or acquisition of a school
26 facilities project which would otherwise qualify under this act except
27 that the debt was issued prior to the effective date of this act, the
28 ³[²facilities²]³ authority may refinance the debt issued by the local
29 unit through the issuance of bonds secured by repayments of loans
30 made to the local units and may purchase the work or improvement
31 and lease the same to the district, subject to the approval of the State
32 Treasurer; except that the amount of the purchase price for a school
33 facilities project shall not exceed the original cost. Each loan to a
34 local unit pursuant to this section shall be evidenced by local unit
35 obligations and shall be authorized and issued as provided by law.
36 Notwithstanding the provisions of any law to the contrary, the local
37 unit obligations may be sold at private sale to the ³[²facilities²]³
38 authority at any price, whether or not less than par value, and shall be
39 subject to redemption prior to maturity at any times and at any prices
40 as the ³[²facilities²]³ authority and the local unit may agree. All
41 powers, rights, obligations and duties granted to or imposed upon the
42 ³[²facilities²]³ authority, districts, State departments and agencies or
43 others by this act in respect to school facilities projects shall apply to
44 the same extent with respect to any refinance of debt pursuant to this
45 section; except that any action otherwise required to be taken at a

1 particular time in the implementation of a school facilities project may,
2 when the circumstances require in connection with a refinance of debt
3 pursuant to this section, be taken with the same effect as if taken at
4 that particular time. Upon repayment of the bonds or provision for
5 repayment of bonds issued by the ³[²facilities²]³ authority to refinance
6 the debt of the local unit, the school facilities project shall be
7 transferred to the district.

8
9 17. (New section) In each fiscal year the State Treasurer shall pay
10 from the General Fund to the ³[²facilities²]³ authority ³[²and the
11 building authority²]³, in accordance with a contract ²[between]
12 ³[among²] between ³the State Treasurer [and] [and] ³and the³
13 ³[²facilities authority and the building²]³ authority as authorized
14 pursuant to section 18 of this act, an amount equal to the debt service
15 amount due to be paid in the State fiscal year on the bonds or
16 refunding bonds of the ³[²facilities²]³ authority issued or incurred
17 pursuant to section 14 of this act and any additional costs authorized
18 pursuant to that section; provided that all such payments from the
19 General Fund shall be subject to and dependent upon appropriations
20 being made from time to time by the Legislature for those purposes,
21 and provided further that all payments shall be used only to pay for the
22 costs of school facilities projects and the costs of financing those
23 projects.

24
25 18. (New section) The State Treasurer ²[and] ³[²and] ³the
26 ³[²facilities²]³ authority ³[²and the building authority] ²are
27 authorized to enter into one or more contracts to implement the
28 payment arrangement provided for in section 17 of this act. The
29 contract shall provide for payment by the State Treasurer of the
30 amounts required pursuant to section 17 of this act and shall set forth
31 the procedure for the transfer of monies for the purpose of that
32 payment. The contract shall contain terms and conditions as
33 determined by the parties and shall, where appropriate, contain terms
34 and conditions necessary and desirable to secure any bonds or
35 refunding bonds of the ³[²facilities²]³ authority issued or incurred
36 pursuant to this act; provided that notwithstanding any other provision
37 of law or regulation of the ³[²facilities²]³ authority to the contrary,
38 the ³[²facilities²]³ authority ³[²and the building authority²]³ shall be
39 paid only such funds as shall be determined by the contract, and the
40 incurrence of any obligation of the State under the contract, including
41 any payments to be made thereunder from the General Fund, shall be
42 subject to and dependent upon appropriations being made from time
43 to time by the Legislature for the purposes of this act.

44
45 19. (New section) a. The ³[²facilities²]³ authority may make and

1 contract to make loans to local units in accordance with and subject to
2 the provisions of this act to finance all or any portion of the cost of a
3 school facilities project which the local unit may lawfully undertake or
4 acquire and for which the local unit is authorized by law to borrow
5 money; or to refund obligations of the local unit which were issued to
6 provide funds to pay for the cost of a school facilities project. The
7 loans may be made subject to the terms and conditions the
8 ³[²facilities²]³ authority determines to be consistent with the purposes
9 of this act. Each loan by the ³[²facilities²]³ authority and the terms
10 and conditions thereof shall be subject to approval by the State
11 Treasurer.

12 b. Each loan to a local unit shall be evidenced by local unit
13 obligations and shall be authorized and issued as provided by law.
14 Notwithstanding the provisions of any other law to the contrary, the
15 local unit obligations may be sold at private sale to the ³[²facilities²]³
16 authority at any price, whether or not less than par value, and shall be
17 subject to redemption prior to maturity at any times and at any prices
18 as the ³[²facilities²]³ authority and the local unit may agree. Each
19 loan to a local unit and the local unit obligations issued to evidence the
20 loan shall bear interest at a rate or rates per annum, including zero
21 interest, and shall be repaid in whole or in part, as the ³[²facilities²]³
22 authority and the local unit may agree, with the approval of the State
23 Treasurer.

24

25 20. (New section) A local unit may purchase, lease, rent, sublease
26 or otherwise acquire any school facilities project or any space within
27 a project and pay the amounts as may be agreed upon between the
28 local unit and the ³[²facilities²]³ authority as the purchase price, rent
29 or other charge therefor; provided that the terms and conditions of the
30 agreement between the ³[²facilities²]³ authority and the local unit
31 relating to the purchase, lease, rental or sublease shall be subject to the
32 approval of the State Treasurer.

33

34 21. (New section) a. In the event that a local unit has failed or is
35 unable to pay to the ³[²facilities²]³ authority in full when due any
36 local unit obligations issued by the local unit to the ³[²facilities²]³
37 authority, including, but not limited to, any lease or sublease
38 obligations, or any other monies owed by the district to the
39 ³[²facilities²]³ authority, to assure the continued operation and
40 solvency of the ³[²facilities²]³ authority, the State Treasurer shall pay
41 directly to the ³[²facilities²]³ authority an amount sufficient to satisfy
42 the deficiency from State aid payable to the local unit; provided that
43 if the local unit is a school district, the State aid shall not include any
44 State aid which may otherwise be restricted pursuant to the provisions
45 of P.L.1996, c.138 (C.18A:7F-1 et seq.). As used in this section, local

1 unit obligations include the principal or interest on local unit
2 obligations or payment pursuant to a lease or sublease of a school
3 facilities project to a local unit, including the subrogation of the
4 ³[²facilities²]³ authority to the right of the holders of those
5 obligations, any fees or charges payable to the ³[²facilities²]³
6 authority, and any amounts payable by a local unit under a service
7 contract or other contractual arrangement the payments under which
8 are pledged to secure any local unit obligations issued to the
9 ³[²facilities²]³ authority by another local unit.

10 b. If the ³[²facilities²]³ authority requires, and if there has been
11 a failure or inability of a local unit to pay its local unit obligations to
12 the ³[²facilities²]³ authority for a period of 30 days, the chairman or
13 the executive director of the ³[²facilities²]³ authority shall certify to
14 the State Treasurer, with written notice to the fiscal officer of the local
15 unit, the amount remaining unpaid, and the State Treasurer shall pay
16 that amount to the ³[²facilities²]³ authority; or if the right to receive
17 those payments has been pledged or assigned to a trustee for the
18 benefit of the holders of bonds or refunding bonds of the
19 ³[²facilities²]³ authority, to that trustee, out of the State aid payable
20 to the local unit, until the amount so certified has been paid.
21 Notwithstanding any provision of this act to the contrary, the State
22 Treasurer's obligation to pay the ³[²facilities²]³ authority pursuant to
23 this section shall not extend beyond the amount of State aid payable
24 to the local unit.

25 c. The amount paid to the ³[²facilities²]³ authority pursuant to
26 this section shall be deducted from the appropriation or apportionment
27 of State aid payable to the local unit and shall not obligate the State
28 to make, nor entitle the local unit to receive, any additional
29 appropriation or apportionment. The obligation of the State Treasurer
30 to make payments to the ³[²facilities²]³ authority or trustee and the
31 right of the ³[²facilities²]³ authority or trustee to receive those
32 payments shall be subject and subordinate to the rights of holders of
33 qualified bonds issued prior to the effective date of this act pursuant
34 to P.L.1976, c.38 (C.40A:3-1 et seq.) and P.L.1976, c.39 (C.18A:24-
35 85 et seq.).

36

37 22. (New section) a. The ³[²facilities²]³ authority ³[²and the
38 building authority²]³ shall have the power to accept and use any funds
39 appropriated and paid by the State to the ³[²facilities²]³ authority
40 ³[²and the building authority,²]³ for the purposes for which the
41 appropriations are made. The ³[²facilities²]³ authority ³[²and the
42 building authority²]³ shall have the power to apply for and receive and
43 accept appropriations or grants of property, money, services or
44 reimbursements for money previously spent and other assistance
45 offered or made available to it by or from any person, government

1 agency, public authority or any public or private entity whatever for
 2 any lawful corporate purpose of the ³[²facilities²]³ authority,
 3 including, without limitation, grants, appropriations or reimbursements
 4 from the federal government, and to apply and negotiate for the same
 5 upon such terms and conditions as may be required by any person,
 6 government agency, authority or entity as the ³[²facilities²]³ authority
 7 ³[²and the building authority²]³ may determine to be necessary,
 8 convenient or desirable.

9 b. The ³[²facilities²]³ authority shall establish a financial incentive
 10 program for the purpose of promoting donations to school facilities
 11 projects. Any entity which makes a donation approved by the State
 12 Treasurer to the preliminary eligible costs of a school facilities project
 13 shall receive an incentive payment pursuant to the provisions of this
 14 subsection. The amount of the incentive payment shall equal 50% of
 15 the fair market value of the donation but shall not in any one year
 16 exceed one-half of the amount of taxes paid or otherwise due from the
 17 donor pursuant to the provisions of the "New Jersey Gross Income
 18 Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation
 19 Business Tax Act," P.L.1945, c.45 (C.54:10A-1 et seq.), as applicable,
 20 for the tax year in which the donation is made. The fair market value
 21 of a non-cash donation shall be determined by the State Treasurer. The
 22 carry-forward for incentive payments shall not be inconsistent with
 23 that allowed by P.L.1976, c.47 (C.54A:1-1 et seq) in the case of a
 24 donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in
 25 the case of a donation by a corporation.

26 All incentive payments made pursuant to this section shall be funded
 27 by and shall be subject to annual appropriations to the ³[²facilities²]³
 28 authority for this purpose, and shall in no way rely upon funds raised
 29 by the issuance of bonds for school facilities projects.

30
 31 23. (New section) ²a.² Not less than the prevailing wage rate
 32 determined by the Commissioner of Labor pursuant to the provisions
 33 of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers
 34 employed in the performance of construction contracts in connection
 35 with any school facilities project that is undertaken by the
 36 ³[²building²]³ authority ²[, a redevelopment entity,]² ³a
 37 redevelopment entity,³ or a district ²and any contractor who violates
 38 the provisions of this subsection shall be prohibited from subsequently
 39 bidding on any State or district contract.

40 b. Registration fees collected pursuant to P.L.1999, c.238 (C.34:11-
 41 56.48 et seq.) shall be applied toward the enforcement and
 42 administrative costs of the Division of Workplace Standards, Office of
 43 Wage and Hour Compliance, Public Contracts section and Registration
 44 section within the Department of Labor².

45
 46 24. (New section) The commissioner, in consultation with the State

1 Treasurer, shall annually submit to the Governor, the Joint Budget
 2 Oversight Committee, the President of the Senate and the Speaker of
 3 the General Assembly a report on the school facilities construction
 4 program established pursuant to the provisions of this act. The report
 5 shall be submitted no later than August 1 of each year and shall
 6 include, but not be limited to, the following information for the prior
 7 fiscal year: the number of school facilities projects approved by the
 8 commissioner pursuant to section 5 of this act; the number of projects
 9 constructed by the ³[²building²]³ authority and the amount of time
 10 that it has taken the ³[²building²]³ authority to complete those
 11 projects; the ²[amount] ³[value²] aggregate principal amount³ of
 12 bonds ³, notes or other obligations³ issued by the ³[facilities]³
 13 authority for the ²State share of² construction and renovation of
 14 school facilities ²and whether there is a need to adjust the ³aggregate
 15 principal³ amount of bonds ³, notes or other obligations³
 16 authorized for issuance pursuant to subsection a. of section 14 of this
 17 act²; the number of projects constructed by districts; ²[the number of
 18 demonstration projects approved;]² ³the number of demonstration
 19 projects approved;³ the number of approved projects which exceeded
 20 the facilities efficiency standards, the components of those projects
 21 which exceeded the standards, and the amount of construction by
 22 individual districts and Statewide estimated to have exceeded the
 23 standards; and recommendations for changes in the school facilities
 24 construction program established pursuant to this act.

25

26 25. (New section) Notwithstanding the provisions of ³[P.L.1999,
 27 c.138] the annual appropriations act³ to the contrary concerning the
 28 conditions on the appropriation and reappropriation of the balance in
 29 the School Construction and Renovation Fund, the unexpended
 30 balance in the School Construction and Renovation Fund on the
 31 effective date of this act is appropriated to the ³[²building²]³
 32 authority ²[to be used to pay for school facilities projects and the
 33 administrative, insurance, and other operating cost of the authority
 34 incurred in connection with those projects] ³[for deposit in the
 35 School Facilities Construction Fund established pursuant to subsection
 36 e. of section 13 of this act²] to be used to pay for school facilities
 37 projects and the administrative, insurance, and other operating costs
 38 of the authority incurred in connection with school facilities projects.
 39 In addition, there is appropriated from the General Fund to the
 40 Department of Law and Public Safety, Office of the Attorney General,
 41 an amount not to exceed \$1,000,000, subject to the approval of the
 42 Director of the Division of Budget and Accounting in the Department
 43 of the Treasury, for the Unit of Fiscal Integrity in School
 44 Construction, established pursuant to section 70 of this act, and any
 45 additional amounts as may be required by the unit, subject to the

1 approval of the Director of the Division of Budget and Accounting and
2 the Joint Budget Oversight Committee³.

3
4 26. (New section) a. The commissioner shall adopt, pursuant to the
5 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
6 seq.), rules and regulations necessary to implement the provisions of
7 sections 1 through 12 ²and ³[58 through 60²] 57 and 58 and 64³ of
8 this act; except that notwithstanding any provision of P.L.1968, c.410
9 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt,
10 immediately upon filing with the Office of Administrative Law, such
11 rules and regulations as the commissioner deems necessary to
12 implement the provisions of sections 1 through 12 ³and 57 and 58 and
13 64³ of this act which shall be effective for a period not to exceed 12
14 months. Determinations made by the commissioner pursuant to this
15 act and the rules and regulations adopted by the commissioner to
16 implement this act shall be considered to be final agency action and
17 appeal of that action shall be directly to the Appellate Division of the
18 Superior Court. The regulations shall thereafter be amended, adopted
19 or re-adopted by the State Board of Education in accordance with the
20 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

21 b. The ³[²facilities²]³ authority shall adopt, pursuant to the
22 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
23 seq.), ³[and in consultation with the State Treasurer,]³ rules and
24 regulations necessary to implement the provisions of ³[sections 13
25 through 22 of]³ this act ³that apply to the authority³; except that
26 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
27 to the contrary, the ³[²facilities²]³ authority may adopt, immediately
28 upon filing with the Office of Administrative Law, such rules and
29 regulations as the ³[²facilities²]³ authority deems necessary to
30 implement the provisions of ³[sections 13 through 22 of]³ this act
31 ³that apply to the authority³ which shall be effective for a period not
32 to exceed 12 months and shall thereafter be amended, adopted or re-
33 adopted by the ³[²facilities²]³ authority, in accordance with the
34 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

35 c. ³[²The building authority shall adopt, pursuant to the
36 “Administrative Procedure Act”, P.L.1968, c.410 (C.52:14B-1 et
37 seq.), rules and regulations necessary to implement the provisions of
38 this act as they apply to the building authority; except that
39 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.)
40 to the contrary, the building authority may adopt, immediately upon
41 filing with the Office of Administrative Law, such rules and regulations
42 as the building authority deems necessary to implement the provisions
43 of this act as they apply to the building authority which shall be
44 effective for a period not to exceed 12 months and shall thereafter be
45 amended, adopted or re-adopted by the building authority, in

1 accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et
2 seq.).

3 d.²³ Any regulations adopted to implement this act shall include
4 provisions to ensure that all programs necessary to comply with
5 Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), are approved.

6
7 27. (New section) All property of the ³[²facilities authority and the
8 building²]³ authority shall be exempt from levy and sale by virtue of
9 an execution and no execution of other judicial process shall issue
10 against the same nor shall any judgment against the ³[²facilities
11 authority and the building²]³ authority be a charge or lien upon ²[its]
12 ³[their²] ³its³ property; provided that nothing herein contained shall
13 apply to or limit the rights of the holder of any bonds, notes or other
14 obligations to pursue any remedy for the enforcement of any pledge or
15 lien given by the ³[²facilities authority and the building²]³ authority
16 on or with respect to any project, school facilities project, or any
17 revenues or other moneys.

18
19 28. (New section) If any clause, sentence, paragraph, section or
20 part of this act shall be adjudged by any court of competent
21 jurisdiction to be invalid, the judgment shall not affect, impair or
22 invalidate the remainder thereof, but shall be confined in its operation
23 to the clause, sentence, paragraph, section or part thereof directly
24 involved in the controversy in which the judgment shall have been
25 rendered.

26
27 29. (New section) This act shall be construed liberally to effectuate
28 the legislative intent and the purposes of this act as complete and
29 independent authority for the performance of each act and thing herein
30 authorized and all powers herein granted shall be broadly interpreted
31 to effectuate the intent and purposes and not as a limitation of
32 powers.

33
34 30. (New section) There shall be appropriated annually for the
35 purposes of this act up to \$100,000,000 from monies made available
36 to the State from tobacco companies under the nationwide settlement
37 of the respective actions by the various states against those companies,
38 entered into by this State in the Master Settlement Agreement in State
39 of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior
40 Court, Chancery Division, Middlesex County, No.C.254-96.

41
42 31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to
43 read as follows:

44 11. Each school district and county vocational school district shall
45 make an annual report of its progress in conforming to the standards
46 for the evaluation of school performance adopted pursuant to section

- 1 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report
2 shall include but not be limited to:
- 3 a. Demographic data related to each school;
 - 4 b. Results of designated assessment programs, including Statewide
5 assessment programs established pursuant to law and regulation;
 - 6 c. Information on each school's fiscal operation, including the
7 budget of each school;
 - 8 d. (Deleted by amendment, P.L.1996, c.138).
 - 9 e. Plans and programs for professional improvement;
 - 10 f. Plans to carry out innovative educational programs designed to
11 improve the quality of education;
 - 12 g. Recommendations for school improvements during the ensuing
13 year; and
 - 14 h. Such additional information as may be prescribed by the
15 commissioner.

16 [Additionally, the State Board of Education may require each
17 district to submit a facilities survey, including current use practices and
18 projected capital project needs.]

19 The district reports shall be submitted to the commissioner annually
20 on a date to be prescribed by the commissioner, who shall make them
21 the basis for an annual report to the Governor and the Legislature,
22 describing the condition of education in New Jersey, the efforts of
23 New Jersey schools in meeting the standards of a thorough and
24 efficient education, the steps underway to correct deficiencies in
25 school performance, and the progress of New Jersey schools in
26 comparison to other state education systems in the United States.

27 (cf: P.L.1996, c.138, s.36)

28

29 32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to
30 read as follows:

31 1. a. In any State-operated school district created pursuant to the
32 provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be
33 established a Capital Project Control Board, hereinafter the board,
34 which shall be responsible for the review of any capital project
35 proposed by the State district superintendent provided that the State
36 district superintendent proposes that the capital project be financed in
37 whole or in part by school bonds or notes, or through a lease purchase
38 agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board
39 shall also be responsible for the certification to the State district
40 superintendent of schools and the Commissioner of Education of the
41 necessity for the capital project and the certification of the
42 appropriation to be made by the governing body of the municipality.

43 b. The board shall consist of five voting members. One member
44 shall be appointed by the Commissioner of Education and two
45 members shall be appointed by the chief executive officer with the
46 consent of a majority of the full membership of the local governing
47 body of the municipality or municipalities in which the school district

1 is located. If the school district is comprised of two municipalities,
2 each municipality shall be entitled to one member, appointed by the
3 executive officer with the consent of the governing body. If the school
4 district is comprised of more than two municipalities, each of the two
5 municipalities with the largest population according to the most recent
6 federal decennial census shall be entitled to one member, appointed by
7 the executive officer with the consent of the governing body.
8 However, if a local governing body fails to agree upon the selection of
9 either board member appointed by an executive officer, then the
10 Commissioner of Education shall make the appointment. One member
11 shall be appointed by the Director of the Division of Local
12 Government Services in the Department of Community Affairs who
13 shall have experience in the area of local finance and capital projects.
14 The fifth member shall be the State district superintendent of schools
15 who shall serve ex-officio and shall act as chairperson of the board.
16 The board members, except for the State district superintendent, shall
17 each serve for a term of one year commencing on July 1 of each year
18 and expiring on June 30 of the following year. Any vacancy in the
19 membership of the board shall be filled for the unexpired term in the
20 manner provided by the original appointment. Members of the board
21 may be employees of the State or any subdivision thereof. All
22 members of the board shall serve without compensation.

23 c. The board shall meet from time to time upon the request of the
24 State district superintendent. All meetings of the board shall be
25 conducted pursuant to the provisions of the "Open Public Meetings
26 Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district
27 superintendent, or his designee, shall be charged with the responsibility
28 of preparing a transcript of the proceedings and all votes shall be
29 recorded in writing.

30 (cf: P.L.1991, c.139, s.1)

31

32 33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to
33 read as follows:

34 2. The board shall hear the recommendation of the State district
35 superintendent concerning any proposed capital project, which is to be
36 financed in whole or in part by school bonds or notes, or through a
37 lease purchase agreement pursuant to subsection f. of
38 N.J.S.18A:20-4.2, and shall undertake all actions necessary to review
39 the proposed capital project to determine whether the project will
40 assist the State-operated school district in providing a thorough and
41 efficient system of education in that district. In making this
42 determination it may take into consideration factors such as the
43 conditions in the school district, any applicable educational goals, the
44 objectives and standards established by the State, the need for the
45 capital project, the reasonableness of the amount to be expended for
46 the capital project, the estimated time for the undertaking and
47 completion of the capital project, and any other factors which the

1 board may deem necessary including the relationship of the capital
2 project to the long-term capital budget or plan of the school district
3 and the fiscal implications thereof.

4 Following its review and within 60 days of the date on which the
5 State district superintendent submits the recommendation to the board,
6 the board shall adopt a resolution as to whether the State-operated
7 school district should undertake the capital project and providing its
8 reasons therefor. The board shall adopt a resolution indicating the
9 necessity for the capital project and shall also fix and determine by
10 resolution the amount necessary to be raised locally for the capital
11 project. If the board fails to act within 60 days of the submission date,
12 the State district superintendent shall submit the recommendation to
13 the commissioner who shall approve or disapprove the capital project.
14 If the board makes a decision which is contrary to the recommendation
15 of the superintendent, the superintendent may, within 30 days from the
16 date of the board's action, submit the matter to the commissioner for
17 final decision. If the commissioner determines that a capital project
18 should be undertaken, the commissioner shall so notify the board and
19 shall indicate the amount necessary to be raised locally for the capital
20 project. Upon notification, the board shall adopt a resolution
21 indicating the necessity for the capital project and shall also fix and
22 determine by resolution the amount necessary for the capital project
23 as indicated by the commissioner. Certified copies of any resolution
24 requesting the authorization and issuance of bonds and notes or the
25 authorization of a lease purchase agreement shall be delivered to the
26 State district superintendent, the Commissioner of Education, the
27 Director of the Division of Local Government Services in the
28 Department of Community Affairs and the governing body of the
29 municipality or municipalities in which the school district is located.
30 The board shall not approve or recommend any capital project which
31 is inconsistent with the provisions of N.J.S.18A:21-1.

32 (cf: P.L.1991, c.139, s.2)

33

34 34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to
35 read as follows:

36 3. Notwithstanding the provisions of any law to the contrary, the
37 cost of any capital project authorized pursuant to this act which is to
38 be funded by bonds or notes and certified by the board to the State
39 district superintendent, the Commissioner of Education, the Director
40 of the Division of Local Government Services in the Department of
41 Community Affairs and the governing body of the municipality or
42 municipalities in which the school district is located shall be financed
43 by the issuance of school bonds or notes pursuant to the provisions of
44 chapter 24 of Title 18A of the New Jersey Statutes and the "Local
45 Bond Law," (N.J.S.40A:2-1 et seq.) and the notes, school bonds or
46 other obligations shall be authorized, issued, sold and delivered in the
47 manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).

1 (cf: P.L.1991, c.139, s.3)

2

3 35. N.J.S.18A:20-4.2 is amended to read as follows:

4 18A:20-4.2 The board of education of any school district may, for
5 school purposes:

6 (a) Purchase, take and condemn lands within the district and lands
7 not exceeding 50 acres in extent without the district but situate in a
8 municipality or municipalities adjoining the district, but no more than
9 25 acres may be so acquired in any one such municipality, without the
10 district, except with the consent, by ordinance, of such municipality;

11 (b) Grade, drain and landscape lands owned or to be acquired by it
12 and improve the same in like manner;

13 (c) Erect, lease for a term not exceeding 50 years, enlarge, improve,
14 repair or furnish buildings;

15 (d) Borrow money therefor, with or without mortgage; in the case
16 of a type II district without a board of school estimate, when
17 authorized so to do at any annual or special school election; and in the
18 case of a type II district having a board of school estimate, when the
19 amount necessary to be provided therefor shall have been fixed,
20 determined and certified by the board of school estimate; and in the
21 case of a type I district, when an ordinance authorizing expenditures
22 for such purpose is finally adopted by the governing body of a
23 municipality comprised within the district; provided, however, that no
24 such election shall be held nor shall any such resolution of a school
25 estimate board or ordinance of a municipal governing body be
26 introduced to authorize any lease of any building for a term exceeding
27 one year, until the proposed terms of such lease have been reviewed
28 and approved by the Commissioner of Education and the Local
29 Finance Board in the Department of Community Affairs;

30 (e) Construct, purchase, lease or otherwise acquire a building with
31 the federal government, the State, a political subdivision thereof or any
32 other individual or entity properly authorized to do business in the
33 State; provided that: (1) the noneducational uses of the building are
34 compatible with the establishment and operation of a school, as
35 determined by the Commissioner of Education; (2) the portion of the
36 building to be used as a school meets regulations of the Department of
37 Education; (3) the board of education has complied with the
38 provisions of law and regulations relating to the selection and approval
39 of sites; and (4) in the case of a lease, that any lease in excess of five
40 years shall be approved by the Commissioner of Education and the
41 Local Finance Board in the Department of Community Affairs;

42 (f) Acquire [by lease purchase agreement a site and school
43 building; provided that the site and building meet guidelines and
44 regulations of the Department of Education and that any lease
45 purchase agreement in excess of five years shall be approved by the
46 Commissioner of Education as in the best interest of the school district
47 after determining that the relationship of the proposed lease purchase

1 project to the district's goals and objectives established pursuant to
2 P.L.1975, c.212 (C.18A:7A-1 et seq.) has clearly been established; and
3 provided that for any lease purchase agreement in excess of five years
4 the Local Finance Board in the Department of Community Affairs shall
5 determine within 30 days that the cost and the financial terms and
6 conditions of the agreement are reasonable], with the approval of
7 either the commissioner, or voters or board of school estimate, as
8 applicable, improvements or additions to school buildings through
9 lease purchase agreements not in excess of five years. The agreement
10 shall be recorded as an expenditure of the General Fund of the district.
11 The commissioner shall approve the agreement only upon a
12 demonstration by the district that the lease purchase payments and any
13 operating expenses related to the agreement can be included within the
14 district's net budget spending growth limitation and will not result in
15 the need for approval by the voters or board of school estimate, as
16 appropriate, of additional spending proposals to maintain existing
17 instructional programs and extracurricular activities. If the
18 commissioner cannot approve the agreement, the board of education
19 may frame a separate question to authorize the lease purchase
20 agreement and obtain voter or board of school estimate approval to
21 enter into the agreement. A district may, without separate prior
22 approval of the commissioner, also acquire equipment through a lease
23 purchase agreement not in excess of five years, provided that the
24 amount of the first installment and each subsequent installment for the
25 lease purchase payments is included in the budget that is advertised
26 and submitted for approval to the voters of the district or the board of
27 school estimate, as appropriate. As used herein, a "lease purchase
28 agreement" refers to any agreement which gives the board of
29 education as lessee the option of purchasing the leased [premises]
30 equipment or improvements or additions to existing school buildings
31 during or upon termination of the lease, with credit toward the
32 purchase price of all or part of rental payments which have been made
33 by the board of education in accordance with the lease. As part of
34 such a transaction [approved by the Commissioner of Education], the
35 board of education may transfer or lease land or rights in land,
36 including any building thereon, after publicly advertising for proposals
37 for the transfer for nominal or fair market value, to the party selected
38 by the board of education, by negotiation or otherwise, after
39 determining that the proposal is in the best interest of the taxpayers of
40 the district, to construct or to improve and to lease or to own or to
41 have ownership interests in the site and the school building to be
42 leased pursuant to such lease purchase agreement, notwithstanding the
43 provisions of any other law to the contrary. The land and any building
44 thereon which is described in a lease purchase agreement entered into
45 pursuant to this amendatory act, shall be deemed to be and treated as
46 property of the school district, used for school purposes pursuant to
47 R.S.54:4-3.3, and shall not be considered or treated as property leased

1 to another whose property is not exempt, and shall not be assessed as
2 real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any
3 lease purchase agreement authorized by this section shall contain a
4 provision making payments thereunder subject to the annual
5 appropriation of funds sufficient to meet the required payments or
6 shall contain an annual cancellation clause and shall require all
7 construction contracts let by public school districts or let by
8 developers or owners of property used for school purposes to be
9 competitively bid, pursuant to [P.L.1977, c.114 (N.J.S.18A:18A-1 et
10 seq.)] N.J.S.18A:18A-1 et seq.;

11 (g) Establish with an individual or entity authorized to do business
12 in the State a tenancy in common, condominium, horizontal property
13 regime or other joint ownership arrangement on a site contributed by
14 the school district; provided the following conditions are met:

15 (1) The individual or entity agrees to construct on the site, or
16 provide for the construction thereon, a building or buildings for use of
17 the board of education separately or jointly with the individual or
18 entity, which shall be subject to the joint ownership arrangement;

19 (2) The provision of the building shall be at no cost or at a reduced
20 cost to the board of education;

21 (3) The school district shall not make any payment for use of the
22 building other than its pro rata share of costs of maintenance and
23 improvements;

24 (4) The noneducational uses of the building are compatible with the
25 establishment and operation of a school, as determined by the
26 Commissioner of Education;

27 (5) The portion of the building to be used as a school, and the site,
28 meet regulations of the Department of Education; and

29 (6) Any such agreement shall be approved by the Commissioner of
30 Education and the Local Finance Board in the Department of
31 Community Affairs;

32 (h) Acquire through sale and lease-back textbooks and
33 non-consumable instructional materials provided that the sale price and
34 principal amount of the lease-back do not exceed the fair market value
35 of the textbooks and instructional materials and that the interest rate
36 applied in the lease-back is consistent with prevailing market rates or
37 is less.

38 (cf: P.L.1998, c.55, s.1)

39

40 36. N.J.S.18A:22-18 is amended to read as follows:

41 18A:22-18. When a board of education of a type I district shall
42 determine by resolution that it is necessary to sell school bonds to
43 raise money for any capital project authorized by law, it shall prepare
44 and deliver to each member of the board of school estimate a
45 statement of the amount of money estimated to be necessary for such
46 purpose. The statement shall include the amount needed to be raised
47 by school bonds, the final eligible costs of the project as approved by

1 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
2 pending before the Legislature as this bill) ²[and in the case of a
3 demonstration project pursuant to section 6 of P.L. , c. (C.)
4 (now pending before the Legislature as this bill)]^{2 3} and in the case
5 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
6 (C.) (now pending before the Legislature as this bill)³ , and, if
7 applicable, the amount of any costs of the project which are in addition
8 to the final eligible costs.

9 (cf: P.L.1993, c.83, s.6)

10
11 37. N.J.S.18A:22-19 is amended to read as follows:

12 18A:22-19. The board of school estimate shall fix and determine
13 the local share amount necessary for said purpose and shall certify
14 such amount separately to the board of education and to the governing
15 body of the municipality.

16 (cf: N.J.S.18A:22-19)

17
18 38. N.J.S.18A:22-27 is amended to read as follows:

19 18A:22-27. Whenever the board of education in a type II school
20 district having a board of school estimate shall, by resolution adopted
21 by recorded roll call affirmative vote of two thirds of its full
22 membership, determine that it is necessary to sell school bonds to raise
23 money for any capital project, it shall, by such resolution, estimate the
24 amount necessary to be raised for such project or projects, itemizing
25 such estimate so as to make it readily understandable, and the
26 secretary of the board of education shall certify a copy of such
27 resolution to each member of the board of school estimate of the
28 district. The resolution shall include the amount needed to be raised
29 by school bonds, the final eligible costs of the project as approved by
30 the commissioner pursuant to section 5 of P.L. , c. (C.) (now
31 pending before the Legislature as this bill) ²[and in the case of a
32 demonstration project pursuant to section 6 of P.L. , c. (C.)
33 (now pending before the Legislature as this bill)]^{2 3} and in the case
34 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
35 (C.) (now pending before the Legislature as this bill)³ , and, if
36 applicable, the amount of any costs of the project which are in
37 addition to the final eligible costs.

38 (cf: P.L.1993, c.83, s.8)

39
40 39. N.J.S.18A:22-28 is amended to read as follows:

41 18A:22-28. The board of education of such district shall also, upon
42 delivery of such certificate to the members of the board of school
43 estimate, fix a date, place and time for the holding of a public hearing
44 by the board of school estimate with respect to the amount of money
45 to be raised locally for such project or projects, which date shall be not
46 less than 15 nor more than 30 days after the date of such delivery, and
47 shall cause notice of such public hearing and such resolution, including

1 a statement that said resolution will be on file and open to
2 examination to the public between reasonable hours to be fixed and at
3 a place to be named therein from the date of such notice until the date
4 of said public hearing, to be published at least once and not less than
5 seven days before such public hearing in at least one newspaper,
6 published in each municipality comprised within the school district,
7 and if no newspaper is published in any such municipality, then, as to
8 such municipality, in at least one newspaper circulating in the
9 municipality, and said board of education shall cause said resolution
10 to be on file and open to the examination of the public accordingly and
11 to be produced at said public hearing for the information of those
12 attending the same.

13 (cf: N.J.S.18A:22-28)

14

15 40. N.J.S.18A:22-29 is amended to read as follows:

16 18A:22-29. On the date and at the time and place so fixed for such
17 public hearing, the board of school estimate shall grant the taxpayers
18 and other interested persons an opportunity to present objections and
19 to be heard with respect to said resolution and the amount of money
20 necessary to be raised locally for such project or projects and with
21 respect to the various items and projects for which the same is to be
22 raised.

23 (cf: N.J.S.18A:22-29)

24

25 41. N.J.S.18A:22-30 is amended to read as follows:

26 18A:22-30. At or after such hearing the board of school estimate
27 shall fix and determine the amount of money necessary to be raised
28 locally for said project or projects, and the secretary of said board
29 shall certify said amount to the board of education of the district and
30 to the board or body of each municipality comprised therein which has
31 power to make appropriations of money to be raised by taxes in such
32 municipality. The board of education of the district and the governing
33 body of each such municipality comprising the district shall apportion
34 the amount so to be appropriated, assessed, levied and raised in each
35 of such municipalities, as nearly as may be, on the same basis and by
36 the application of the same standards as are provided by law for
37 apportionment of appropriations by county tax boards.

38 (cf: N.J.S.18A:22-30)

39

40 42. N.J.S.18A:22-39 is amended to read as follows:

41 18A:22-39. Whenever the undertaking of any capital project or
42 projects to be paid for from the proceeds of an issue or issue of bonds
43 is submitted to the voters of a type II district at an annual or special
44 school election for their approval or disapproval, the board shall frame
45 and adopt by a recorded roll call majority vote of its full membership
46 the question or questions to be submitted so that each project is
47 submitted in a separate question, or all or any number of them are

1 submitted in one question, which shall state the project or projects so
 2 submitted and the amounts to be raised for each of the projects so
 3 separately submitted or for each or for all of the projects so jointly
 4 submitted, as the case may be, but any proposal for the purchase of
 5 land shall be sufficient to authorize the taking and condemning of such
 6 land. If the project is to be constructed by the New Jersey
 7 ²[Economic Development] ³[Building²] Economic Development ³
 8 Authority ²[or a redevelopment entity] ² ³or a redevelopment entity³
 9 or by the district with a grant pursuant to section 15 of P.L. , c.
 10 (C.) (now pending before the Legislature as this bill), the referendum
 11 shall, when framed as a single question, request approval for the local
 12 share and shall disclose the final eligible costs of the project as
 13 approved by the commissioner pursuant to section 5 of P.L. , c. (C.)
 14 (now pending before the Legislature as this bill) ²[and in the case of
 15 a demonstration project pursuant to section 6 of P.L. , c. (C.)
 16 (now pending before the Legislature as this bill)] ² ³and in the case
 17 of a demonstration project pursuant to sections 5 and 6 of P.L. , c.
 18 (C.) (now pending before the Legislature as this bill) ³ , and, if
 19 applicable, the amount of any costs of the project which are in addition
 20 to the final eligible costs. If the school facilities project is not to be
 21 constructed by the New Jersey ²[Economic Development]
 22 ³[Building²] Economic Development ³ Authority ²[or a
 23 redevelopment entity] ² ³or a redevelopment entity³ or by the district
 24 with a grant pursuant to section 15 of P.L. , c. (C.) (now pending
 25 before the Legislature as this bill), the referendum shall, when framed
 26 as a single question, request approval for the total costs of the project,
 27 shall disclose State debt service aid for the project and, if applicable,
 28 the amount of any costs of the project which are in addition to the final
 29 eligible costs of the project. When a project is framed in more than
 30 one question, a summary shall be included in the explanatory statement
 31 which accompanies the questions that includes the total costs of the
 32 project, total State debt service aid, and, if applicable, the amount of
 33 the costs of the project which are in addition to the final eligible costs
 34 of the project, and any individual question containing costs in addition
 35 to the final eligible costs shall include the amount of those additional
 36 costs.

37 The statement of additional costs in any ballot question and in any
 38 explanatory statement that accompanies a ballot question shall describe
 39 the additional costs as follows: "This project includes \$(insert
 40 amount) for school facility construction elements in addition to the
 41 facilities efficiency standards developed by the Commissioner of
 42 Education."

43 (cf: P.L.1993, c.83, s.12)

44
 45 ²[43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read
 46 as follows:

1 2. The Legislature hereby finds and determines that:

2 a. Department of Labor [and Industry] statistics of recent years
3 indicate a continuing decline in manufacturing employment within the
4 State, which is a contributing factor to the drastic unemployment
5 existing within the State, which far exceeds the national average, thus
6 adversely affecting the economy of the State and the prosperity,
7 safety, health and general welfare of its inhabitants and their standard
8 of living; that there is an urgent need to protect and enhance the
9 quality of the natural environment and to reduce, abate and prevent
10 environmental pollution derived from the operation of industry,
11 utilities and commerce within the State; and that the availability of
12 financial assistance and suitable facilities are important inducements to
13 new and varied employment promoting enterprises to locate in the
14 State, to existing enterprises to remain and expand in the State, and
15 to industry, utilities and commerce to reduce, abate and prevent
16 environmental pollution.

17 b. The provision of buildings, structures and other facilities to
18 increase opportunity for employment in manufacturing, industrial,
19 commercial, recreational, retail and service enterprises in the State is
20 in the public interest and it is a public purpose for the State to induce
21 and to accelerate opportunity for employment in such enterprises.

22 c. In order to aid in supplying these needs and to assist in the
23 immediate reduction of unemployment and to provide sufficient
24 employment for the citizens of the State in the future, it is necessary
25 and in the public interest to aid and encourage the immediate
26 commencement of new construction projects of all types, to induce
27 and facilitate the acquisition and installation at an accelerated rate of
28 such devices, equipment and facilities as may be required to reduce,
29 abate and prevent environmental pollution by industry, utilities and
30 commerce.

31 d. The availability of financial assistance by the State will reduce
32 present unemployment and improve future employment opportunities
33 by encouraging and inducing the undertaking of such construction
34 projects, the location, retaining or expanding of employment
35 promoting enterprises within the State, and the accelerated acquisition
36 and installation of energy saving improvements and pollution control
37 devices, equipment and facilities.

38 e. In many municipalities in our State substantial and persistent
39 unemployment exists; and many existing residential, industrial,
40 commercial and manufacturing facilities within such municipalities are
41 either obsolete, inefficient, dilapidated or are located without regard
42 to the master plans of such municipalities; and the obsolescence and
43 abandonment of existing facilities will increase with further
44 technological advances, the provision of modern, efficient facilities in
45 other states and the difficulty which many municipalities have in
46 attracting new facilities; and that many existing and planned
47 employment promoting facilities are far from or not easily accessible

1 to the places of residence of substantial numbers of unemployed and
2 underemployed persons.

3 f. By virtue of their architectural and cultural heritage, their
4 positions as principal centers of communication and transportation
5 and their concentration of productive and energy efficient facilities,
6 many municipalities are capable of ameliorating the conditions of
7 deterioration which impede sound community growth and
8 development; and that building a proper balance of housing, industrial
9 and commercial facilities and increasing the attractiveness of such
10 municipalities to persons of all income levels is essential to restoring
11 such municipalities as desirable places to live, work, shop and enjoy
12 life's amenities; that the accomplishment of these objectives is beyond
13 remedy solely by the regulatory process in the exercise of the police
14 power and cannot be dealt with effectively by the ordinary operations
15 of private enterprise without the powers provided herein, and that the
16 exercise of the powers herein provided is critical to continuing the
17 process of revitalizing such municipalities and will serve an urgent
18 public use and purpose.

19 The Legislature further determines that in order to aid in remedying
20 the aforesaid conditions and to further and implement the purposes of
21 this act, that there shall be created a body politic and corporate having
22 the powers, duties and functions provided in this act; and that the
23 authority and powers conferred under this act, and the expenditure of
24 moneys pursuant thereto constitute a serving of a valid public purpose;
25 and that the enactment of the provisions hereinafter set forth is in the
26 public interest and for the public benefit and good, and is hereby so
27 declared to be as a matter of express legislative determination.

28 The Legislature further finds and determines that:

29 g. It is essential that this and future generations of young people be
30 given the fullest opportunity to learn and develop their intellectual
31 capacities; that institutions of public elementary and secondary
32 education within the State be provided with the appropriate additional
33 means required to assist these young citizens in achieving the required
34 levels of learning and the complete development of their intellectual
35 abilities; and that the resources of the State be employed to meet the
36 tremendous demand for public elementary and secondary educational
37 opportunities.

38 h. Public elementary and secondary educational facilities are an
39 integral part of the effort in this State to provide educational
40 opportunities; it is the purpose of P.L. , c. (C.)(now pending
41 before the Legislature as this bill) to provide a measure of assistance
42 and an alternative method of financing to enable school districts to
43 provide the facilities which are so critically needed; the inventory of
44 public elementary and secondary school buildings and the equipment
45 and capital resources currently available are aging, both
46 chronologically and technologically; and the current funding at the
47 federal, State, and local levels and the current mechanisms for

1 construction of these capital projects are inadequate to meet the
2 demonstrated need for school facilities, and these inadequacies
3 necessitate additional sources of funding and the coordination of
4 construction activities at the State level to meet those needs.

5 i. While the credit status of New Jersey's school districts is sound,
6 it can be economically more reasonable to finance the costs of
7 developing the educational infrastructure of the State's public
8 elementary and secondary schools by providing for the funding of
9 capital projects through the issuance of bonds, notes or other
10 obligations by the New Jersey Economic Development Authority, to
11 be retired through annual payments made by the State subject to
12 appropriation by the State Legislature, and to provide for the use of
13 the proceeds of those bonds, notes or other obligations to pay for
14 educational infrastructure projects; and such a structure would
15 substantially reduce the costs of financing and provide for a more
16 efficient use of the funds available for the development of the
17 educational infrastructure.

18 j. The New Jersey Economic Development Authority has
19 substantial and significant experience in undertaking major capital
20 construction projects, has a system of internal controls and procedures
21 to ensure the integrity of construction activities, and is therefore the
22 appropriate entity to undertake the planning, design, construction, and
23 operation of educational infrastructure projects; and by authorizing the
24 New Jersey Economic Development Authority to undertake these
25 activities, there will be achieved economies of scale, better
26 coordination of resources, more effective financial management and
27 control and increased monitoring and quality control of school district
28 construction.

29 (cf: P.L.1983, c.282, s.1)]²

30

31 ²[44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read
32 as follows:

33 3. As used in this act, unless a different meaning clearly appears
34 from the context:

35 a. "Authority" means the New Jersey Economic Development
36 Authority, created by section 4 of this act.

37 b. "Bonds" means bonds or other obligations issued by the
38 authority pursuant to this act [or], "Economic Recovery Bonds or
39 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
40 bonds, notes, other obligations and refunding bonds issued by the
41 authority pursuant to P.L. , c. (C.)(now pending before the
42 Legislature as this bill).

43 c. "Cost" means the cost of the acquisition, construction,
44 reconstruction, repair, alteration, improvement and extension of any
45 building, structure, facility including water transmission facilities, or
46 other improvement; the cost of machinery and equipment; the cost of
47 acquisition, construction, reconstruction, repair, alteration,

1 improvement and extension of energy saving improvements or
2 pollution control devices, equipment or facilities; the cost of lands,
3 rights-in-lands, easements, privileges, agreements, franchises, utility
4 extensions, disposal facilities, access roads and site development
5 deemed by the authority to be necessary or useful and convenient for
6 any project or school facilities project or in connection therewith;
7 discount on bonds; cost of issuance of bonds; engineering and
8 inspection costs; costs of financial, legal, professional and other
9 estimates and advice; organization, administrative, insurance,
10 operating and other expenses of the authority or any person prior to
11 and during any acquisition or construction, and all such expenses as
12 may be necessary or incident to the financing, acquisition, construction
13 or completion of any project or school facilities project or part thereof,
14 and also such provision for reserves for payment or security of
15 principal of or interest on bonds during or after such acquisition or
16 construction as the authority may determine.

17 d. "County" means any county of any class.

18 e. "Development property" means any real or personal property,
19 interest therein, improvements thereon, appurtenances thereto and air
20 or other rights in connection therewith, including land, buildings,
21 plants, structures, systems, works, machinery and equipment acquired
22 or to be acquired by purchase, gift or otherwise by the authority within
23 an urban growth zone.

24 f. "Person" means any person, including individuals, firms,
25 partnerships, associations, societies, trusts, public or private
26 corporations, or other legal entities, including public or governmental
27 bodies, as well as natural persons. "Person" shall include the plural as
28 well as the singular.

29 g. "Pollution control project" means any device, equipment,
30 improvement, structure or facility, or any land and any building,
31 structure, facility or other improvement thereon, or any combination
32 thereof, whether or not in existence or under construction, or the
33 refinancing thereof in order to facilitate improvements or additions
34 thereto or upgrading thereof, and all real and personal property
35 deemed necessary thereto, having to do with or the end purpose of
36 which is the control, abatement or prevention of land, sewer, water,
37 air, noise or general environmental pollution, including, but not limited
38 to, any air pollution control facility, noise abatement facility, water
39 management facility, thermal pollution control facility, radiation
40 contamination control facility, wastewater collection system,
41 wastewater treatment works, sewage treatment works system, sewage
42 treatment system or solid waste disposal facility or site; provided that
43 the authority shall have received from the Commissioner of the State
44 Department of Environmental Protection or his duly authorized
45 representative a certificate stating the opinion that, based upon
46 information, facts and circumstances available to the State Department
47 of Environmental Protection and any other pertinent data, (1) said

1 pollution control facilities do not conflict with, overlap or duplicate
2 any other planned or existing pollution control facilities undertaken or
3 planned by another public agency or authority within any political
4 subdivision, and (2) that such facilities, as designed, will be a pollution
5 control project as defined in this act and are in furtherance of the
6 purpose of abating or controlling pollution.

7 h. "Project" means: (1) (a) acquisition, construction,
8 reconstruction, repair, alteration, improvement and extension of any
9 building, structure, facility, including water transmission facilities or
10 other improvement, whether or not in existence or under construction,
11 (b) purchase and installation of equipment and machinery, (c)
12 acquisition and improvement of real estate and the extension or
13 provision of utilities, access roads and other appurtenant facilities; and
14 (2) (a) the acquisition, financing, or refinancing of inventory, raw
15 materials, supplies, work in process, or stock in trade, or (b) the
16 financing, refinancing or consolidation of secured or unsecured debt,
17 borrowings, or obligations, or (c) the provision of financing for any
18 other expense incurred in the ordinary course of business; all of which
19 are to be used or occupied by any person in any enterprise promoting
20 employment, either for the manufacturing, processing or assembly of
21 materials or products, or for research or office purposes, including,
22 but not limited to, medical and other professional facilities, or for
23 industrial, recreational, hotel or motel facilities, public utility and
24 warehousing, or for commercial and service purposes, including, but
25 not limited to, retail outlets, retail shopping centers, restaurant and
26 retail food outlets, and any and all other employment promoting
27 enterprises, including, but not limited to, motion picture and television
28 studios and facilities and commercial fishing facilities, commercial
29 facilities for recreational fishermen, fishing vessels, aquaculture
30 facilities and marketing facilities for fish and fish products and (d)
31 acquisition of an equity interest in, including capital stock of, any
32 corporation; or any combination of the above, which the authority
33 determines will: (i) tend to maintain or provide gainful employment
34 opportunities within and for the people of the State, or (ii) aid, assist
35 and encourage the economic development or redevelopment of any
36 political subdivision of the State, or (iii) maintain or increase the tax
37 base of the State or of any political subdivision of the State, or (iv)
38 maintain or diversify and expand employment promoting enterprises
39 within the State; and (3) the cost of acquisition, construction,
40 reconstruction, repair, alteration, improvement and extension of an
41 energy saving improvement or pollution control project which the
42 authority determines will tend to reduce the consumption in a building
43 devoted to industrial or commercial purposes, or in an office building,
44 of nonrenewable sources of energy or to reduce, abate or prevent
45 environmental pollution within the State; and (4) the acquisition,
46 construction, reconstruction, repair, alteration, improvement,
47 extension, development, financing or refinancing of infrastructure and

1 transportation facilities or improvements related to economic
2 development and of cultural, recreational and tourism facilities or
3 improvements related to economic development and of capital facilities
4 for primary and secondary schools and of mixed use projects
5 consisting of housing and commercial development; and (5) the
6 establishment, acquisition, construction, rehabilitation, improvement,
7 and ownership of port facilities as defined in section 3 of P.L.1997,
8 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
9 any person for costs in connection with any project, or the refinancing
10 of any project or portion thereof, if determined by the authority as
11 necessary and in the public interest to maintain employment and the
12 tax base of any political subdivision and will facilitate improvements
13 thereto or the completion thereof, and (ii) development property and
14 any construction, reconstruction, improvement, alteration, equipment
15 or maintenance or repair, or planning and designing in connection
16 therewith. For the purpose of carrying out mixed use projects
17 consisting of both housing and commercial development, the authority
18 may enter into agreements with the New Jersey Housing and Mortgage
19 Finance Agency for loan guarantees for any such project in accordance
20 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
21 that purpose shall allocate to the New Jersey Housing and Mortgage
22 Finance Agency, under such agreements, funding available pursuant to
23 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
24 shall not include a school facilities project.

25 i. "Revenues" means receipts, fees, rentals or other payments to be
26 received on account of lease, mortgage, conditional sale, or sale, and
27 payments and any other income derived from the lease, sale or other
28 disposition of a project, moneys in such reserve and insurance funds
29 or accounts or other funds and accounts, and income from the
30 investment thereof, established in connection with the issuance of
31 bonds or notes for a project or projects, and fees, charges or other
32 moneys to be received by the authority in respect of projects or school
33 facilities projects and contracts with persons.

34 j. "Resolution" means any resolution adopted or trust agreement
35 executed by the authority, pursuant to which bonds of the authority
36 are authorized to be issued.

37 k. "Energy saving improvement" means the construction, purchase
38 and installation in a building devoted to industrial or commercial
39 purposes of any of the following, designed to reduce the amount of
40 energy from nonrenewable sources needed for heating and cooling that
41 building: insulation, replacement burners, replacement high efficiency
42 heating and air conditioning units, including modular boilers and
43 furnaces, water heaters, central air conditioners with or without heat
44 recovery to make hot water for industrial or commercial purposes or
45 in office buildings, and any solar heating or cooling system
46 improvement, including any system which captures solar radiation to
47 heat a fluid which passes over or through the collector element of that

1 system and then transfers that fluid to a point within the system where
2 the heat is withdrawn from the fluid for direct usage or storage. These
3 systems shall include, but not necessarily be limited to, systems
4 incorporating flat plate, evacuated tube or focusing solar collectors.

5 The foregoing list shall not be construed to be exhaustive, and shall
6 not serve to exclude other improvements consistent with the legislative
7 intent of this amendatory act.

8 l. "Urban growth zone" means any area within a municipality
9 receiving State aid pursuant to the provisions of P.L.1978, c.14
10 (C.52:27D-178 et seq.) or a municipality certified by the
11 Commissioner of Community Affairs to qualify under such law in
12 every respect except population, which area has been so designated
13 pursuant to an ordinance of the governing body of such municipality.

14 m. "District" means a local or regional school district established
15 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
16 Statutes, a county special services school district established pursuant
17 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
18 county vocational school district established pursuant to article 3 of
19 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
20 operated school district established pursuant to P.L.1987, c.399
21 (C.18A:7A-34 et seq.).

22 n. "Local unit" means a county, municipality, board of education
23 or any other political entity authorized to construct, operate and
24 maintain a school facilities project and to borrow money for those
25 purposes pursuant to Title 18A of the New Jersey Statutes.

26 o. "Refunding bonds" means bonds, notes or other obligations
27 issued to refinance bonds previously issued by the authority pursuant
28 to P.L.1974, c.80 (C34:1B-1 et seq.) and P.L. , c. (C.)(now
29 pending before the Legislature as this bill).

30 p. "School facilities project" means the acquisition, demolition,
31 construction, improvement, repair, alteration, modernization,
32 renovation, reconstruction or maintenance of all or any part of a
33 school facility or of any other personal property necessary for, or
34 ancillary to, any school facility, and shall include fixtures, furnishings
35 and equipment, and shall also include, but is not limited to, site
36 acquisition, site development, the services of design professionals,
37 such as engineers and architects, construction management, legal
38 services, financing costs and administrative costs and expenses
39 incurred in connection with the project.

40 q. "School facility" means and includes any structure, building or
41 facility used wholly or in part for academic purposes by a district, but
42 shall exclude athletic stadiums, grandstands, and any structure, building
43 or facility used solely for school administration.

44 (cf: P.L.1997, c.150, s.22)]²

45

46 ²[45. Section 4 of P.L.1974, c. 80 (C.34:1B-4) is amended to read
47 as follows:

1 4. a. There is hereby established in, but not of, the Department of
2 ~~[Commerce and Economic Development] the Treasury~~ a public body
3 corporate and politic, with corporate succession, to be known as the
4 "New Jersey Economic Development Authority." The authority is
5 hereby constituted as an instrumentality of the State exercising public
6 and essential governmental functions, and the exercise by the authority
7 of the powers conferred by this act shall be deemed and held to be an
8 essential governmental function of the State.

9 b. The authority shall consist of the Commissioner of Banking, the
10 ~~[Commissioner of Commerce and Economic Development] Chief~~
11 ~~Executive Officer and Secretary of the New Jersey Commerce and~~
12 ~~Economic Growth Commission~~, the Commissioner of Labor, ~~the~~
13 ~~Commissioner of Education~~, and the State Treasurer, who shall be
14 members ex officio, and ~~[six] eight~~ public members appointed by the
15 Governor ~~[with the advice and consent of the Senate, of which one]~~
16 ~~as follows: two~~ public ~~[member] members~~ (who shall not be ~~[a~~
17 ~~legislator] legislators~~) shall be appointed by the Governor upon
18 recommendation of the Senate President ~~[and one]; two~~ public
19 ~~[member] members~~ (who shall not be ~~[a legislator] legislators~~) shall
20 be appointed by the Governor upon recommendation of the Speaker
21 of the General Assembly; ~~and four public members shall be appointed~~
22 ~~by the Governor, with the advice and consent of the Senate~~, all for
23 terms of three years. ~~[The first two public member positions on the~~
24 ~~authority that are or become vacant on or after the effective date of~~
25 ~~P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by appointment of~~
26 ~~the Governor upon the recommendation of the Senate President and~~
27 ~~the Speaker of the General Assembly, respectively.]~~ Each member
28 shall hold office for the term of his appointment and until his successor
29 shall have been appointed and qualified. A member shall be eligible for
30 reappointment. Any vacancy in the membership occurring other than
31 by expiration of term shall be filled in the same manner as the original
32 appointment but for the unexpired term only. In the event the
33 authority shall by resolution determine to accept the declaration of an
34 urban growth zone by any municipality, the mayor or other chief
35 executive officer of such municipality shall ex officio be a member of
36 the authority for the purpose of participating and voting on all matters
37 pertaining to such urban growth zone.

38 The Governor shall appoint ~~[with the advice and consent of the~~
39 ~~Senate,] three~~ alternate members of the authority ~~[, of which] as~~
40 ~~follows: one~~ alternate member (who shall not be a legislator) shall be
41 appointed by the Governor upon the recommendation of the Senate
42 President ~~[, and]; one~~ alternate member (who shall not be a legislator)
43 shall be appointed by the Governor upon the recommendation of the
44 Speaker of the General Assembly ; ~~and one alternate member shall be~~
45 ~~appointed by the Governor with the advice and consent of the Senate~~,
46 all for terms of three years. ~~[The first two alternate member positions~~

1 on the authority that are or become vacant on or after the effective
2 date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be filled by
3 appointment of the Governor upon the recommendation of the Senate
4 President and the Speaker of the General Assembly, respectively.]
5 The chairperson may authorize an alternate member, in order of
6 appointment, to exercise all of the powers, duties and responsibilities
7 of such member, including, but not limited to, the right to vote on
8 matters before the authority.

9 Each alternate member shall hold office for the term of his
10 appointment and until his successor shall have been appointed and
11 qualified. An alternate member shall be eligible for reappointment.
12 Any vacancy in the alternate membership occurring other than by the
13 expiration of a term shall be filled in the same manner as the original
14 appointment but for the unexpired term only. Any reference to a
15 member of the authority in this act shall be deemed to include alternate
16 members unless the context indicates otherwise.

17 The terms of office of the members and alternate members of the
18 authority appointed by the Governor who are serving on the effective
19 date of P.L. , c. (C.) (now pending before the Legislature as this
20 bill) shall expire upon the appointment by the Governor of eight public
21 members and three alternate members. The initial appointments of the
22 eight public members shall be as follows: the two members appointed
23 upon the recommendation of the President of the Senate and the two
24 members appointed upon the recommendation of the Speaker of the
25 General Assembly shall serve terms of three years; two members shall
26 serve terms of two years; and two members shall serve terms of one
27 year. The initial appointments of the alternate members shall be as
28 follows: the alternate member appointed upon the recommendation of
29 the President of the Senate shall serve a term of three years; the
30 alternate member appointed upon the recommendation of the Speaker
31 of the General Assembly shall serve a term of two years; and one
32 alternate member shall serve a term of one year.

33 c. Each member appointed by the Governor may be removed from
34 office by the Governor, for cause, after a public hearing, and may be
35 suspended by the Governor pending the completion of such hearing.
36 Each member before entering upon his duties shall take and subscribe
37 an oath to perform the duties of his office faithfully, impartially and
38 justly to the best of his ability. A record of such oaths shall be filed in
39 the office of the Secretary of State.

40 d. [The Commissioner of Commerce and Economic Development
41 may, at his discretion, serve as the chairperson of the authority or may
42 appoint one of the six public members of the authority as chairperson.
43 Any such designation or appointment shall be made in writing and shall
44 be delivered to the authority and to the Governor and shall continue
45 in effect until revoked or amended by a writing delivered to the
46 authority and the Governor.] A chairperson shall be appointed by the
47 Governor, with the advice and consent of the Senate, from the public

1 members. The members of the authority shall elect from their
2 remaining number a vice chairperson and a treasurer thereof. The
3 authority shall employ an executive director who shall be its secretary
4 and chief executive officer. The powers of the authority shall be
5 vested in the members thereof in office from time to time and [~~six~~]
6 seven members of the authority shall constitute a quorum at any
7 meeting thereof. Action may be taken and motions and resolutions
8 adopted by the authority at any meeting thereof by the affirmative vote
9 of at least [~~six~~] seven members of the authority. No vacancy in the
10 membership of the authority shall impair the right of a quorum of the
11 members to exercise all the powers and perform all the duties of the
12 authority.

13 e. Each member of the authority shall execute a bond to be
14 conditioned upon the faithful performance of the duties of such
15 member in such form and amount as may be prescribed by the Director
16 of the Division of Budget and Accounting in the Department of the
17 Treasury. Such bonds shall be filed in the office of the Secretary of
18 State. At all times thereafter the members and treasurer of the
19 authority shall maintain such bonds in full force and effect. All costs
20 of such bonds shall be borne by the authority.

21 f. The members of the authority shall serve without
22 compensation, but the authority shall reimburse its members for actual
23 expenses necessarily incurred in the discharge of their duties.
24 Notwithstanding the provisions of any other law, no officer or
25 employee of the State shall be deemed to have forfeited or shall forfeit
26 his office or employment or any benefits or emoluments thereof by
27 reason of his acceptance of the office of ex officio member of the
28 authority or his services therein.

29 g. Each ex officio member of the authority may designate an
30 officer or employee of his department to represent him at meetings of
31 the authority, and each such designee may lawfully vote and otherwise
32 act on behalf of the member for whom he constitutes the designee.
33 Any such designation shall be in writing delivered to the authority and
34 shall continue in effect until revoked or amended by writing delivered
35 to the authority.

36 h. The authority may be dissolved by act of the Legislature on
37 condition that the authority has no debts or obligations outstanding or
38 that provision has been made for the payment or retirement of such
39 debts or obligations. Upon any such dissolution of the authority, all
40 property, funds and assets thereof shall be vested in the State.

41 i. A true copy of the minutes of every meeting of the authority
42 shall be forthwith delivered by and under the certification of the
43 secretary thereof to the Governor. No action taken at such meeting
44 by the authority shall have force or effect until 10 days, Saturdays,
45 Sundays, and public holidays excepted, after the copy of the minutes
46 shall have been so delivered, unless during such 10-day period the
47 Governor shall approve the same in which case such action shall

1 become effective upon such approval. If, in that 10-day period, the
2 Governor returns such copy of the minutes with veto of any action
3 taken by the authority or any member thereof at such meeting, such
4 action shall be null and void and of no effect. The powers conferred
5 in this subsection i. upon the Governor shall be exercised with due
6 regard for the rights of the holders of bonds and notes of the authority
7 at any time outstanding, and nothing in, or done pursuant to, this
8 subsection i. shall in any way limit, restrict or alter the obligation or
9 powers of the authority or any representative or officer of the
10 authority to carry out and perform in every detail each and every
11 covenant, agreement or contract at any time made or entered into by
12 or on behalf of the authority with respect to its bonds or notes or for
13 the benefit, protection or security of the holders thereof.

14 j. On or before March 31 in each year, the authority shall make
15 an annual report of its activities for the preceding calendar year to the
16 Governor and the Legislature. Each such report shall set forth a
17 complete operating and financial statement covering the authority's
18 operations during the year. The authority shall cause an audit of its
19 books and accounts to be made at least once in each year by certified
20 public accountants and cause a copy thereof to be filed with the
21 Secretary of State and the Director of the Division of Budget and
22 Accounting in the Department of the Treasury.

23 k. The Director of the Division of Budget and Accounting in the
24 Department of the Treasury and his legally authorized representatives
25 are hereby authorized and empowered from time to time to examine
26 the accounts, books and records of the authority including its receipts,
27 disbursements, contracts, sinking funds, investments and any other
28 matters relating thereto and to its financial standing.

29 l. No member, officer, employee or agent of the authority shall
30 be interested, either directly or indirectly, in any project or school
31 facilities project, or in any contract, sale, purchase, lease or transfer of
32 real or personal property to which the authority is a party.

33 (cf: P.L.1995, c.227)]²

34

35 ²[46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
36 as follows:

37 5. The authority shall have the following powers:

38 a. To adopt bylaws for the regulation of its affairs and the conduct
39 of its business;

40 b. To adopt and have a seal and to alter the same at pleasure;

41 c. To sue and be sued;

42 d. To acquire in the name of the authority by purchase or
43 otherwise, on such terms and conditions and such manner as it may
44 deem proper, or by the exercise of the power of eminent domain in the
45 manner provided by the Eminent Domain Act of 1971, P.L.1971,
46 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
47 property which it may determine is reasonably necessary for any

1 project or school facilities project; provided, however, that the
2 authority in connection with any project shall not take by exercise of
3 the power of eminent domain any real property except upon consent
4 thereto given by resolution of the governing body of the municipality
5 in which such real property is located; and provided further that the
6 authority shall be limited in its exercise of the power of eminent
7 domain in connection with any project to municipalities receiving State
8 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
9 to municipalities which had a population, according to the latest
10 federal decennial census, in excess of 10,000;

11 e. To enter into contracts with a person upon such terms and
12 conditions as the authority shall determine to be reasonable, including,
13 but not limited to, reimbursement for the planning, designing,
14 financing, construction, reconstruction, improvement, equipping,
15 furnishing, operation and maintenance of the project or the school
16 facilities project and to pay or compromise any claims arising
17 therefrom;

18 f. To establish and maintain reserve and insurance funds with
19 respect to the financing of the project or the school facilities project;

20 g. To sell, convey or lease to any person all or any portion of a
21 project or school facilities project, for such consideration and upon
22 such terms as the authority may determine to be reasonable;

23 h. To mortgage, pledge or assign or otherwise encumber all or any
24 portion of a project , school facilities project or revenues, whenever
25 it shall find such action to be in furtherance of the purposes of this act
26 and P.L. , c. (C.)(now pending before the Legislature as this
27 bill);

28 i. To grant options to purchase or renew a lease for any of its
29 projects or school facilities projects on such terms as the authority may
30 determine to be reasonable;

31 j. To contract for and to accept any gifts or grants or loans of funds
32 or property or financial or other aid in any form from the United States
33 of America or any agency or instrumentality thereof, or from the State
34 or any agency, instrumentality or political subdivision thereof, or from
35 any other source and to comply, subject to the provisions of the act
36 and P.L. , c. (C.)(now pending before the Legislature as this
37 bill), with the terms and conditions thereof;

38 k. In connection with any application for assistance under this act
39 or P.L. , c. (C.)(now pending before the Legislature as this bill)
40 or commitments therefor, to require and collect such fees and charges
41 as the authority shall determine to be reasonable;

42 l. To adopt, amend and repeal regulations to carry out the
43 provisions of this act and P.L. , c. (C.)(now pending before the
44 Legislature as this bill);

45 m. To acquire, purchase, manage and operate, hold and dispose of
46 real and personal property or interests therein, take assignments of
47 rentals and leases and make and enter into all contracts, leases,

- 1 agreements and arrangements necessary or incidental to the
2 performance of its duties;
- 3 n. To purchase, acquire and take assignments of notes, mortgages
4 and other forms of security and evidences of indebtedness;
- 5 o. To purchase, acquire, attach, seize, accept or take title to any
6 project or school facilities project by conveyance or by foreclosure,
7 and sell, lease, manage or operate any project or school facilities
8 project for a use specified in this act and P.L. , c. (C.)(now
9 pending before the Legislature as this bill);
- 10 p. To borrow money and to issue bonds of the authority and to
11 provide for the rights of the holders thereof, as provided in this act and
12 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 13 q. To extend credit or make loans to any person for the planning,
14 designing, acquiring, constructing, reconstructing, improving,
15 equipping and furnishing of a project or school facilities project, which
16 credits or loans may be secured by loan and security agreements,
17 mortgages, leases and any other instruments, upon such terms and
18 conditions as the authority shall deem reasonable, including provision
19 for the establishment and maintenance of reserve and insurance funds,
20 and to require the inclusion in any mortgage, lease, contract, loan and
21 security agreement or other instrument, such provisions for the
22 construction, use, operation and maintenance and financing of a
23 project or school facilities project as the authority may deem necessary
24 or desirable;
- 25 r. To guarantee up to 90% of the amount of a loan to a person, if
26 the proceeds of the loan are to be applied to the purchase and
27 installation, in a building devoted to industrial or commercial
28 purposes, or in an office building, of an energy improvement system;
- 29 s. To employ consulting engineers, architects, attorneys, real estate
30 counselors, appraisers, and such other consultants and employees as
31 may be required in the judgment of the authority to carry out the
32 purposes of the act and P.L. , c. (C.)(now pending before the
33 Legislature as this bill), and to fix and pay their compensation from
34 funds available to the authority therefor, all without regard to the
35 provisions of Title 11A of the New Jersey Statutes;
- 36 t. To do and perform any acts and things authorized by this act and
37 P.L. , c. (C.)(now pending before the Legislature as this bill)
38 under, through or by means of its own officers, agents and employees,
39 or by contract with any person;
- 40 u. To procure insurance against any losses in connection with its
41 property, operations or assets in such amounts and from such insurers
42 as it deems desirable;
- 43 v. To do any and all things necessary or convenient to carry out its
44 purposes and exercise the powers given and granted in the act and
45 P.L., c. (C.)(now pending before the Legislature as this bill);
- 46 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
47 maintain or repair or provide for the construction, reconstruction,

1 improvement, alteration, equipping or maintenance or repair of any
2 development property and lot, award and enter into construction
3 contracts, purchase orders and other contracts with respect thereto,
4 upon such terms and conditions as the authority shall determine to be
5 reasonable, including, but not limited to, reimbursement for the
6 planning, designing, financing, construction, reconstruction,
7 improvement, equipping, furnishing, operation and maintenance of any
8 such development property and the settlement of any claims arising
9 therefrom and the establishment and maintenance of reserve funds with
10 respect to the financing of such development property;

11 x. When authorized by the governing body of a municipality
12 exercising jurisdiction over an urban growth zone, to construct, cause
13 to be constructed or to provide financial assistance to projects in an
14 urban growth zone which shall be exempt from the terms and
15 requirements of the land use ordinances and regulations, including, but
16 not limited to, the master plan and zoning ordinances, of such
17 municipality; and

18 y. To enter into business employment incentive agreements as
19 provided in the "Business Employment Incentive Program Act,"
20 P.L.1996, c.26 (C.34:1B-124 et al.)[.];

21 z. To undertake school facilities projects and to enter into
22 agreements or contracts, execute instruments, and do and perform all
23 acts or things necessary, convenient or desirable for the purposes of
24 the authority to carry out any power expressly provided pursuant to
25 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
26 pending before the Legislature as this bill), including, but not limited
27 to, entering into contracts with the State Treasurer, the Commissioner
28 of Education, districts and any other entity which may be required in
29 order to carry out the provisions of P.L. , c. (C.)(now pending
30 before the Legislature as this bill);

31 aa. To enter into leases, rentals or other disposition of a real
32 property interest in and of any school facilities project to or from any
33 local unit pursuant to P.L. , c. (C.)(now pending before the
34 Legislature as this bill);

35 bb. To make and contract to make loans or leases and to make
36 grants to local units to finance the cost of school facilities projects and
37 to acquire and contract to acquire bonds, notes or other obligations
38 issued or to be issued by local units to evidence the loans or leases, all
39 in accordance with the provisions of P.L. , c. (C.)(now pending
40 before the Legislature as this bill);

41 cc. Subject to any agreement with holders of its bonds issued to
42 finance a project or school facilities project, obtain as security or to
43 provide liquidity for payment of all or any part of the principal of and
44 interest and premium on the bonds of the authority or for the purchase
45 upon tender or otherwise of the bonds, lines of credit, letters of credit,
46 reimbursement agreements, interest rate exchange agreements,
47 currency exchange agreements, interest rate floors or caps, options,

1 puts or calls to hedge payment, currency, rate, spread or similar
2 exposure or similar agreements, float agreements, forward agreements,
3 insurance contract, surety bond, commitment to purchase or sell
4 bonds, purchase or sale agreement, or commitments or other contracts
5 or agreements, and other security agreements or instruments in any
6 amounts and upon any terms as the authority may determine and pay
7 any fees and expenses required in connection therewith;

8 dd. To charge to and collect from local units, the State and any
9 other person, any fees and charges in connection with the authority's
10 actions undertaken with respect to school facilities projects, including,
11 but not limited to, fees and charges for the authority's administrative,
12 organization, insurance, operating and other expenses incident to the
13 financing, construction and placing into service and maintenance of
14 school facilities projects.

15 (cf: P.L.1996, c.26, s.16)]²

16
17 ²[47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to
18 read as follows:

19 1. The New Jersey Economic Development Authority shall adopt
20 rules and regulations requiring that not less than the prevailing wage
21 rate be paid to workers employed in the performance of construction
22 contracts undertaken in connection with [Authority financial
23 assistance] any of its projects or school facilities projects. The
24 prevailing wage rate shall be the rate determined by the Commissioner
25 of Labor [and Industry] pursuant to the provisions of P.L.1963,
26 c.150 (C.34:11-56.25 et seq.).

27 (cf: P.L.1979, c.303, s.1)]²

28
29 ²[48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to
30 read as follows:

31 4. a. The New Jersey Economic Development Authority shall adopt
32 rules and regulations to establish an affirmative action program for the
33 hiring of minority workers employed in the performance of
34 construction contracts undertaken in connection with any of its
35 projects [receiving Authority assistance] and school facilities
36 projects, and to expand the business opportunities of socially and
37 economically disadvantaged contractors and vendors seeking to
38 provide materials and services for those contracts, consistent with the
39 provisions of the "Law Against Discrimination," P.L.1945, c.169
40 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
41 proper enforcement and administration of such rules and regulations.

42 b. Within 180 days of the effective date of P.L. , c. (C.)(now
43 pending before the Legislature as this bill), but before adoption of its
44 rules and regulations concerning its affirmative action program, the
45 authority shall submit the proposed rules and regulations to the
46 presiding officers and the standing committees on State government

1 of both houses of the Legislature for their review.

2 (cf: P.L.1979, c.303, s.4)]²

3

4 ²[49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to
5 read as follows:

6 15. The exercise of the powers granted by this act and P.L. , c.
7 (C.)(now pending before the Legislature as this bill) shall constitute
8 the performance of an essential governmental function and the
9 authority shall not be required to pay any taxes or assessments upon
10 or in respect of a project or school facilities project, or any property
11 or moneys of the authority, and the authority, its projects and school
12 facilities projects, property and moneys and any bonds and notes
13 issued under the provisions of this act and P.L. , c. (C.)(now
14 pending before the Legislature as this bill), their transfer and the
15 income therefrom, including any profit made on the sale thereof, shall
16 at all times be free from taxation of every kind by the State except for
17 transfer, inheritance and estate taxes and by any political subdivision
18 of the State; provided, that any person occupying a project whether
19 as lessee, vendee or otherwise shall, as long as title thereto shall
20 remain in the authority, pay to the political subdivision in which such
21 project is located a payment in lieu of taxes which shall equal the
22 taxes on real and personal property, including water and sewer service
23 charges or assessments, which such person would have been required
24 to pay had it been the owner of such property during the period for
25 which such payment is made and neither the authority nor its projects,
26 properties, money or bonds and notes shall be obligated, liable or
27 subject to lien of any kind for the enforcement, collection or payment
28 thereof. If and to the extent the proceedings under which the bonds
29 authorized to be issued under the provisions of this act so provide, the
30 authority may agree to cooperate with such person occupying a
31 project, in connection with any administrative or judicial proceedings
32 for determining the validity or amount of such payments and may
33 agree to appoint or designate and reserve the right in and for such
34 person to take all action which the authority may lawfully take in
35 respect of such payments and all matters relating thereto, provided
36 such person shall bear and pay all costs and expenses of the authority
37 thereby incurred at the request of such person or by reason of any
38 such action taken by such person in behalf of the authority. If such
39 person occupying a project has paid the amounts in lieu of taxes
40 required by this section to be paid such person shall not be required
41 to pay any such taxes as to which a payment in lieu thereof has been
42 made to the State or to any political subdivision, any other statute to
43 the contrary notwithstanding.

44 (cf: P.L.1974, c.80, s.15)]²

45

46 ²[50. (New section) In the exercise of powers granted by P.L. ,
47 c. (C.)(now pending before the Legislature as this bill) in

1 connection with any school facilities project, any and all claims,
2 damages, losses, liabilities or costs that the authority may incur shall
3 be payable only from the amounts made available to the authority
4 pursuant to that act. In connection with any agreement or contract
5 entered into by the authority relating to any school facilities project,
6 there shall be no recovery against the authority for punitive or
7 consequential damages arising out of contract nor shall there be any
8 recovery against the authority for claims based upon implied
9 warranties or upon contracts implied in law.]²

10
11 ²[51. (New section) a. No municipality shall modify or change the
12 drawings, plans or specifications for the construction, reconstruction,
13 rehabilitation, alteration or improvement of any school facilities
14 project of the authority, or the construction, plumbing, heating,
15 lighting or other mechanical branch of work necessary to complete the
16 work in question, nor to require that any person, firm or corporation
17 employed on any such work shall perform the work in any other or
18 different manner than that provided by the drawings, plans and
19 specifications, nor to require that any person, firm or corporation
20 obtain any other or additional authority, approval, permit or certificate
21 from the municipality in relation to the work being done, and the doing
22 of the work by any person, firm or corporation in accordance with the
23 terms of the drawings, plans, specifications or contracts shall not
24 subject the person, firm or corporation to any liability or penalty, civil
25 or criminal, other than as may be stated in the contracts or incidental
26 to the proper enforcement thereof; nor shall any municipality require
27 the authority or any person, firm, partnership or corporation which
28 leases or purchases the school facilities project for lease or purchase
29 to a State agency, to obtain any other or additional authority,
30 approval, permit, certificate or certificate of occupancy from the
31 municipality as a condition of owning, using, maintaining, operating or
32 occupying any school facilities project acquired, constructed,
33 reconstructed, rehabilitated, altered or improved by the authority or by
34 any subsidiary thereof. The foregoing provisions shall not preclude
35 any municipality from exercising the right of inspection for the purpose
36 of requiring compliance by any school facilities project with local
37 requirements for operation and maintenance affecting the health, safety
38 and welfare of the occupants thereof, provided that the compliance
39 does not require changes, modifications or additions to the original
40 construction of the school facilities project.

41 b. Each municipality in which any school facilities project of the
42 authority is located shall provide for the school facilities project,
43 whether then owned by the authority, any subsidiary, any State agency
44 or any person, firm, partnership or corporation, police, fire, sanitation,
45 health protection and other municipal services of the same character
46 and to the same extent as those provided for other residents of the
47 municipality.

1 c. In carrying out any school facilities project, the authority may
2 enter into contractual agreements with local government agencies with
3 respect to the furnishing of any community, municipal or public
4 facilities or services necessary or desirable for the school facilities
5 project, and any local government agency may enter into these
6 contractual agreements with the authority and do all things necessary
7 to carry out its obligations.]]²

8
9 ²[52. (New section) a. The authority, in the exercise of its
10 authority to make and enter into contracts and agreements for school
11 facilities projects necessary or incidental to the performance of its
12 duties and the execution of its powers, shall adopt standing rules and
13 procedures providing that no contract on behalf of the authority in
14 connection with a school facilities project shall be entered into for the
15 doing of any work, or for the hiring of equipment or vehicles, where
16 the sum to be expended exceeds the sum of \$7,500 unless the
17 authority shall first publicly advertise for bids therefor, and shall award
18 the contract to the lowest responsible bidder. Advertising shall not
19 be required where the contract to be entered into is one for the
20 furnishing or performing of services of a professional nature or for the
21 supplying of any product or the rendering of any service by a public
22 utility subject to the jurisdiction of the Board of Public Utilities and
23 tariffs and schedules of the charges made, charged, or exacted by the
24 public utility for any products to be supplied or services to be
25 rendered are filed with the board. This section shall not prevent the
26 authority from having any work done by its own employees, nor shall
27 it apply to repairs, or to the furnishing of materials, supplies or labor,
28 or the hiring of equipment or vehicles, when the safety or protection
29 of its or other public property or the public convenience requires, or
30 the exigency of the accomplishment of the school facilities projects
31 will not allow advertisement. In that case, the board of directors of
32 the authority shall, by resolution, declare the exigency or emergency
33 to exist, and set forth in the resolution the nature thereof and the
34 approximate amount to be so expended.

35 b. (1) In undertaking any school facilities project where the cost of
36 construction, reconstruction, rehabilitation or improvement will exceed
37 \$25,000 the authority shall be subject to the rules and regulations of
38 the Division of Property Management and Construction concerning
39 procedural requirements for the making, negotiating or awarding of
40 purchases, contracts or agreements and the prequalification and
41 classification of bidders; and the authority, with the assistance of the
42 division, may prepare, or cause to be prepared, separate plans and
43 specifications for:

44 (a) The plumbing and gas fitting and all work and materials kindred
45 thereto,

46 (b) The steam and hot water heating and ventilating apparatus,
47 steam power plants and all work and materials kindred thereto,

- 1 (c) The electrical work,
- 2 (d) Structural steel and ornamental iron work and materials, and
- 3 (e) General construction, which shall include all other work and
- 4 materials required to complete the building.

5 (2) The authority shall receive (a) separate bids for each of the
6 branches of work specified in paragraph (1) of this subsection; or (b)
7 bids for all the work and materials required to complete the school
8 facilities projects to be included in a single overall contract, in which
9 case there shall be set forth in the bid the name or names of all
10 subcontractors to whom the bidder will subcontract for the furnishing
11 of any of the work and materials specified in branches (a) through (d)
12 in paragraph (1) of this subsection; or (c) both.

13 (3) Contracts shall be awarded to the lowest responsible bidder in
14 each branch of work in the case of separate bids and to the single
15 lowest responsible bidder in the case of single bids. In the event that
16 a contract is advertised in accordance with subparagraph (c) of
17 paragraph (2) of this subsection, the contract shall be awarded in the
18 following manner: If the sum total of the amounts bid by the lowest
19 responsible bidder for each branch is less than the amount bid by the
20 lowest responsible bidder for all of the work and materials, the
21 authority shall award separate contracts for each of branches to the
22 lowest responsible bidder therefor, but if the sum total of the amount
23 bid by the lowest responsible bidder for each branch is not less than
24 the amount bid by the lowest responsible bidder for all the work and
25 materials, the authority shall award a single over-all contract to the
26 lowest responsible bidder for all of the work and materials.

27 Whenever a contract is awarded under subparagraph (b) or (c) of
28 paragraph (2) of this subsection, all payments required to be made by
29 the authority under the contract for work and materials supplied by a
30 subcontractor may, upon the certification of the contractor of the
31 amount due to the subcontractor, be paid directly to the
32 subcontractor. Payments to a subcontractor for work and materials
33 supplied in connection with the contract shall be made within 10
34 calendar days of the receipt of payment for that work or the delivery
35 of those materials by the subcontractor in accordance with the
36 provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any
37 regulations promulgated thereunder.

38 (4) All construction, reconstruction, rehabilitation or improvement
39 of school facilities projects undertaken by the authority pursuant to
40 the provisions of P.L. , c. (C.) (now pending before the
41 Legislature as this bill) shall be subject during such undertaking to the
42 supervision of the Division of Property Management and Construction
43 to the same extent as any project undertaken by the State.]²

44

45 ²[53. (New section) a. If the authority shall find it necessary in
46 connection with the undertaking of any school facilities project to
47 change the location of any portion of any public highway or road, it

1 may contract with any government agency, or public or private
2 corporation which may have jurisdiction over the public highway or
3 road to cause the public highway or road to be constructed at such
4 locations as the authority shall deem most favorable. The cost of the
5 reconstruction and any damage incurred in changing the location of the
6 highway shall be ascertained and paid by the authority as part of the
7 cost of the school facilities project. Any public highway affected by
8 the construction of any school facilities project may be vacated or
9 relocated by the authority in the manner now provided by law for the
10 vacation or relocation of public roads, and any damages awarded on
11 account thereof shall be paid by the authority as a part of the cost of
12 the school facilities project. In all undertakings authorized by this
13 subsection, the authority shall consult and obtain the approval of the
14 Commissioner of Transportation.

15 b. The authority and its authorized agents and employees may enter
16 upon any lands, waters and premises for the purpose of making
17 surveys, soundings, drillings and examinations as it may deem
18 necessary or convenient for the purposes of this act, all in accordance
19 with due process of law, and this entry shall not be deemed a trespass
20 nor shall an entry for this purpose be deemed an entry under any
21 condemnation proceedings which may be then pending. The authority
22 shall make reimbursement for any actual damages resulting to the
23 lands, waters and premises as a result of these activities.

24 c. The authority shall have the power to make reasonable
25 regulations for the installation, construction, maintenance, repair,
26 renewal, relocation and removal of tracks, pipes, mains, conduits,
27 cables, wires, towers, poles and other equipment and appliances,
28 herein called "public utility facilities," or any public utility as defined
29 in R.S.48:2-13, in, on, along, over or under any school facilities
30 project. Whenever the authority shall determine that it is necessary
31 that any public utility facilities which now are, or hereafter may be,
32 located in, on, along, over or under any school facilities project shall
33 be relocated in the school facilities project, or should be removed from
34 the school facilities project, the public utility owning or operating the
35 facilities shall relocate or remove them in accordance with the order
36 of the authority. The cost and expenses of the relocation or removal,
37 including the cost of installing the facilities in a new location or new
38 locations, and the cost of any lands, or any rights or interests in lands,
39 and any other rights, acquired to accomplish the relocation or removal,
40 shall be ascertained and paid by the authority as a part of the cost of
41 the school facilities project. In case of any relocation or removal of
42 facilities, the public utility owning or operating them, its successors or
43 assigns, may maintain and operate the facilities, with the necessary
44 appurtenances, in the new location or new locations, for as long a
45 period, and upon the same terms and conditions, as it had the right to
46 maintain and operate the facilities in their former location or locations.
47 In all undertakings authorized by this subsection the authority shall

1 consult and obtain the approval of the Board of Public Utilities.]²

2

3 ²[54. (New section) Notwithstanding the provisions of any law to
4 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
5 pending before the Legislature as this bill) shall be fully negotiable
6 within the meaning and for all purposes of Title 12A of the New Jersey
7 Statutes, and each holder or owner of such a bond or other obligation,
8 or of any coupon appurtenant thereto, by accepting the bond or
9 coupon shall be conclusively deemed to have agreed that the bond or
10 coupon is and shall be fully negotiable within the meaning and for all
11 purposes of Title 12A.]²

12

13 ²[55. Section 22 of P.L. 1975, c.291 (C.40:55D-31) is amended to
14 read as follows:

15 22. a. Whenever the planning board shall have adopted any portion
16 of the master plan, the governing body or other public agency having
17 jurisdiction over the subject matter, before taking action necessitating
18 the expenditure of any public funds, incidental to the location,
19 character or extent of such project, shall refer the action involving
20 such specific project to the planning board for review and
21 recommendation in conjunction with such master plan and shall not act
22 thereon, without such recommendation or until 45 days have elapsed
23 after such reference without receiving such recommendation. This
24 requirement shall apply to action by a housing, parking, highway,
25 special district, or other authority, redevelopment agency, school
26 board or other similar public agency, State, county or municipal.

27 b. The planning board shall review and issue findings concerning
28 any long-range facilities plan submitted to the board pursuant to the
29 "Educational Facilities Construction and Financing Act," P.L. ,
30 c. (C.) (now pending before the Legislature as this bill), for the
31 purpose of review of the extent to which the long-range facilities plan
32 is informed by, and consistent with, at least the land use plan element
33 and the housing element contained within the municipal master plan
34 adopted pursuant to section 19 of P.L. 1975, c. 291 (C.40:55D-28 and
35 such other elements of the municipal master plan as the planning board
36 deems necessary to determine whether the prospective sites for school
37 facilities contained in the long range facilities plan promote more
38 effective and efficient coordination of school construction with the
39 development efforts of the municipality. The planning board shall
40 devote at least one full meeting of the board to presentation and
41 review of the long-range facilities plan prior to adoption of a
42 resolution setting forth the board's findings.

43 (cf: P.L.1975, c.291, s.22)]²

44

45 ³[²43. N.J.S.18A:72A-1 is amended to read as follows:

46 18A:72A-1. [It is hereby declared] The Legislature finds and

1 declares that a serious public emergency exists affecting and
2 threatening the welfare, comfort, health, safety and prosperity of the
3 people of the state and resulting from the fact that financial resources
4 are lacking with which to construct required dormitory and other
5 educational facilities at public and private institutions of higher
6 education and to construct public elementary and secondary school
7 facilities; that it is essential that this and future generations of youth
8 be given the fullest opportunity to learn and to develop their
9 intellectual and mental capacities; that it is essential that institutions
10 for higher education and school districts within the state be provided
11 with appropriate additional means to assist such youth in achieving
12 the required levels of learning and development of their intellectual
13 and mental capacities; that it is essential that all resources of the state
14 be employed in order to meet the tremendous demand for higher
15 educational opportunities and public school facilities; that all
16 institutions of higher education in the state, both public and private,
17 and all public elementary and secondary educational institutions, are
18 an integral part of the total educational effort in the state for
19 providing higher educational opportunities, and that it is the purpose
20 of this chapter and P.L. , c. (C.) (now pending before the
21 Legislature as this bill) to provide a measure of assistance and an
22 alternative method of financing to enable institutions of higher
23 education and public school districts in the state to provide the
24 facilities which are sorely needed to accomplish the purposes of this
25 chapter and P.L. , c. (C.) (now pending before the Legislature as
26 this bill), all to the public benefit and good, to the extent and manner
27 provided herein and in P.L. , c. (C.) (now pending before the
28 Legislature as this bill).

29 The Legislature further finds that the inventory of public
30 elementary and secondary school buildings and the equipment and
31 capital resources currently available are aging, both chronologically
32 and technologically; that the current funding at the federal, State, and
33 local levels and the current mechanisms for construction of these
34 capital projects is inadequate to meet the demonstrated need for public
35 school facilities and these inadequacies necessitate additional sources
36 of funding and the coordination of construction activities at the State
37 level to meet those needs; that while the credit status of New Jersey's
38 school districts is sound, it can be economically more reasonable to
39 finance the costs of developing the educational infrastructure of the
40 State's public elementary and secondary schools, by providing for the
41 funding of capital projects through the issuance of bonds, notes or
42 other obligations by the New Jersey Educational Facilities Authority,
43 to be retired through annual payments made by the State subject to
44 appropriation by the State Legislature, and to provide for the use of
45 the proceeds of those bonds, notes or other obligations to pay for
46 educational infrastructure projects; that such a structure would
47 substantially reduce the costs of financing and provide for a more

1 efficient use of the funds available for the development of the
2 educational infrastructure; that the New Jersey Building Authority has
3 substantial and significant experience in undertaking major capital
4 construction projects, has a system of internal controls and procedures
5 to ensure the integrity of construction activities, and is therefore the
6 appropriate entity to undertake the planning, design, construction and
7 operation of elementary and secondary educational infrastructure
8 projects; and that by authorizing the New Jersey Educational Facilities
9 Authority and the New Jersey Building Authority to undertake these
10 activities, there will be achieved economies of scale, better
11 coordination of resources, effective financial management and
12 reporting, and increased monitoring and quality control of school
13 district instruction. ²

14 (cf: N.J.S.18A:72A-1)]³

15

16 ³[²⁴⁴. N.J.S.18A:72A-3 is amended to read as follows:

17 18A:72A-3. As used in this act, the following words and terms
18 shall have the following meanings, unless the context indicates or
19 requires another or different meaning or intent:

20 "Authority" means the New Jersey Educational Facilities Authority
21 created by this chapter or any board, body, commission, department
22 or officer succeeding to the principal functions thereof or to whom the
23 powers conferred upon the authority by this chapter and P.L. , c.
24 (C.) (now pending before the Legislature as this bill) shall be given
25 by law;

26 "Bond" means bonds [or] , notes or other obligations and
27 refunding bonds of the authority issued pursuant to this chapter and
28 P.L. , c. (C.) (now pending before the Legislature as this bill);

29 "Cost" means in connection with a school facilities project, all costs
30 and expenses necessary or incident to all or part of a school facilities
31 project, including the costs associated with financing and
32 administrative fees and expenses ;

33 "County college capital project" means any capital project of a
34 county college certified pursuant to section 2 of P.L.1971, c.12
35 (C.18A:64A-22.2) and approved by the State Treasurer for funding
36 pursuant to the "County College Capital Projects Fund Act,"
37 P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

38 "District" means a local or regional school district established
39 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
40 Statutes, a county special services school district established pursuant
41 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
42 county vocational school district established pursuant to article 3 of
43 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
44 operated school district established pursuant to P.L.1987, c.399
45 (C.18A:7A-34);

46 "Dormitory" means a housing unit with necessary and usual
47 attendant and related facilities and equipment;

1 "Educational facility" means a structure suitable for use as a
2 dormitory, dining hall, student union, administration building,
3 academic building, library, laboratory, research facility, classroom,
4 athletic facility, health care facility, teaching hospital, and parking
5 maintenance storage or utility facility and other structures or facilities
6 related thereto or required or useful for the instruction of students or
7 the conducting of research or the operation of an institution for higher
8 education, and public libraries, and the necessary and usual attendant
9 and related facilities and equipment, but shall not include any facility
10 used or to be used for sectarian instruction or as a place for religious
11 worship;

12 "Emerging needs program" means a program at one or more public
13 or private institutions of higher education directed to meeting new and
14 advanced technology needs or to supporting new academic programs
15 in science and technology;

16 "Higher education equipment" means any property consisting of, or
17 relating to, scientific, engineering, technical, computer,
18 communications or instructional equipment;

19 "Local unit" means a county, municipality, board of education or
20 any other political entity authorized to construct, operate and maintain
21 a school facilities project and to borrow money for those purposes
22 pursuant to Title 18A of the New Jersey Statutes;

23 "Participating college" means a public institution of higher
24 education or private college which, pursuant to the provisions of this
25 chapter, participates with the authority in undertaking the financing
26 and construction or acquisition of a project;

27 "Project" means a dormitory or an educational facility or any
28 combination thereof, or a county college capital project, but shall not
29 include a school facilities project;

30 "Private college" means an institution for higher education other
31 than a public college, situated within the State and which, by virtue of
32 law or charter, is a nonprofit educational institution empowered to
33 provide a program of education beyond the high school level;

34 "Private institution of higher education" means independent colleges
35 or universities incorporated and located in New Jersey, which by virtue
36 of law or character or license, are nonprofit educational institutions
37 authorized to grant academic degrees and which provide a level of
38 education which is equivalent to the education provided by the State's
39 public institutions of higher education as attested by the receipt of and
40 continuation of regional accreditation by the Middle States Association
41 of Colleges and Schools, and which are eligible to receive State aid;

42 "Public institution of higher education" means Rutgers, The State
43 University, the State colleges, the New Jersey Institute of Technology,
44 the University of Medicine and Dentistry of New Jersey, the county
45 colleges and any other public university or college now or hereafter
46 established or authorized by law;

47 "School facilities project" means the acquisition, demolition,

1 construction, improvement, repair, alteration, modernization,
2 renovation, reconstruction or maintenance of all or any part of any
3 school facility or of any other personal property necessary for or
4 ancillary to any school facility, and shall include fixtures, furnishings
5 and equipment, and shall include, but is not limited to, site
6 acquisition, site development, the services of design professionals such
7 as engineers and architects, construction management, legal services,
8 financing costs and administrative costs and expenses incurred in
9 connection with the school facilities project.

10 "School facility" means and includes any structure, building or
11 facility used wholly or in part for academic purposes by a district, but
12 shall exclude athletic stadiums, grandstands, and any structure,
13 building or facility used solely for school administration.

14 "Refunding bonds" means bonds, notes, or other obligations issued
15 to refinance bonds previously issued by the authority pursuant to this
16 chapter and P.L. , c. (C.) (now pending before the Legislature as
17 this bill).

18 "University" means Rutgers, The State University.²
19 (cf: P.L.1999, c.184, s.6)]³

1 ³[²45. N.J.S.18A:72A-4 is amended to read as follows:

2 18A:72A-4. (a) There is hereby established in but not of the
3 Department of the Treasury a public body corporate and politic, with
4 corporate succession to be known as the "New Jersey educational
5 facilities authority." Notwithstanding this allocation, the authority shall
6 be independent of any supervision or control by the department or any
7 officer thereof. The authority shall constitute a political subdivision of
8 the State established as an instrumentality exercising public and
9 essential governmental functions, and the exercise by the authority of
10 the powers conferred by this chapter and P.L. , c. (C.) (now
11 pending before the Legislature as this bill) shall be deemed and held
12 to be an essential governmental function of the State.

13 (b) The authority shall consist of seven members, two of whom
14 shall be the chairman of the Commission on Higher Education, ex
15 officio, and the State Treasurer, ex officio, or when so designated by
16 them, their deputies; one person to be appointed by the Governor upon
17 the recommendation of the President of the Senate and one person
18 appointed by the Governor upon the recommendation of the Speaker
19 of the General Assembly who shall serve during the two-year
20 legislative term in which they are appointed and until their successors
21 are appointed and qualified; and [five] three citizens of the State to be
22 appointed by the Governor [with the advice and consent of the
23 Senate] no more than two of whom shall be of the same political party
24 for terms of five years [; provided that the terms of the members first
25 appointed shall be arranged by the Governor so that one of such terms
26 shall expire on April 30 in each successive year ensuing after such
27 appointments]. Each member shall hold office for the term of his
28 appointment and shall continue to serve during the term of his
29 successor unless and until his successor shall have been appointed and
30 qualified. Any vacancy among the members appointed by the
31 Governor shall be filled by appointment for the unexpired term only.
32 A member of the authority shall be eligible for reappointment.

33 The terms of office of members of the authority appointed by the
34 Governor who are serving on the effective date of P.L. , c. (C.)
35 (now pending before the Legislature as this bill) shall expire upon the
36 appointment by the Governor of five members of the authority as
37 provided by this section. The five members initially appointed by the
38 Governor pursuant to this section shall be as follows: one member
39 upon the recommendation of the President of the Senate and one
40 member upon the recommendation of the Speaker of the General
41 Assembly, who shall serve during the two-year legislative term in
42 which they are appointed; and three members whose terms shall be
43 arranged so that a term of one of the members expires on April 30 in
44 each successive year ensuing after the appointments.

45 (c) Any member of the authority appointed by the Governor may
46 be removed from office by the Governor for cause after a public
47 hearing.

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

4 (e) The authority, upon the first appointment of its members and
5 thereafter on or after April 30 in each year, shall annually elect from
6 among its members a chairman and a vice chairman who shall hold
7 office until April 30 next ensuing and shall continue to serve during the
8 terms of their respective successors unless and until their respective
9 successors shall have been appointed and qualified. The authority may
10 also appoint, retain and employ, without regard to the provisions of
11 Title 11, Civil Service, of the Revised Statutes, such officers, agents,
12 employees and experts as it may require, and it shall determine their
13 qualifications, terms of office, duties, services and compensation.

14 (f) The powers of the authority shall be vested in the members
15 thereof in office from time to time and a majority of the total
16 authorized membership of the authority shall constitute a quorum at
17 any meeting thereof. Action may be taken and motions and resolutions
18 adopted by the authority at any meeting thereof by the affirmative vote
19 of a majority of the members present, unless in any case the bylaws of
20 the authority shall require a larger number. No vacancy in the
21 membership of the authority shall impair the right of a quorum to
22 exercise all the rights and perform all the duties of the authority.

23 (g) Before the issuance of any bonds under the provisions of this
24 chapter or P.L. , c. (C.) (now pending before the Legislature as
25 this bill) , the members and the officer of the authority charged with
26 the handling of the authority's moneys shall be covered by a surety
27 bond or bonds in a penal sum of not less than \$25,000.00 per person
28 conditioned upon the faithful performance of the duties of their
29 respective offices, and executed by a surety company authorized to
30 transact business in the State of New Jersey as surety. Each such bond
31 shall be submitted to the attorney general for his approval and upon his
32 approval shall be filed in the Office of the Secretary of State prior to
33 the issuance of any bonds by the authority. At all times after the
34 issuance of any bonds by the authority the officer of the authority and
35 each member charged with the handling of the authority's moneys shall
36 maintain such surety bonds in full force and effect. All costs of such
37 surety bonds shall be borne by the authority.

38 (h) Notwithstanding any other law to the contrary, it shall not be
39 or constitute a conflict of interest for a trustee, director, officer or
40 employee of a participating college or a member or employee of a
41 board of education to serve as a member of the authority; provided
42 such trustee, director, officer, member or employee shall abstain from
43 discussion, deliberation, action and vote by the authority under this
44 chapter or P.L. , c. (C.) (now pending before the Legislature as
45 this bill) in specific respect to such participating college or board of
46 education of which such member is a trustee, director, officer,
47 member or employee.

1 (i) A true copy of the minutes of every meeting of the authority
2 shall be forthwith delivered by and under the certification of the
3 secretary thereof, to the Governor. No action taken at such meeting
4 by the authority shall have force or effect until 10 days, Saturdays,
5 Sundays and public holidays excepted, after such copy of the minutes
6 shall have been so delivered. If, in said 10-day period, the Governor
7 returns such copy of the minutes with veto of any action taken by the
8 authority or any member thereof at such meeting, such action shall be
9 null and of no effect. If the Governor shall not return the minutes
10 within said 10-day period, any action therein recited shall have force
11 and effect according to the wording thereof. At any time prior to the
12 expiration of the said 10-day period, the Governor may sign a
13 statement of approval of any such action of the authority, in which
14 case the action so approved shall not thereafter be disapproved.

15 Notwithstanding the foregoing provisions of this subsection (i),
16 with regard to the authorization or sale of bonds of the authority, the
17 authority shall furnish to the Governor a certified copy of the minutes
18 of the meeting at which the bonds are authorized or sold and the
19 Governor shall indicate approval or disapproval of the action upon
20 receipt of the certified copy of the minutes.

21 The powers conferred in this subsection (i) upon the Governor shall
22 be exercised with due regard for the rights of the holders of bonds of
23 the authority at any time outstanding, and nothing in, or done pursuant
24 to, this subsection (i) shall in any way limit, restrict or alter the
25 obligation or powers of the authority or any representative or officer
26 of the authority to carry out and perform in every detail each and
27 every covenant, agreement or contract at any time made or entered
28 into by or on behalf of the authority with respect to its bonds or for
29 the benefit, protection or security of the holders thereof.²

30 (cf: P.L.1999, c.217, s.11)]³

31

32 ³[²46. N.J.S.18A:72A-5 is amended to read as follows:

33 18A:72A-5. The authority shall have power:

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

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

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

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

42 (e) To borrow money and to issue bonds and notes and other
43 obligations of the authority and to provide for the rights of the holders
44 thereof as provided in this chapter and P.L. , c. (C.) (now
45 pending before the Legislature as this bill);

46 (f) To acquire, lease as lessee, hold and dispose of real and
47 personal property or any interest therein, in the exercise of its powers

1 and the performance of its duties under this chapter and P.L. , c.
2 (C.) (now pending before the Legislature as this bill);

3 (g) To acquire in the name of the authority by purchase or
4 otherwise, on such terms and conditions and in such manner as it may
5 deem proper, or by the exercise of the power of eminent domain, any
6 land or interest therein and other property which it may determine is
7 reasonably necessary for any project or school facilities project,
8 including any lands held by any county, municipality, local unit or
9 other governmental subdivision of the State; and to hold and use the
10 same and to sell, convey, lease or otherwise dispose of property so
11 acquired, no longer necessary for the authority's purposes;

12 (h) To receive and accept, from any federal or other public agency
13 or governmental entity, grants or loans for or in aid of the acquisition
14 or construction of any project or school facilities project, and to
15 receive and accept aid or contributions from any other source, of
16 either money, property, labor or other things of value, to be held, used
17 and applied only for the purposes for which such grants, loans and
18 contributions may be made consistent with this chapter and section 22
19 of P.L. , c. (C.) (now pending before the Legislature as this bill);

20 (i) To prepare or cause to be prepared plans, specifications,
21 designs and estimates of costs for the construction and equipment of
22 projects for participating colleges under the provisions of this chapter,
23 and from time to time to modify such plans, specifications, designs or
24 estimates;

25 (j) By contract or contracts or by its own employees to construct,
26 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
27 projects for participating colleges and, pursuant to the provisions of
28 P.L. ,c. (C.) (now pending before the Legislature as this bill), to
29 finance the planning, design, and construction of school facilities
30 projects; however, in any contract or contracts undertaken by the
31 authority for the construction, reconstruction, rehabilitation or
32 improvement of any public college project where the cost of such
33 work will exceed \$25,000, the contracting agent shall advertise for and
34 receive in the manner provided by law:

- 35 (1) separate bids for the following categories of work;
36 (a) the plumbing and gas fitting work;
37 (b) the heating and ventilating systems and equipment;
38 (c) the electrical work, including any electrical power plants;
39 (d) the structural steel and ornamental iron work;
40 (e) all other work and materials required for the completion of the
41 project, or
42 (2) bids for all work and materials required to complete the entire
43 project if awarded as a single contract; or
44 (3) both (1) and (2) above.

45 All bids submitted shall set forth the names and license numbers of,
46 and evidence of performance security from, all subcontractors to
47 whom the bidder will subcontract the work described in the foregoing

1 categories (1)(a) through (1)(e).

2 Contracts shall be awarded to the lowest responsible bidder whose
3 bid, conforming to the invitation for bids, will be the most
4 advantageous to the authority;

5 (k) To determine the location and character of any project to be
6 undertaken pursuant to the provisions of this chapter; and to
7 construct, reconstruct, maintain, repair, operate, lease, as lessee or
8 lessor, and regulate the same pursuant to this chapter in the case of
9 any project, and as authorized pursuant to the provisions of P.L. , c.
10 (C.) (now pending before the Legislature as this bill) in the case of
11 any school facilities project; to enter into contracts for any or all such
12 purposes; to enter into contracts for the management and operation of
13 a project and the financing of a school facilities project, and to
14 designate a participating college as its agent to determine the location
15 and character of a project undertaken by such participating college
16 under the provisions of this chapter and, as the agent of the authority,
17 to construct, reconstruct, maintain, repair, operate, lease, as lessee or
18 lessor, and regulate the same, and, as agent of the authority, to enter
19 into contracts for any and all such purposes including contracts for the
20 management and operation of such project;

21 (l) To establish rules and regulations for the use of a project or any
22 portion thereof and to designate a participating college as its agent to
23 establish rules and regulations for the use of a project undertaken by
24 such participating college;

25 (m) Generally to fix and revise from time to time and to charge and
26 collect rates, rents, fees and other charges for the use of and for the
27 services furnished or to be furnished by a project or, if applicable, a
28 school facilities project or any portion thereof and to contract with
29 holders of its bonds and with any other person, party, association,
30 corporation or other body, public or private, in respect thereof;

31 (n) To enter into any and all agreements or contracts, execute any
32 and all instruments, and do and perform any and all acts or things
33 necessary, convenient or desirable for the purposes of the authority or
34 to carry out any power expressly given in this chapter or in P.L. ,
35 c. (C.) (now pending before the Legislature as this bill);

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

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

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

1 (r) To enter into agreements or contracts, execute instruments, and
2 do and perform all acts or things necessary, convenient or desirable for
3 the purposes of the authority to carry out any power expressly
4 provided pursuant to this chapter and P.L. , c. (C.)(now
5 pending before the Legislature as this bill), including, but not limited
6 to, entering into contracts with the State Treasurer and the building
7 authority as authorized pursuant to section 18 of P.L. , c. (C.)
8 (now pending before the Legislature as this bill and entering into
9 agreements with districts as may be authorized pursuant to P.L. , c.
10 (C.) (now pending before the Legislature as this bill);

11 (s) To enter into leases, rentals or other disposition of a real
12 property interest in and of any school facilities project to or from any
13 local unit, pursuant to P.L. , c. (C.)(now pending before the
14 Legislature as this bill);

15 (t) To make and contract to make loans or leases to local units to
16 finance the cost of school facilities projects and to acquire and
17 contract to acquire bonds, notes or other obligations issued or to be
18 issued by local units to evidence the loans or leases, all in accordance
19 with the provisions of this chapter and P.L. , c. (C.)(now
20 pending before the Legislature as this bill);

21 (u) Subject to any agreement with holders of its bonds issued to
22 finance a school facilities project, obtain as security or to provide
23 liquidity for payment of all or any part of the principal of and interest
24 and premium on the bonds of the authority or for the purchase upon
25 tender or otherwise of the bonds, lines of credit, letters of credit,
26 reimbursement agreements, interest rate exchange agreements,
27 currency exchange agreements, interest rate floors or caps, options,
28 puts or calls to hedge payment, currency, rate, spread or similar
29 exposure or similar agreements, float agreements, forward agreements,
30 insurance contract, surety bond, commitment to purchase or sell
31 bonds, purchase or sale agreement, or commitments or other contracts
32 or agreements and other security agreements or instruments in any
33 amounts and upon any terms as the authority may determine and pay
34 any fees and expenses required in connection therewith;

35 (v) To charge to and collect from local units, the State and any
36 other person, any fees and charges in connection with the authority's
37 actions undertaken with respect to projects and school facilities
38 projects, including, but not limited to, fees and charges for the
39 authority's administrative, organization, insurance, operating and other
40 expenses incident to the financing, construction and placing into
41 service and maintenance of projects and school facilities projects.²

42 (cf: P.L.1997, c.360, s.6)]³

43

44 ³[²47. N.J.S.18A:72A-12 is amended to read as follows:

45 18A:72A-12. **[All]** With respect to projects, all moneys received
46 pursuant to the authority of this chapter, whether as proceeds from the
47 sale of bonds or as revenues, shall be deemed to be trust funds to be

1 held and applied solely as provided in this chapter. Any officer with
2 whom, or any bank or trust company with which, such moneys shall be
3 deposited shall act as trustee of such moneys and shall hold and apply
4 the same for the purposes hereof, subject to such regulations as this
5 chapter and the resolution authorizing the bonds of any issue or the
6 trust agreement securing such bonds may provide.²

7 (cf: N.J.S.18A:72A-12)]³

8

9 ³[²48. N.J.S.18A:72A-15 is amended to read as follows:

10 18A:72A-15. Bonds and notes issued by the authority under the
11 provisions of this chapter and P.L. , c. (C.) (now pending before
12 the Legislature as this bill) are hereby made securities in which the
13 state and all political subdivisions of the state, their officers, boards,
14 commissions, departments or other agencies, all banks, bankers,
15 savings banks, trust companies, savings and loan associations,
16 investment companies and other persons carrying on a banking
17 business, all insurance companies, insurance associations, and other
18 persons carrying on an insurance business, and all administrators,
19 executors, guardians, trustees and other fiduciaries, and all other
20 persons whatsoever who now are or may hereafter be authorized to
21 invest in bonds or other obligations of the state, may properly and
22 legally invest any funds, including capital belonging to them or within
23 their control; and said bonds, notes or other securities or obligations
24 are hereby made securities which may properly and legally be
25 deposited with and received by any state or municipal officers or
26 agency of the state for any purpose for which the deposit of bonds or
27 other obligations of the state is now or may hereafter be authorized
28 by law.²

29 (cf: N.J.S.18A:72A-15)]³

30

31 ³[²49. Section 2 of P.L.1981, c.120 (C.52:18A-78.2) is amended
32 to read as follows:

33 2. As used in this act, unless the context clearly indicates
34 otherwise:

35 a. "Authority" means the New Jersey Building Authority created
36 under this act.

37 b. "Bonds" means bonds , notes, other obligations and refunding
38 bonds issued by the authority pursuant to this act.

39 c. "Building" includes any portion thereof, such as an apartment
40 created under the "Horizontal Property Act," P.L.1963, c.168
41 (C.46:8A-1 et seq.) or a unit created under the "Condominium Act,"
42 P.L.1969, c.257 (C.46:8B-1 et seq.).

43 d. "Local governmental agency" means any municipality, county,
44 school district, or any agency, department or instrumentality of any of
45 the foregoing, or any other public body having local or regional
46 jurisdiction or powers and not constituting a State agency.

47 e. "Notes" means notes issued by the authority pursuant to this act.

1 f. "Project" means any building or buildings, including related
2 structures, parking facilities, improvements, real and personal property
3 or any interest therein, including lands under water, space rights and
4 air rights, and other appurtenances and facilities necessary or
5 convenient to the use or operation of the building or buildings,
6 acquired, owned, constructed, reconstructed, extended, rehabilitated,
7 renovated, preserved or improved by the authority for the purposes set
8 forth in section 8 of P.L.1992, c.174 (C.52:18A-78.5a), but shall not
9 include a school facilities project.

10 g. "State agency" means the Executive, Legislative or Judicial
11 branch of the State Government or any officer, department, board,
12 commission, bureau, division, public authority or corporation, agency
13 or instrumentality of the State.

14 h. "Historic public building" means a building that is owned by a
15 governmental agency and that is on or eligible for State or National
16 Registers of Historic Places.

17 i. "District" means a local or regional school district established
18 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
19 Statutes, a county special services school district established pursuant
20 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
21 county vocational school district established pursuant to article 3 of
22 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
23 operated school district established pursuant to P.L.1987, c.399
24 (C.18A:7A-34).

25 j. "Local unit" means a county, municipality, board of education or
26 any other political entity authorized to construct, operate and maintain
27 a school facilities project and to borrow money for those purposes
28 pursuant to Title 18A of the New Jersey Statutes.

29 k. "School facilities project" means the acquisition, demolition,
30 construction, improvement, repair, alteration, modernization,
31 renovation, reconstruction or maintenance of all or any part of a
32 school facility or of any other personal property necessary for or
33 ancillary to a school facility, and shall include fixtures, furnishings and
34 equipment, and shall include, but is not limited to, site acquisition, site
35 development, the services of design professionals such as engineers
36 and architects, construction management, legal services and financing
37 and administrative costs incurred in connection with the school
38 facilities project.

39 l. "School facility" means and includes any structure, building or
40 facility used wholly or in part for academic purposes by a district, but
41 shall exclude athletic stadiums, grandstands, and any structure,
42 building or facility used solely for school administration.

43 m. "Refunding bonds" means bonds, notes, or other obligations
44 issued to refinance bonds previously issued by the authority pursuant
45 to P.L.1981, c.120 (C.52:18A-78.1 et seq.).²

46 (cf: P.L.1992, c.174, s.1)]³

47

1 ³[²50. Section 3 of P.L.1981, c.120 (C.52:18A-78.3) is amended
2 to read as follows:

3 3. The Legislature finds and declares the following:

4 a. That for many years the functions of the State Government have
5 grown and that during this period of rapid expansion no definite
6 program has been adopted for the housing and carrying out of the
7 operations of the many State agencies.

8 b. That many State agencies have their offices in privately owned
9 or inadequate State owned buildings and that these buildings are
10 inadequate to meet the needs of these State agencies and the needs of
11 the people of the State.

12 c. That it is to the economic benefit and general welfare of the
13 citizens of the State to provide sufficient office space and related
14 facilities for these State agencies and thus provide for a more efficient
15 and economic operation of State Government.

16 d. That projects for the construction of correctional facilities are
17 required because of a critical public need and a legal constraint.

18 e. That in order to provide for office space and related facilities at
19 a cost that these State agencies can afford, it is necessary to create and
20 establish a building authority for the purposes of constructing,
21 operating, selling and leasing office buildings and related facilities to
22 meet the needs of State agencies.

23 f. It is necessary and in the public interest that this building
24 authority have the necessary funds to provide for predevelopment
25 cost, temporary financing, land development expenses, construction
26 and operation of office buildings and related facilities for the use of,
27 and sale or rental to, State agencies.

28 g. That the renovation and preservation of historic public buildings
29 contribute to the preservation of the State's heritage, the promotion of
30 the cultural life of our people, and the development and redevelopment
31 of our municipalities.

32 h. For these purposes, there should be created a corporate
33 governmental agency to be known as the "New Jersey Building
34 Authority" which, through issuance of bonds and notes to the private,
35 investing public may provide or obtain the capital resources necessary
36 to acquire, construct, reconstruct, rehabilitate, renovate, preserve or
37 improve these office buildings and related facilities necessary or
38 convenient to the operation of any State agency, or historic public
39 buildings, as the case may be.

40 i. That the acquisition, construction, reconstruction, rehabilitation,
41 renovation, preservation or improvement of these office buildings and
42 related facilities necessary or convenient to the operation of any State
43 agency, and historic public buildings are public uses and public
44 purposes for which public money may be loaned and private property
45 may be acquired and tax exemptions granted, and that the powers and
46 duties of the New Jersey Building Authority as set forth in this act are
47 necessary and proper for the purpose of achieving the ends here

1 recited.

2 j. That the construction, reconstruction, rehabilitation, renovation,
3 preservation and improvement activities of the authority will provide
4 a much needed stimulus for the construction industry, and related
5 industries and professions, particularly in urban areas.

6 k. That the highest priority for the New Jersey Building shall be the
7 renovation and preservation of the following facilities in the State
8 Capital: the State House, the Old Barracks, the War Memorial, the
9 Kelsey Building, and the townhouses adjacent to the Kelsey Building.

10 The Legislature further finds and declares that:

11 l. It is essential that this and future generations of young people be
12 given the fullest opportunity to learn and develop their intellectual
13 capacities; that institutions of public elementary and secondary
14 education within the State be provided with the appropriate additional
15 means required to assist these young citizens in achieving the required
16 levels of learning and the complete development of their intellectual
17 abilities; and that the resources of the State be employed to meet the
18 tremendous demand for public elementary and secondary educational
19 opportunities.

20 m. Public elementary and secondary educational facilities are an
21 integral part of the effort in this State to provide educational
22 opportunities; it is the purpose of P.L. , c. (C.) (now pending
23 before the Legislature as this bill) to provide a measure of assistance
24 and an alternative method of financing to enable school districts to
25 provide the facilities which are so critically needed; the inventory of
26 public elementary and secondary school buildings and the equipment
27 and capital resources currently available are aging, both
28 chronologically and technologically; and the current funding at the
29 federal, State, and local levels and the current mechanisms for
30 construction of these capital projects is inadequate to meet the
31 demonstrated need for school facilities and these inadequacies
32 necessitate additional sources of funding and the coordination of
33 construction activities at the State level to meet those needs.

34 n. While the credit status of New Jersey's school districts is sound,
35 it can be economically more reasonable to finance the costs of
36 developing the educational infrastructure of the State's public
37 elementary and secondary schools, by providing for the funding of
38 capital projects through the issuance of bonds, notes or other
39 obligations by the New Jersey Educational Facilities Authority, to be
40 retired through annual payments made by the State subject to
41 appropriation by the State Legislature, and to provide for the use of
42 the proceeds of those bonds, notes or other obligations to pay for
43 educational infrastructure projects; and such a structure would
44 substantially reduce the costs of financing and provide for a more
45 efficient use of the funds available for the development of the
46 educational infrastructure.

47 o. The New Jersey Building Authority has substantial and

1 significant experience in undertaking major capital construction
2 projects, has a system of internal controls and procedures to ensure the
3 integrity of construction activities, and is therefore the appropriate
4 entity to undertake the planning, design, construction, and operation
5 of educational infrastructure projects; and by authorizing the New
6 Jersey Building Authority and the New Jersey Educational Facilities
7 Authority to undertake these activities, there will be achieved
8 economies of scale, better coordination of resources, effective
9 financial management and control and increased monitoring and quality
10 control of school district construction.²

11 (cf: P.L.1992, c.174, s.2)]³

12

13 ³[²⁵¹. Section 4 of P.L.1981, c.120 (C.52:18A-78.4) is amended
14 to read as follows:

15 4. a. There is established in the Department of the Treasury a
16 public body corporate and politic, with corporate succession, to be
17 known as the "New Jersey Building Authority." The authority is
18 constituted an instrumentality of the State exercising public and
19 essential governmental functions, and the exercise by the authority
20 thereof of the powers conferred by this act shall be deemed and held
21 to be an essential governmental function of the State.

22 b. The membership of the authority shall consist of [12] 15
23 directors as follows: the State Treasurer, [the Comptroller of the
24 Treasury,] the Chairman of the Commission on Capital Budgeting
25 and Planning and the Commissioner of Education who shall be
26 members ex officio; [two] three persons appointed by the Governor
27 upon the recommendation of the President of the Senate and [two]
28 three persons appointed by the Governor upon the recommendation
29 of the Speaker of the General Assembly, of whom no more than [one]
30 two of each group of [two] three shall be of the same political party,
31 and who shall serve during the [2-] two- year legislative term in
32 which they are appointed and until their successors shall have been
33 appointed and qualified; and [five] six directors appointed by the
34 Governor [with the advice and consent of the Senate] for terms of 4
35 years no more than [three] four of whom shall be of the same political
36 party. [The directors of the authority first appointed by the Governor
37 shall serve for terms of 1 year, 2 years, 3 years and two for 4 years,
38 respectively, and thereafter directors shall be appointed by the
39 Governor for terms of 4 years.] Each such director shall hold office
40 for the term of his appointment and until his successor shall have been
41 appointed and qualified. A director shall be eligible for
42 reappointment. Any vacancy on the board of directors occurring other
43 than by expiration of term shall be filled in the same manner as the
44 original appointment but for the unexpired term only. At least six of
45 the directors appointed by the Governor shall have as part of their
46 vocational, professional, or civic background some experience in the

1 field of public education or in the construction of a public school
2 facility or in the financing of a public school facility.

3 The terms of office of the directors of the authority appointed by
4 the Governor who are serving on the effective date of P.L. , c. (C.)
5 (now pending before the Legislature as this bill) shall expire upon the
6 appointment by the Governor of ten directors pursuant to this
7 section . The 12 directors appointed by the Governor pursuant to the
8 provisions of this section shall be as follows: three persons upon the
9 recommendation of the President of the Senate and three persons
10 upon the recommendation of the Speaker of the General Assembly,
11 who shall serve during the two- year legislative term in which they are
12 appointed; and six persons, one of whom shall serve for a term of one
13 year, two for terms of two years, two for terms of three years, and
14 one for a term on four years.

15 c. Each director appointed by the Governor, except those
16 appointed upon recommendation of the President of the Senate and
17 Speaker of the General Assembly, may be removed from office by the
18 Governor for cause, after a public hearing, and may be suspended by
19 the Governor pending the completion of the hearing. Each director
20 before entering upon his duties shall take and subscribe an oath to
21 perform the duties of his office faithfully, impartially and justly to the
22 best of his ability. A record of the oaths shall be filed in the office of
23 the Secretary of State.

24 d. The authority shall not be deemed to be constituted and shall not
25 take action or adopt motions or resolutions until all original authorized
26 members shall have been appointed and qualified in the manner
27 provided in this section. A chairman shall be appointed by the
28 Governor with the advice and consent of the Senate from the
29 directors of the authority other than the ex officio directors, and the
30 directors of the authority shall annually elect one of their number as
31 vice chairman thereof. The directors shall elect a secretary and a
32 treasurer who need not be directors, and the same person may be
33 elected to serve both as secretary and treasurer. The powers of the
34 authority shall be vested in the directors thereof in office from time to
35 time and seven directors of the authority shall constitute a quorum at
36 any meeting thereof. Action may be taken and motions and
37 resolutions adopted by the authority at any meeting thereof by the
38 affirmative vote of at least [seven] eight directors of the authority.
39 No vacancy on the board of directors of the authority shall impair the
40 right of a quorum of the directors to exercise all the powers and
41 perform all the duties of the authority.

42 e. Each director and the treasurer of the authority shall execute a
43 bond to be conditioned upon the faithful performance of the duties of
44 the director or treasurer, as the case may be, in such form and amount
45 as may be prescribed by the Comptroller of the Treasury. Bonds shall
46 be filed in the office of the Secretary of State. At all times thereafter,
47 the directors and treasurer of the authority shall maintain these bonds

- 1 in full effect. All costs of the bonds shall be borne by the authority.
- 2 f. The directors of the authority shall serve without compensation,
3 but the authority shall reimburse its directors for actual expenses
4 necessarily incurred in the discharge of their duties. Notwithstanding
5 the provisions of any other law, no officer or employee of the State
6 shall be deemed to have forfeited or shall forfeit his office or
7 employment or any benefits or emoluments thereof by reason of his
8 acceptance of the office of ex officio director of the authority or his
9 services therein.
- 10 g. The State Treasurer [and the Comptroller of the Treasury of the
11 State], as an ex officio [directors] director of the authority, may
12 [each] designate an officer or employee of the Department of the
13 Treasury to represent him at meetings of the authority, and the
14 Chairman of the Commission on Capital Budgeting and Planning, as
15 ex officio director of the authority, may designate a member or the
16 executive director of the Commission on Capital Budgeting and
17 Planning to represent him at meetings of the authority and the
18 Commissioner of Education, as an ex officio director of the authority,
19 may designate an officer or employee of the Department of Education
20 to represent him at meetings of the authority. Each designee may
21 lawfully vote and otherwise act on behalf of the director for whom he
22 constitutes the designee. The designation shall be in writing delivered
23 to the authority and shall continue in effect until revoked or amended
24 in writing delivered to the authority.
- 25 h. The authority may be dissolved by act of the Legislature on
26 condition that the authority has no debts or obligations outstanding or
27 that provision has been made for the payment or retirement of these
28 debts or obligations. Upon any dissolution of the authority all
29 property, funds and assets thereof shall be vested in the State. In
30 addition, subject to any property rights of a person, firm, partnership
31 [or], corporation or local unit resulting from the sale or leasing of a
32 project or a school facilities project by the authority to the person,
33 firm, partnership [or], corporation or local unit, any project or school
34 facilities project shall be vested in the State upon the payment or
35 retirement of all debts or obligations for the project or school
36 facilities project or upon the assumption by the State of liability for
37 any outstanding debts or obligations for the project or school facilities
38 project.
- 39 i. A true copy of the minutes of every meeting of the authority shall
40 be forthwith delivered by and under the certification of the secretary
41 thereof to the Governor and the presiding officers of both houses of
42 the Legislature. No action taken at any meeting by the authority shall
43 have effect until 15 days after a copy of the minutes has been so
44 delivered unless during the 15-day period the Governor shall approve
45 the same in which case the action shall become effective upon the
46 approval. If, in the 15-day period, the Governor returns the copy of
47 the minutes with veto of any action taken by the authority or any

1 member thereof at that meeting, the action shall be of no effect. The
2 powers conferred in this subsection upon the Governor shall be
3 exercised with due regard for the rights of the holders of bonds and
4 notes of the authority at any time outstanding; and nothing in, or
5 done pursuant to, this subsection shall in any way limit, restrict or
6 alter the obligation or powers of the authority or any representative
7 or officer of the authority to carry out and perform in every detail
8 each and every covenant, agreement or contract at any time made or
9 entered into by or on behalf of the authority with respect to its bonds
10 or notes or for the benefit, protection or security of the holders
11 thereof.²

12 (cf: P.L.1983, c.138, s.3)]³

13

14 ³[²52. Section 5 of P.L.1981, c.120 (C.52:18A-78.5) is amended
15 to read as follows:

16 5. Except as otherwise limited by this act, the authority shall have
17 power:

18 a. To make and alter bylaws for its organization and internal
19 management and, subject to agreements with noteholders and
20 bondholders, to make rules and regulations with respect to its projects,
21 its school facilities projects, operations, properties and facilities.

22 b. To adopt an official seal and alter the same at pleasure.

23 c. To sue and be sued.

24 d. To make and enter into all contracts and agreements necessary
25 or incidental to the performance of its duties and the exercise of its
26 powers under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and
27 P.L. , c. (C.)(now pending before the Legislature as this bill).

28 e. To enter into agreements or other transactions with and accept
29 grants and the cooperation of the United States or any agency thereof
30 or any State agency in furtherance of the purposes of this act,
31 including but not limited to the development, maintenance, operation
32 and financing of any project or school facilities project, and to do any
33 and all things necessary in order to avail itself of this aid and
34 cooperation.

35 f. To receive and accept aid or contributions from any source of
36 money, property, labor or other things of value, to be held, used and
37 applied to carry out the purposes of [this act] P.L.1981, c.120
38 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
39 the Legislature as this bill) subject to such conditions upon which this
40 aid and these contributions may be made, including but not limited to,
41 gifts or grants from any department or agency of the United States or
42 any State agency for any purpose consistent with [this act] P.L.1981,
43 c.120 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending
44 before the Legislature as this bill) .

45 g. To acquire, own, hold, sell, assign, exchange, lease, mortgage
46 or otherwise dispose of real and personal property or any interest
47 therein in the exercise of its powers and the performance of its duties

1 under [this act] P.L.1981, c.120 (C.52:18A-78.1 et seq.) and P.L. ,
2 c. (C.)(now pending before the Legislature as this bill).

3 h. To appoint an executive director and such other officers,
4 employees and agents as it may require for the performance of its
5 duties, and to fix their compensation, promote and discharge them, all
6 without regard to the provisions of Title 11 of the Revised Statutes.

7 i. To acquire, construct, reconstruct, rehabilitate, renovate,
8 preserve, improve, alter or repair or provide for the demolition,
9 construction, reconstruction, improvement, alteration or repair of any
10 project or school facilities project and let, award and enter into
11 construction contracts, purchase orders and other contracts with
12 respect thereto in such manner as the authority shall determine.

13 j. To arrange or contract with a county or municipality and any
14 relevant utility for the planning, replanning, opening, grading or
15 closing of streets, roads, roadways, alleys or other places, or for the
16 furnishing of facilities or for the acquisition by a county or
17 municipality of property or property rights or for the furnishing of
18 property or services, in connection with a project or school facilities
19 project.

20 k. To sell, lease, assign, transfer, convey, exchange, mortgage or
21 otherwise dispose of or encumber any project or school facilities
22 project or other property no longer needed to carry out the public
23 purposes of the authority and, in the case of the sale of any project or
24 school facilities project or property, to accept a purchase money
25 mortgage in connection therewith; and to lease, repurchase or
26 otherwise acquire and hold any project or school facilities project or
27 property which the authority has theretofore sold, leased or otherwise
28 conveyed, transferred or disposed of.

29 l. To grant options to purchase any project or school facilities
30 project or to renew any leases entered into by it in connection with any
31 of its projects or school facilities project, on such terms and conditions
32 as it deems advisable.

33 m. To acquire by purchase, lease or otherwise, on such terms and
34 conditions and in such manner as it may deem proper, or by the
35 exercise of the power of eminent domain, except with respect to lands
36 owned by the State or any public lands reserved for recreation and
37 conservation purposes, any land and other property, including railroad
38 lands and land under water, which it may determine is reasonably
39 necessary for any of its projects or school facilities project or for the
40 relocation or reconstruction of any highway by the authority and any
41 and all rights, title and interest in that land and other property,
42 including public lands, highways or parkways, owned by or in which
43 a State agency or local governmental agency has any right, title or
44 interest, or parts thereof or rights therein and any fee simple absolute
45 or any lesser interest in private property, and any fee simple absolute
46 in, easements upon or the benefit of restrictions upon, abutting
47 property to preserve and protect any project or school facilities

1 project.

2 n. To prepare or cause to be prepared plans, specifications, designs
3 and estimates of costs for the construction, reconstruction,
4 rehabilitation, improvement, alteration or repair of any project or
5 school facilities project, and from time to time to modify these plans,
6 specifications, designs or estimates.

7 o. To sell, lease, rent, sublease or otherwise dispose of any project
8 or any space embraced in any project to any State agency or to any
9 person, firm, partnership or corporation for sale, leasing, rental or
10 subleasing to any State agency, and, where applicable, to establish and
11 revise the purchase price, rents or other charges therefor; provided,
12 however, that the incurrence of any liabilities by a State agency under
13 any agreement entered into with the authority pursuant to the
14 aforesaid authorization, including, without limitation, the payment of
15 any and all rentals or other amounts required to be paid by the agency
16 thereunder, shall be subject to and dependent upon appropriations
17 being made from time to time by the Legislature for that purpose and
18 approval by the presiding officers, or such other officers as may be
19 provided by law, of both houses of any such lease.

20 p. To sell, lease, rent, sublease or otherwise dispose of, to any
21 person, firm, partnership or corporation, any surplus space in any
22 project over and above that sold, leased, rented, subleased or
23 otherwise disposed of to State agencies and to establish and revise the
24 purchase price, rents or charges therefor.

25 q. To approve of the selection of any tenant not a State agency
26 under a lease or sublease agreement for the use or occupation of any
27 portion of a building in which a project is located.

28 r. To manage or operate any project or school facilities project or
29 real or personal property related thereto whether owned or leased by
30 the authority or any State agency or any person, firm, partnership or
31 corporation, and to enter into agreements with any State agency, or
32 any local governmental agency, or local unit or with any person, firm,
33 association, partnership or corporation, either public or private, for the
34 purpose of causing any project or school facilities project or related
35 property to be managed.

36 s. To provide advisory, consultative, training and educational
37 services, technical assistance and advice to any person, firm,
38 association, partnership or corporation, either public or private, in
39 order to carry out the purposes of [this act] P.L.1981, c.120
40 (C.52:18A-78.1 et seq.) and P.L. , c. (C.)(now pending before
41 the Legislature as this bill).

42 t. Subject to the provisions of any contract with noteholders or
43 bondholders to consent to any modification, amendment or revision of
44 any kind of any contract, lease or agreement of any kind to which the
45 authority is a party.

46 u. To determine, after holding a public hearing in the municipality
47 in which the project is to be located, except as otherwise provided in

1 section 6 of ~~[this act] P.L.1981, c.120 (C.52:18A-78.6), and at any~~
2 ~~time, with respect to a school facilities project, the location, type and~~
3 ~~character of the project or school facilities project or any part thereof~~
4 ~~and all other matters in connection with all or any part of the project~~
5 ~~or school facilities project notwithstanding any land use plan, zoning~~
6 ~~regulation, [building code] or similar regulation heretofore or~~
7 ~~hereafter adopted by any municipality, county, public body corporate~~
8 ~~and politic, or any other political subdivision of the State.~~

9 v. To borrow money and to issue its bonds and notes and to secure
10 the same and provide for the rights of the holders thereof as provided
11 in this act.

12 w. Subject to any agreement with bondholders or noteholders, to
13 invest moneys of the authority not required for immediate use,
14 including proceeds from the sale of any bonds or notes, in those
15 obligations, securities and other investments as the authority shall
16 deem prudent.

17 x. To procure insurance against any loss in connection with its
18 property and other assets and operations in such amounts and from
19 such insurers as it deems desirable.

20 y. To engage the services of architects, engineers, attorneys,
21 accountants, building contractors, urban planners, landscape architects
22 and financial experts and such other advisors, consultants and agents
23 as may be necessary in its judgment and to fix their compensation.

24 z. To enter into agreements or contracts, execute instruments, and
25 do and perform all acts or things necessary, convenient or desirable for
26 the purposes of the authority or to carry out any power expressly
27 provided pursuant to P.L.1981, c.120 (C.52:18A-78.1 et. seq.) and
28 P.L. , c. (C.)(now pending before the Legislature as this bill).

29 aa. To enter into agreements with the State Treasurer, the
30 Commissioner of Education, districts, the New Jersey Educational
31 Facilities Authority and any other entity which may be required in
32 order to carry out the provisions of P.L. , c. (C.)(now pending
33 before the Legislature as this bill).

34 bb. To do any act necessary or convenient to the exercise of the
35 foregoing powers or reasonably implied therefrom.²

36 (cf: P.L.1992, c.174, s.10)]³

37
38 ³[²53. Section 10 of P.L.1981, c.120 (C.52:18A-78.10) is
39 amended to read as follows:

40 10. a. No municipality shall modify or change the drawings, plans
41 or specifications for the construction, reconstruction, rehabilitation,
42 alteration or improvement of any project or school facilities project
43 of the authority, or the construction, plumbing, heating, lighting or
44 other mechanical branch of work necessary to complete the work in
45 question, nor to require that any person, firm or corporation employed
46 on any such work shall perform the work in any other or different
47 manner than that provided by the drawings, plans and specifications,

1 nor to require that any person, firm or corporation obtain any other
2 or additional authority, approval, permit or certificate from the
3 municipality in relation to the work being done, and the doing of the
4 work by any person, firm or corporation in accordance with the terms
5 of the drawings, plans, specifications or contracts shall not subject the
6 person, firm or corporation to any liability or penalty, civil or
7 criminal, other than as may be stated in the contracts or incidental to
8 the proper enforcement thereof; nor shall any municipality require the
9 authority or any State agency which leases or purchases the project,
10 or any person, firm, partnership or corporation which leases or
11 purchases the project for lease or purchase to a State agency, to
12 obtain any other or additional authority, approval, permit, certificate
13 or certificate of occupancy from the municipality as a condition of
14 owning, using, maintaining, operating or occupying any project
15 acquired, constructed, reconstructed, rehabilitated, altered or
16 improved by the authority or by any subsidiary thereof. The
17 foregoing provisions shall not preclude any municipality from
18 exercising the right of inspection for the purpose of requiring
19 compliance by any project with local requirements for operation and
20 maintenance, affecting the health, safety and welfare of the occupants
21 thereof, provided that the compliance does not require changes,
22 modifications or additions to the original construction of the project.

23 b. Each municipality in which any project or school facilities
24 project of the authority is located shall provide for the project or
25 school facilities project, whether then owned by the authority, any
26 subsidiary, any State agency or any person, firm, partnership or
27 corporation, police, fire, sanitation, health protection and other
28 municipal services of the same character and to the same extent as
29 those provided for other residents of the municipality.

30 c. In carrying out any project or school facilities project, the
31 authority may enter into contractual agreements with local
32 governmental agencies with respect to the furnishing of any
33 community, municipal or public facilities or services necessary or
34 desirable for the project or school facilities project, and any local
35 governmental agency may enter into these contractual agreements with
36 the authority and do all things necessary to carry out its obligations
37 under the same.²

38 (cf: P.L.1983, c.138, s.7)]³

39

40 ³[²54. Section 11 of P.L.1981, c.120 (C.52:18A-78.11) is
41 amended to read as follows:

42 11. a. The authority, in the exercise of its authority to make and
43 enter into contracts and agreements necessary or incidental to the
44 performance of its duties and the execution of its powers, shall adopt
45 standing rules and procedures providing that no contract on behalf of
46 the authority shall be entered into for the doing of any work, or for the
47 hiring of equipment or vehicles, where the sum to be expended

1 exceeds the sum of \$7,500.00 unless the authority shall first publicly
2 advertise for bids therefor, and shall award the contract to the lowest
3 responsible bidder. Advertising shall not be required where the
4 contract to be entered into is one for the furnishing or performing of
5 services of a professional nature or for the supplying of any product
6 or the rendering of any service by a public utility subject to the
7 jurisdiction of the Board of Public Utilities and tariffs and schedules
8 of the charges made, charged, or exacted by the public utility for any
9 products to be supplied or services to be rendered are filed with the
10 board. This section shall not prevent the authority from having any
11 work done by its own employees, nor shall it apply to repairs, or to the
12 furnishing of materials, supplies or labor, or the hiring of equipment or
13 vehicles, when the safety or protection of its or other public property
14 or the public convenience requires, or the exigency of the
15 accomplishment of the projects or school facilities projects will not
16 allow advertisement. In that case, the board of directors of the
17 authority shall, by resolution, declare the exigency or emergency to
18 exist, and set forth in the resolution the nature thereof and the
19 approximate amount to be so expended.

20 b. (1) In undertaking any project or school facilities project where
21 the cost of construction, reconstruction, rehabilitation or improvement
22 will exceed \$25,000.00, the authority shall be subject to the rules and
23 regulations of the Division of **[Building] Property Management** and
24 Construction concerning procedural requirements for the making,
25 negotiating or awarding of purchases, contracts or agreements
26 except as otherwise provided in P.L. , c. (C.)(now pending before
27 the Legislature as this bill) ; and the authority, with the assistance of
28 the division, may prepare, or cause to be prepared, separate plans and
29 specifications for:

30 (a) The plumbing and gas fitting and all work and materials kindred
31 thereto,

32 (b) The steam and hot water heating and ventilating apparatus,
33 steam power plants and all work and materials kindred thereto,

34 (c) The electrical work,

35 (d) Structural steel and ornamental iron work and materials, and

36 (e) General construction, which shall include all other work and
37 materials required to complete the building.

38 (2) The authority shall receive (a) separate bids for each of the
39 branches of work specified in paragraph (1) of this subsection; or (b)
40 bids for all the work and materials required to complete the project
41 or school facilities project to be included in a single overall contract,
42 in which case there shall be set forth in the bid the name or names of
43 all subcontractors to whom the bidder will subcontract for the
44 furnishing of any of the work and materials specified in branches (a)
45 through (d) in paragraph (1) of this subsection; or (c) both.

46 (3) Contracts shall be awarded to the lowest responsible bidder in
47 each branch of work in the case of separate bids and to the single

1 lowest responsible bidder in the case of single bids. In the event that
2 a contract is advertised in accordance with subparagraph (c) of
3 paragraph (2) of this subsection, the contract shall be awarded in the
4 following manner: If the sum total of the amounts bid by the lowest
5 responsible bidder for each branch is less than the amount bid by the
6 lowest responsible bidder for all of the work and materials, the
7 authority shall award separate contracts for each of the branches to the
8 lowest responsible bidder therefor, but if the sum total of the amount
9 bid by the lowest responsible bidder for each branch is not less than
10 the amount bid by the lowest responsible bidder for all the work and
11 materials, the authority shall award a single over-all contract to the
12 lowest responsible bidder for all of the work and materials.

13 Whenever a contract is awarded under subparagraph (b) or (c) of
14 paragraph (2) of this subsection, all payments required to be made by
15 the authority under the contract for work and materials supplied by a
16 subcontractor may, upon the certification of the contractor of the
17 amount due to the subcontractor, be paid directly to the subcontractor.
18 Payments to a subcontractor for work and materials supplied in
19 connection with the contract shall be made within 10 calendar days of
20 the receipt of payment for that work or the delivery of those materials
21 by the subcontractor in accordance with the provisions of P.L.1991,
22 c.133 (C.2A:30A-1 et seq.), and any regulations promulgated
23 thereunder.

24 (4) All construction, reconstruction, rehabilitation or improvement
25 undertaken by the authority pursuant to this act shall be subject during
26 such undertaking to the supervision of the Division of
27 [Building]Property Management and Construction to the same extent
28 as any project undertaken by the State.

29 c. With respect to the lease or sale of any project or portion
30 thereof to any person, firm, partnership or corporation, for subsequent
31 lease to or purchase by a State agency, no agreement for that lease or
32 sale shall be entered into, unless the authority shall first publicly
33 advertise for bids therefor. The authority shall employ a person, firm,
34 partnership or corporation, independent from any other aspect or
35 component of the financing of or any ownership or leasehold interest
36 in that project, to assist in the bid procedure and evaluation.²
37 (cf: P.L.1999, c.280, s.2)]³

38
39 ³[²55. Section 12 of P.L.1981, c.120 (C.52:18A-78.12) is
40 amended to read as follows:

41 12. a. If the authority shall find it necessary in connection with the
42 undertaking of any of its projects or school facilities projects to
43 change the location of any portion of any public highway, or road, it
44 may contract with any government agency, or public or private
45 corporation which may have jurisdiction over the public highway or
46 road to cause the public highway or road to be constructed at such
47 location as the authority shall deem most favorable. The cost of the

1 reconstruction and any damage incurred in changing the location of
2 the highway shall be ascertained and paid by the authority as a part of
3 the cost of the project or school facilities project. Any public highway
4 affected by the construction of any project or school facilities project
5 may be vacated or relocated by the authority in the manner now
6 provided by law for the vacation or relocation of public roads, and
7 any damages awarded on account thereof shall be paid by the
8 authority as a part of the cost of the project or school facilities project.
9 In all undertakings authorized by the subsection, the authority shall
10 consult and obtain the approval of the Commissioner of
11 Transportation.

12 b. In addition to the foregoing powers, the authority and its
13 authorized agents and employees may enter upon any lands, waters
14 and premises for the purpose of making surveys, soundings, drillings
15 and examinations as it may deem necessary or convenient for the
16 purposes of this act, all in accordance with due process of law, and
17 this entry shall not be deemed a trespass nor shall an entry for this
18 purpose be deemed an entry under any condemnation proceedings
19 which may be then pending. The authority shall make reimbursement
20 for any actual damages resulting to the lands, waters and premises as
21 a result of these activities.

22 c. The authority shall also have power to make reasonable
23 regulations for the installation, construction, maintenance, repair,
24 renewal, relocation and removal of tracks, pipes, mains, conduits,
25 cables, wires, towers, poles and other equipment and appliances,
26 herein called "public utility facilities" , or any public utility as defined
27 in R.S.48:2-13, in, on, along, over or under any project or school
28 facilities project. Whenever the authority shall determine that it is
29 necessary that any public utility facilities which now are, or hereafter
30 may be, located in, on, along, over or under any project or school
31 facilities project shall be relocated in the project or school facilities
32 project, or should be removed from the project or school facilities
33 project, the public utility owning or operating the facilities shall
34 relocate or remove the same in accordance with the order of the
35 authority. The cost and expenses of the relocation or removal,
36 including the cost of installing the facilities in a new location, or new
37 locations, and the cost of any lands, or any rights or interests in lands,
38 and any other rights, acquired to accomplish the relocation or
39 removal, shall be ascertained and paid by the authority as a part of the
40 cost of the project or school facilities project. In case of any
41 relocation or removal of facilities, as aforesaid, the public utility
42 owning or operating the same, its successors or assigns, may maintain
43 and operate the facilities, with the necessary appurtenances, in the
44 new location or new locations, for as long a period, and upon the
45 same terms and conditions, as it had the right to maintain and operate
46 the facilities in their former location or locations. In all undertakings
47 authorized by this subsection the authority shall consult and obtain the

1 approval of the Board of Public Utilities.²

2 (cf: P.L.1981, c.120, s.12)]³

3

4 ³[²56. Section 28 of P.L.1981, c.120 (C.52:18A-78.28) is
5 amended to read as follows:

6 28. a. The authority shall adopt rules and regulations to establish
7 an affirmative action program for the hiring of minority workers
8 employed in the performance of construction contracts undertaken in
9 connection with any of its projects and school facilities projects, and
10 to expand the business opportunities of socially and economically
11 disadvantaged contractors and vendors seeking to provide materials
12 and services for those contracts, consistent with the provisions of the
13 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
14 The authority shall provide for the proper enforcement and
15 administration of these rules and regulations.

16 b. Within 180 days of the effective date of this act, but before
17 adoption of its rules and regulations concerning its affirmative action
18 program, the authority shall submit the proposed rules and regulations
19 to the presiding officers and the standing committees on state
20 government of both houses of the Legislature for their review.²

21 (cf: P.L.1981, c.120, s.28)]³

22

23 ³[²57. Section 29 of P.L.1981, c.120 (C.52:18A-78.29) is
24 amended to read as follows:

25 29. The authority shall adopt rules and regulations requiring that
26 not less than the prevailing wage rate be paid to workers employed in
27 the performance of construction contracts undertaken in connection
28 with any of its projects or school facilities projects. The prevailing
29 wage rate shall be the rate determined by the Commissioner of Labor
30 and Industry pursuant to the provisions of P.L.1963, c.150
31 (C.34:11-56.25 et seq.).²

32 (cf: P.L.1981, c.120, s.29)]³

33

34 ³43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read
35 as follows:

36 2. The Legislature hereby finds and determines that:

37 a. Department of Labor [and Industry] statistics of recent years
38 indicate a continuing decline in manufacturing employment within the
39 State, which is a contributing factor to the drastic unemployment
40 existing within the State, which far exceeds the national average, thus
41 adversely affecting the economy of the State and the prosperity,
42 safety, health and general welfare of its inhabitants and their standard
43 of living; that there is an urgent need to protect and enhance the
44 quality of the natural environment and to reduce, abate and prevent
45 environmental pollution derived from the operation of industry,
46 utilities and commerce within the State; and that the availability of
47 financial assistance and suitable facilities are important inducements to

1 new and varied employment promoting enterprises to locate in the
2 State, to existing enterprises to remain and expand in the State, and
3 to industry, utilities and commerce to reduce, abate and prevent
4 environmental pollution.

5 b. The provision of buildings, structures and other facilities to
6 increase opportunity for employment in manufacturing, industrial,
7 commercial, recreational, retail and service enterprises in the State is
8 in the public interest and it is a public purpose for the State to induce
9 and to accelerate opportunity for employment in such enterprises.

10 c. In order to aid in supplying these needs and to assist in the
11 immediate reduction of unemployment and to provide sufficient
12 employment for the citizens of the State in the future, it is necessary
13 and in the public interest to aid and encourage the immediate
14 commencement of new construction projects of all types, to induce
15 and facilitate the acquisition and installation at an accelerated rate of
16 such devices, equipment and facilities as may be required to reduce,
17 abate and prevent environmental pollution by industry, utilities and
18 commerce.

19 d. The availability of financial assistance by the State will reduce
20 present unemployment and improve future employment opportunities
21 by encouraging and inducing the undertaking of such construction
22 projects, the location, retaining or expanding of employment
23 promoting enterprises within the State, and the accelerated acquisition
24 and installation of energy saving improvements and pollution control
25 devices, equipment and facilities.

26 e. In many municipalities in our State substantial and persistent
27 unemployment exists; and many existing residential, industrial,
28 commercial and manufacturing facilities within such municipalities are
29 either obsolete, inefficient, dilapidated or are located without regard
30 to the master plans of such municipalities; and the obsolescence and
31 abandonment of existing facilities will increase with further
32 technological advances, the provision of modern, efficient facilities in
33 other states and the difficulty which many municipalities have in
34 attracting new facilities; and that many existing and planned
35 employment promoting facilities are far from or not easily accessible
36 to the places of residence of substantial numbers of unemployed and
37 underemployed persons.

38 f. By virtue of their architectural and cultural heritage, their
39 positions as principal centers of communication and transportation
40 and their concentration of productive and energy efficient facilities,
41 many municipalities are capable of ameliorating the conditions of
42 deterioration which impede sound community growth and
43 development; and that building a proper balance of housing, industrial
44 and commercial facilities and increasing the attractiveness of such
45 municipalities to persons of all income levels is essential to restoring
46 such municipalities as desirable places to live, work, shop and enjoy
47 life's amenities; that the accomplishment of these objectives is beyond

1 remedy solely by the regulatory process in the exercise of the police
2 power and cannot be dealt with effectively by the ordinary operations
3 of private enterprise without the powers provided herein, and that the
4 exercise of the powers herein provided is critical to continuing the
5 process of revitalizing such municipalities and will serve an urgent
6 public use and purpose.

7 The Legislature further determines that in order to aid in remedying
8 the aforesaid conditions and to further and implement the purposes of
9 this act, that there shall be created a body politic and corporate having
10 the powers, duties and functions provided in this act; and that the
11 authority and powers conferred under this act, and the expenditure of
12 moneys pursuant thereto constitute a serving of a valid public purpose;
13 and that the enactment of the provisions hereinafter set forth is in the
14 public interest and for the public benefit and good, and is hereby so
15 declared to be as a matter of express legislative determination.

16 The Legislature further finds and determines that:

17 g. It is essential that this and future generations of young people
18 be given the fullest opportunity to learn and develop their intellectual
19 capacities; that institutions of public elementary and secondary
20 education within the State be provided with the appropriate additional
21 means required to assist these young citizens in achieving the required
22 levels of learning and the complete development of their intellectual
23 abilities; and that the resources of the State be employed to meet the
24 tremendous demand for public elementary and secondary educational
25 opportunities.

26 h. Public elementary and secondary educational facilities are an
27 integral part of the effort in this State to provide educational
28 opportunities; it is the purpose of P.L. , c. (C.)(now pending
29 before the Legislature as this bill) to provide a measure of assistance
30 and an alternative method of financing to enable school districts to
31 provide the facilities which are so critically needed; the inventory of
32 public elementary and secondary school buildings and the equipment
33 and capital resources currently available are aging, both
34 chronologically and technologically; and the current funding at the
35 federal, State, and local levels and the current mechanisms for
36 construction of these capital projects are inadequate to meet the
37 demonstrated need for school facilities, and these inadequacies
38 necessitate additional sources of funding and the coordination of
39 construction activities at the State level to meet those needs.

40 i. While the credit status of New Jersey's school districts is sound,
41 it can be economically more reasonable to finance the costs of
42 developing the educational infrastructure of the State's public
43 elementary and secondary schools by providing for the funding of
44 capital projects through the issuance of bonds, notes or other
45 obligations by the New Jersey Economic Development Authority, to
46 be retired through annual payments made by the State subject to
47 appropriation by the State Legislature, and to provide for the use of

1 the proceeds of those bonds, notes or other obligations to pay for
2 educational infrastructure projects; and such a structure would
3 substantially reduce the costs of financing and provide for a more
4 efficient use of the funds available for the development of the
5 educational infrastructure.

6 j. The New Jersey Economic Development Authority has
7 substantial and significant experience in undertaking major capital
8 construction projects, has a system of internal controls and procedures
9 to ensure the integrity of construction activities, and is therefore the
10 appropriate entity to undertake the planning, design, construction, and
11 operation of educational infrastructure projects; and by authorizing the
12 New Jersey Economic Development Authority to undertake these
13 activities, there will be achieved economies of scale, better
14 coordination of resources, more effective financial management and
15 control and increased monitoring and quality control of school district
16 construction.³

17 (cf: P.L.1983, c.282, s.1)

18

19 ³44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read
20 as follows:

21 3. As used in this act, unless a different meaning clearly appears
22 from the context:

23 a. "Authority" means the New Jersey Economic Development
24 Authority, created by section 4 of this act.

25 b. "Bonds" means bonds or other obligations issued by the
26 authority pursuant to this act [or], "Economic Recovery Bonds or
27 Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or
28 bonds, notes, other obligations and refunding bonds issued by the
29 authority pursuant to P.L. , c. (C.)(now pending before the
30 Legislature as this bill).

31 c. "Cost" means the cost of the acquisition, construction,
32 reconstruction, repair, alteration, improvement and extension of any
33 building, structure, facility including water transmission facilities, or
34 other improvement; the cost of machinery and equipment; the cost of
35 acquisition, construction, reconstruction, repair, alteration,
36 improvement and extension of energy saving improvements or
37 pollution control devices, equipment or facilities; the cost of lands,
38 rights-in-lands, easements, privileges, agreements, franchises, utility
39 extensions, disposal facilities, access roads and site development
40 deemed by the authority to be necessary or useful and convenient for
41 any project or school facilities project or in connection therewith;
42 discount on bonds; cost of issuance of bonds; engineering and
43 inspection costs; costs of financial, legal, professional and other
44 estimates and advice; organization, administrative, insurance,
45 operating and other expenses of the authority or any person prior to
46 and during any acquisition or construction, and all such expenses as
47 may be necessary or incident to the financing, acquisition, construction

1 or completion of any project or school facilities project or part thereof,
2 and also such provision for reserves for payment or security of
3 principal of or interest on bonds during or after such acquisition or
4 construction as the authority may determine.

5 d. "County" means any county of any class.

6 e. "Development property" means any real or personal property,
7 interest therein, improvements thereon, appurtenances thereto and air
8 or other rights in connection therewith, including land, buildings,
9 plants, structures, systems, works, machinery and equipment acquired
10 or to be acquired by purchase, gift or otherwise by the authority within
11 an urban growth zone.

12 f. "Person" means any person, including individuals, firms,
13 partnerships, associations, societies, trusts, public or private
14 corporations, or other legal entities, including public or governmental
15 bodies, as well as natural persons. "Person" shall include the plural as
16 well as the singular.

17 g. "Pollution control project" means any device, equipment,
18 improvement, structure or facility, or any land and any building,
19 structure, facility or other improvement thereon, or any combination
20 thereof, whether or not in existence or under construction, or the
21 refinancing thereof in order to facilitate improvements or additions
22 thereto or upgrading thereof, and all real and personal property
23 deemed necessary thereto, having to do with or the end purpose of
24 which is the control, abatement or prevention of land, sewer, water,
25 air, noise or general environmental pollution, including, but not limited
26 to, any air pollution control facility, noise abatement facility, water
27 management facility, thermal pollution control facility, radiation
28 contamination control facility, wastewater collection system,
29 wastewater treatment works, sewage treatment works system, sewage
30 treatment system or solid waste disposal facility or site; provided that
31 the authority shall have received from the Commissioner of the State
32 Department of Environmental Protection or his duly authorized
33 representative a certificate stating the opinion that, based upon
34 information, facts and circumstances available to the State Department
35 of Environmental Protection and any other pertinent data, (1) said
36 pollution control facilities do not conflict with, overlap or duplicate
37 any other planned or existing pollution control facilities undertaken or
38 planned by another public agency or authority within any political
39 subdivision, and (2) that such facilities, as designed, will be a pollution
40 control project as defined in this act and are in furtherance of the
41 purpose of abating or controlling pollution.

42 h. "Project" means: (1) (a) acquisition, construction,
43 reconstruction, repair, alteration, improvement and extension of any
44 building, structure, facility, including water transmission facilities or
45 other improvement, whether or not in existence or under construction,
46 (b) purchase and installation of equipment and machinery, (c)
47 acquisition and improvement of real estate and the extension or

1 provision of utilities, access roads and other appurtenant facilities; and
2 (2) (a) the acquisition, financing, or refinancing of inventory, raw
3 materials, supplies, work in process, or stock in trade, or (b) the
4 financing, refinancing or consolidation of secured or unsecured debt,
5 borrowings, or obligations, or (c) the provision of financing for any
6 other expense incurred in the ordinary course of business; all of which
7 are to be used or occupied by any person in any enterprise promoting
8 employment, either for the manufacturing, processing or assembly of
9 materials or products, or for research or office purposes, including,
10 but not limited to, medical and other professional facilities, or for
11 industrial, recreational, hotel or motel facilities, public utility and
12 warehousing, or for commercial and service purposes, including, but
13 not limited to, retail outlets, retail shopping centers, restaurant and
14 retail food outlets, and any and all other employment promoting
15 enterprises, including, but not limited to, motion picture and television
16 studios and facilities and commercial fishing facilities, commercial
17 facilities for recreational fishermen, fishing vessels, aquaculture
18 facilities and marketing facilities for fish and fish products and (d)
19 acquisition of an equity interest in, including capital stock of, any
20 corporation; or any combination of the above, which the authority
21 determines will: (i) tend to maintain or provide gainful employment
22 opportunities within and for the people of the State, or (ii) aid, assist
23 and encourage the economic development or redevelopment of any
24 political subdivision of the State, or (iii) maintain or increase the tax
25 base of the State or of any political subdivision of the State, or (iv)
26 maintain or diversify and expand employment promoting enterprises
27 within the State; and (3) the cost of acquisition, construction,
28 reconstruction, repair, alteration, improvement and extension of an
29 energy saving improvement or pollution control project which the
30 authority determines will tend to reduce the consumption in a building
31 devoted to industrial or commercial purposes, or in an office building,
32 of nonrenewable sources of energy or to reduce, abate or prevent
33 environmental pollution within the State; and (4) the acquisition,
34 construction, reconstruction, repair, alteration, improvement,
35 extension, development, financing or refinancing of infrastructure and
36 transportation facilities or improvements related to economic
37 development and of cultural, recreational and tourism facilities or
38 improvements related to economic development and of capital facilities
39 for primary and secondary schools and of mixed use projects
40 consisting of housing and commercial development; and (5) the
41 establishment, acquisition, construction, rehabilitation, improvement,
42 and ownership of port facilities as defined in section 3 of P.L.1997,
43 c.150 (C.34:1B-146). Project may also include: (i) reimbursement to
44 any person for costs in connection with any project, or the refinancing
45 of any project or portion thereof, if determined by the authority as
46 necessary and in the public interest to maintain employment and the
47 tax base of any political subdivision and will facilitate improvements

1 thereto or the completion thereof, and (ii) development property and
2 any construction, reconstruction, improvement, alteration, equipment
3 or maintenance or repair, or planning and designing in connection
4 therewith. For the purpose of carrying out mixed use projects
5 consisting of both housing and commercial development, the authority
6 may enter into agreements with the New Jersey Housing and Mortgage
7 Finance Agency for loan guarantees for any such project in accordance
8 with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for
9 that purpose shall allocate to the New Jersey Housing and Mortgage
10 Finance Agency, under such agreements, funding available pursuant to
11 subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project
12 shall not include a school facilities project.

13 i. "Revenues" means receipts, fees, rentals or other payments to be
14 received on account of lease, mortgage, conditional sale, or sale, and
15 payments and any other income derived from the lease, sale or other
16 disposition of a project, moneys in such reserve and insurance funds
17 or accounts or other funds and accounts, and income from the
18 investment thereof, established in connection with the issuance of
19 bonds or notes for a project or projects, and fees, charges or other
20 moneys to be received by the authority in respect of projects or school
21 facilities projects and contracts with persons.

22 j. "Resolution" means any resolution adopted or trust agreement
23 executed by the authority, pursuant to which bonds of the authority
24 are authorized to be issued.

25 k. "Energy saving improvement" means the construction, purchase
26 and installation in a building devoted to industrial or commercial
27 purposes of any of the following, designed to reduce the amount of
28 energy from nonrenewable sources needed for heating and cooling that
29 building: insulation, replacement burners, replacement high efficiency
30 heating and air conditioning units, including modular boilers and
31 furnaces, water heaters, central air conditioners with or without heat
32 recovery to make hot water for industrial or commercial purposes or
33 in office buildings, and any solar heating or cooling system
34 improvement, including any system which captures solar radiation to
35 heat a fluid which passes over or through the collector element of that
36 system and then transfers that fluid to a point within the system where
37 the heat is withdrawn from the fluid for direct usage or storage. These
38 systems shall include, but not necessarily be limited to, systems
39 incorporating flat plate, evacuated tube or focusing solar collectors.

40 The foregoing list shall not be construed to be exhaustive, and shall
41 not serve to exclude other improvements consistent with the legislative
42 intent of this amendatory act.

43 l. "Urban growth zone" means any area within a municipality
44 receiving State aid pursuant to the provisions of P.L.1978, c.14
45 (C.52:27D-178 et seq.) or a municipality certified by the
46 Commissioner of Community Affairs to qualify under such law in
47 every respect except population, which area has been so designated

1 pursuant to an ordinance of the governing body of such municipality.

2 m. "District" means a local or regional school district established
3 pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey
4 Statutes, a county special services school district established pursuant
5 to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a
6 county vocational school district established pursuant to article 3 of
7 chapter 54 of Title 18A of the New Jersey Statutes, and a State-
8 operated school district established pursuant to P.L.1987, c.399
9 (C.18A:7A-34 et seq.).

10 n. "Local unit" means a county, municipality, board of education
11 or any other political entity authorized to construct, operate and
12 maintain a school facilities project and to borrow money for those
13 purposes pursuant to law.

14 o. "Refunding bonds" means bonds, notes or other obligations
15 issued to refinance bonds previously issued by the authority pursuant
16 to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
17 pending before the Legislature as this bill).

18 p. "School facilities project" means the acquisition, demolition,
19 construction, improvement, repair, alteration, modernization,
20 renovation, reconstruction or maintenance of all or any part of a
21 school facility or of any other personal property necessary for, or
22 ancillary to, any school facility, and shall include fixtures, furnishings
23 and equipment, and shall also include, but is not limited to, site
24 acquisition, site development, the services of design professionals,
25 such as engineers and architects, construction management, legal
26 services, financing costs and administrative costs and expenses
27 incurred in connection with the project.

28 q. "School facility" means and includes any structure, building or
29 facility used wholly or in part for academic purposes by a district, but
30 shall exclude athletic stadiums, grandstands, and any structure,
31 building or facility used solely for school administration.³

32 (cf: P.L.1997, c.150, s.22)

33

34 ³45. Section 4 of P.L.1974, c.80 (C.34:1B-4) is amended to read
35 as follows:

36 4. a. There is hereby established in, but not of, the Department of
37 **[Commerce and Economic Development]** the Treasury a public body
38 corporate and politic, with corporate succession, to be known as the
39 "New Jersey Economic Development Authority." The authority is
40 hereby constituted as an instrumentality of the State exercising public
41 and essential governmental functions, and the exercise by the authority
42 of the powers conferred by this act shall be deemed and held to be an
43 essential governmental function of the State.

44 b. The authority shall consist of the Commissioner of Banking, the
45 **[Commissioner of Commerce and Economic Development]** Chief
46 Executive Officer and Secretary of the New Jersey Commerce and
47 Economic Growth Commission, the Commissioner of Labor, the

1 Commissioner of Education, and the State Treasurer, who shall be
2 members ex officio, and ~~[six]~~ eight public members appointed by the
3 Governor ~~[with the advice and consent of the Senate, of which one]~~
4 as follows: two public ~~[member]~~ members (who shall not be ~~[a~~
5 ~~legislator]~~ legislators) shall be appointed by the Governor upon
6 recommendation of the Senate President ~~[and one]~~; two public
7 ~~[member]~~ members (who shall not be ~~[a legislator]~~ legislators) shall
8 be appointed by the Governor upon recommendation of the Speaker
9 of the General Assembly; and four public members shall be appointed
10 by the Governor, all for terms of three years. ~~[The first two public~~
11 ~~member positions on the authority that are or become vacant on or~~
12 ~~after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be~~
13 ~~filled by appointment of the Governor upon the recommendation of the~~
14 ~~Senate President and the Speaker of the General Assembly,~~
15 ~~respectively.]~~ Each member shall hold office for the term of his
16 appointment and until his successor shall have been appointed and
17 qualified. A member shall be eligible for reappointment. Any vacancy
18 in the membership occurring other than by expiration of term shall be
19 filled in the same manner as the original appointment but for the
20 unexpired term only. In the event the authority shall by resolution
21 determine to accept the declaration of an urban growth zone by any
22 municipality, the mayor or other chief executive officer of such
23 municipality shall ex officio be a member of the authority for the
24 purpose of participating and voting on all matters pertaining to such
25 urban growth zone.

26 The Governor shall appoint ~~[with the advice and consent of the~~
27 ~~Senate,]~~ three alternate members of the authority, of which one
28 alternate member (who shall not be a legislator) shall be appointed by
29 the Governor upon the recommendation of the Senate President, and
30 one alternate member (who shall not be a legislator) shall be appointed
31 by the Governor upon the recommendation of the Speaker of the
32 General Assembly ; and one alternate member shall be appointed by
33 the Governor, all for terms of three years. ~~[The first two alternate~~
34 ~~member positions on the authority that are or become vacant on or~~
35 ~~after the effective date of P.L.1992, c.16 (C.34:1B-7.10 et al.) shall be~~
36 ~~filled by appointment of the Governor upon the recommendation of the~~
37 ~~Senate President and the Speaker of the General Assembly,~~
38 ~~respectively.]~~ The chairperson may authorize an alternate member, in
39 order of appointment, to exercise all of the powers, duties and
40 responsibilities of such member, including, but not limited to, the right
41 to vote on matters before the authority.

42 Each alternate member shall hold office for the term of his
43 appointment and until his successor shall have been appointed and
44 qualified. An alternate member shall be eligible for reappointment.
45 Any vacancy in the alternate membership occurring other than by the
46 expiration of a term shall be filled in the same manner as the original

1 appointment but for the unexpired term only. Any reference to a
2 member of the authority in this act shall be deemed to include alternate
3 members unless the context indicates otherwise.

4 The terms of office of the members and alternate members of the
5 authority appointed by the Governor who are serving on the effective
6 date of P.L. , c. (C.) (now pending before the Legislature as this
7 bill) shall expire upon the appointment by the Governor of eight public
8 members and three alternate members. The initial appointments of the
9 eight public members shall be as follows: the two members appointed
10 upon the recommendation of the President of the Senate and the two
11 members appointed upon the recommendation of the Speaker of the
12 General Assembly shall serve terms of three years; two members shall
13 serve terms of two years; and two members shall serve terms of one
14 year. The initial appointments of the alternate members shall be as
15 follows: the alternate member appointed upon the recommendation of
16 the President of the Senate shall serve a term of three years; the
17 alternate member appointed upon the recommendation of the Speaker
18 of the General Assembly shall serve a term of two years; and one
19 alternate member shall serve a term of one year. No member shall be
20 appointed who is holding elective office.

21 c. Each member appointed by the Governor may be removed from
22 office by the Governor, for cause, after a public hearing, and may be
23 suspended by the Governor pending the completion of such hearing.
24 Each member before entering upon his duties shall take and subscribe
25 an oath to perform the duties of his office faithfully, impartially and
26 justly to the best of his ability. A record of such oaths shall be filed in
27 the office of the Secretary of State.

28 d. [The Commissioner of Commerce and Economic Development
29 may, at his discretion, serve as the chairperson of the authority or may
30 appoint one of the six public members of the authority as chairperson.
31 Any such designation or appointment shall be made in writing and shall
32 be delivered to the authority and to the Governor and shall continue
33 in effect until revoked or amended by a writing delivered to the
34 authority and the Governor.] A chairperson shall be appointed by the
35 Governor from the public members. The members of the authority
36 shall elect from their remaining number a vice chairperson and a
37 treasurer thereof. The authority shall employ an executive director
38 who shall be its secretary and chief executive officer. The powers of
39 the authority shall be vested in the members thereof in office from time
40 to time and [six] seven members of the authority shall constitute a
41 quorum at any meeting thereof. Action may be taken and motions and
42 resolutions adopted by the authority at any meeting thereof by the
43 affirmative vote of at least [six] seven members of the authority. No
44 vacancy in the membership of the authority shall impair the right of a
45 quorum of the members to exercise all the powers and perform all the
46 duties of the authority.

47 e. Each member of the authority shall execute a bond to be

1 conditioned upon the faithful performance of the duties of such
2 member in such form and amount as may be prescribed by the Director
3 of the Division of Budget and Accounting in the Department of the
4 Treasury. Such bonds shall be filed in the office of the Secretary of
5 State. At all times thereafter the members and treasurer of the
6 authority shall maintain such bonds in full force and effect. All costs
7 of such bonds shall be borne by the authority.

8 f. The members of the authority shall serve without compensation,
9 but the authority shall reimburse its members for actual expenses
10 necessarily incurred in the discharge of their duties. Notwithstanding
11 the provisions of any other law, no officer or employee of the State
12 shall be deemed to have forfeited or shall forfeit his office or
13 employment or any benefits or emoluments thereof by reason of his
14 acceptance of the office of ex officio member of the authority or his
15 services therein.

16 g. Each ex officio member of the authority may designate an officer
17 or employee of his department to represent him at meetings of the
18 authority, and each such designee may lawfully vote and otherwise act
19 on behalf of the member for whom he constitutes the designee. Any
20 such designation shall be in writing delivered to the authority and shall
21 continue in effect until revoked or amended by writing delivered to the
22 authority.

23 h. The authority may be dissolved by act of the Legislature on
24 condition that the authority has no debts or obligations outstanding or
25 that provision has been made for the payment or retirement of such
26 debts or obligations. Upon any such dissolution of the authority, all
27 property, funds and assets thereof shall be vested in the State.

28 i. A true copy of the minutes of every meeting of the authority shall
29 be forthwith delivered by and under the certification of the secretary
30 thereof to the Governor. No action taken at such meeting by the
31 authority shall have force or effect until 10 days, Saturdays, Sundays,
32 and public holidays excepted, after the copy of the minutes shall have
33 been so delivered, unless during such 10-day period the Governor shall
34 approve the same in which case such action shall become effective
35 upon such approval. If, in that 10-day period, the Governor returns
36 such copy of the minutes with veto of any action taken by the
37 authority or any member thereof at such meeting, such action shall be
38 null and void and of no effect. The powers conferred in this
39 subsection i. upon the Governor shall be exercised with due regard for
40 the rights of the holders of bonds and notes of the authority at any
41 time outstanding, and nothing in, or done pursuant to, this subsection
42 i. shall in any way limit, restrict or alter the obligation or powers of the
43 authority or any representative or officer of the authority to carry out
44 and perform in every detail each and every covenant, agreement or
45 contract at any time made or entered into by or on behalf of the
46 authority with respect to its bonds or notes or for the benefit,
47 protection or security of the holders thereof.

1 j. On or before March 31 in each year, the authority shall make an
2 annual report of its activities for the preceding calendar year to the
3 Governor and the Legislature. Each such report shall set forth a
4 complete operating and financial statement covering the authority's
5 operations during the year. The authority shall cause an audit of its
6 books and accounts to be made at least once in each year by certified
7 public accountants and cause a copy thereof to be filed with the
8 Secretary of State and the Director of the Division of Budget and
9 Accounting in the Department of the Treasury.

10 k. The Director of the Division of Budget and Accounting in the
11 Department of the Treasury and his legally authorized representatives
12 are hereby authorized and empowered from time to time to examine
13 the accounts, books and records of the authority including its receipts,
14 disbursements, contracts, sinking funds, investments and any other
15 matters relating thereto and to its financial standing.

16 l. No member, officer, employee or agent of the authority shall be
17 interested, either directly or indirectly, in any project or school
18 facilities project, or in any contract, sale, purchase, lease or transfer of
19 real or personal property to which the authority is a party.³

20 (cf: P.L.1995, c.227)

21

22 ³46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
23 as follows:

24 5. The authority shall have the following powers:

25 a. To adopt bylaws for the regulation of its affairs and the conduct
26 of its business;

27 b. To adopt and have a seal and to alter the same at pleasure;

28 c. To sue and be sued;

29 d. To acquire in the name of the authority by purchase or
30 otherwise, on such terms and conditions and such manner as it may
31 deem proper, or by the exercise of the power of eminent domain in the
32 manner provided by the Eminent Domain Act of 1971, P.L.1971,
33 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
34 property which it may determine is reasonably necessary for any
35 project or school facilities project; provided, however, that the
36 authority in connection with any project shall not take by exercise of
37 the power of eminent domain any real property except upon consent
38 thereto given by resolution of the governing body of the municipality
39 in which such real property is located; and provided further that the
40 authority shall be limited in its exercise of the power of eminent
41 domain in connection with any project to municipalities receiving State
42 aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or
43 to municipalities which had a population, according to the latest
44 federal decennial census, in excess of 10,000;

45 e. To enter into contracts with a person upon such terms and
46 conditions as the authority shall determine to be reasonable, including,
47 but not limited to, reimbursement for the planning, designing,

- 1 financing, construction, reconstruction, improvement, equipping,
2 furnishing, operation and maintenance of the project or the school
3 facilities project and to pay or compromise any claims arising
4 therefrom;
- 5 f. To establish and maintain reserve and insurance funds with
6 respect to the financing of the project or the school facilities project;
- 7 g. To sell, convey or lease to any person all or any portion of a
8 project or school facilities project, for such consideration and upon
9 such terms as the authority may determine to be reasonable;
- 10 h. To mortgage, pledge or assign or otherwise encumber all or any
11 portion of a project , school facilities project or revenues, whenever
12 it shall find such action to be in furtherance of the purposes of this act
13 and P.L. , c. (C.)(now pending before the Legislature as this
14 bill);
- 15 i. To grant options to purchase or renew a lease for any of its
16 projects or school facilities projects on such terms as the authority may
17 determine to be reasonable;
- 18 j. To contract for and to accept any gifts or grants or loans of
19 funds or property or financial or other aid in any form from the United
20 States of America or any agency or instrumentality thereof, or from
21 the State or any agency, instrumentality or political subdivision
22 thereof, or from any other source and to comply, subject to the
23 provisions of the act and P.L. , c. (C.)(now pending before the
24 Legislature as this bill), with the terms and conditions thereof;
- 25 k. In connection with any application for assistance under this act
26 or P.L. , c. (C.)(now pending before the Legislature as this bill)
27 or commitments therefor, to require and collect such fees and charges
28 as the authority shall determine to be reasonable;
- 29 l. To adopt, amend and repeal regulations to carry out the
30 provisions of this act and P.L. , c. (C.)(now pending before the
31 Legislature as this bill);
- 32 m. To acquire, purchase, manage and operate, hold and dispose of
33 real and personal property or interests therein, take assignments of
34 rentals and leases and make and enter into all contracts, leases,
35 agreements and arrangements necessary or incidental to the
36 performance of its duties;
- 37 n. To purchase, acquire and take assignments of notes, mortgages
38 and other forms of security and evidences of indebtedness;
- 39 o. To purchase, acquire, attach, seize, accept or take title to any
40 project or school facilities project by conveyance or by foreclosure,
41 and sell, lease, manage or operate any project or school facilities
42 project for a use specified in this act and P.L. , c. (C.)(now
43 pending before the Legislature as this bill);
- 44 p. To borrow money and to issue bonds of the authority and to
45 provide for the rights of the holders thereof, as provided in this act and
46 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 47 q. To extend credit or make loans to any person for the planning,

1 designing, acquiring, constructing, reconstructing, improving,
2 equipping and furnishing of a project or school facilities project, which
3 credits or loans may be secured by loan and security agreements,
4 mortgages, leases and any other instruments, upon such terms and
5 conditions as the authority shall deem reasonable, including provision
6 for the establishment and maintenance of reserve and insurance funds,
7 and to require the inclusion in any mortgage, lease, contract, loan and
8 security agreement or other instrument, such provisions for the
9 construction, use, operation and maintenance and financing of a
10 project or school facilities project as the authority may deem necessary
11 or desirable;

12 r. To guarantee up to 90% of the amount of a loan to a person, if
13 the proceeds of the loan are to be applied to the purchase and
14 installation, in a building devoted to industrial or commercial
15 purposes, or in an office building, of an energy improvement system;

16 s. To employ consulting engineers, architects, attorneys, real estate
17 counselors, appraisers, and such other consultants and employees as
18 may be required in the judgment of the authority to carry out the
19 purposes of the act and P.L. , c. (C.)(now pending before the
20 Legislature as this bill), and to fix and pay their compensation from
21 funds available to the authority therefor, all without regard to the
22 provisions of Title 11A of the New Jersey Statutes;

23 t. To do and perform any acts and things authorized by this act
24 and P.L. , c. (C.)(now pending before the Legislature as this
25 bill) under, through or by means of its own officers, agents and
26 employees, or by contract with any person;

27 u. To procure insurance against any losses in connection with its
28 property, operations or assets in such amounts and from such insurers
29 as it deems desirable;

30 v. To do any and all things necessary or convenient to carry out its
31 purposes and exercise the powers given and granted in the act and
32 P.L., c. (C.)(now pending before the Legislature as this bill);

33 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
34 maintain or repair or provide for the construction, reconstruction,
35 improvement, alteration, equipping or maintenance or repair of any
36 development property and lot, award and enter into construction
37 contracts, purchase orders and other contracts with respect thereto,
38 upon such terms and conditions as the authority shall determine to be
39 reasonable, including, but not limited to, reimbursement for the
40 planning, designing, financing, construction, reconstruction,
41 improvement, equipping, furnishing, operation and maintenance of any
42 such development property and the settlement of any claims arising
43 therefrom and the establishment and maintenance of reserve funds with
44 respect to the financing of such development property;

45 x. When authorized by the governing body of a municipality
46 exercising jurisdiction over an urban growth zone, to construct, cause
47 to be constructed or to provide financial assistance to projects in an

1 urban growth zone which shall be exempt from the terms and
2 requirements of the land use ordinances and regulations, including, but
3 not limited to, the master plan and zoning ordinances, of such
4 municipality; and

5 y. To enter into business employment incentive agreements as
6 provided in the "Business Employment Incentive Program Act,"
7 P.L.1996, c.26 (C.34:1B-124 et al.)[.];

8 z. To undertake school facilities projects and to enter into
9 agreements or contracts, execute instruments, and do and perform all
10 acts or things necessary, convenient or desirable for the purposes of
11 the authority to carry out any power expressly provided pursuant to
12 P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L. , c. (C.)(now
13 pending before the Legislature as this bill), including, but not limited
14 to, entering into contracts with the State Treasurer, the Commissioner
15 of Education, districts and any other entity which may be required in
16 order to carry out the provisions of P.L. , c. (C.)(now pending
17 before the Legislature as this bill);

18 aa. To enter into leases, rentals or other disposition of a real
19 property interest in and of any school facilities project to or from any
20 local unit pursuant to P.L. , c. (C.)(now pending before the
21 Legislature as this bill);

22 bb. To make and contract to make loans or leases and to make
23 grants to local units to finance the cost of school facilities projects and
24 to acquire and contract to acquire bonds, notes or other obligations
25 issued or to be issued by local units to evidence the loans or leases, all
26 in accordance with the provisions of P.L. , c. (C.)(now pending
27 before the Legislature as this bill);

28 cc. Subject to any agreement with holders of its bonds issued to
29 finance a project or school facilities project, obtain as security or to
30 provide liquidity for payment of all or any part of the principal of and
31 interest and premium on the bonds of the authority or for the purchase
32 upon tender or otherwise of the bonds, lines of credit, letters of credit,
33 reimbursement agreements, interest rate exchange agreements,
34 currency exchange agreements, interest rate floors or caps, options,
35 puts or calls to hedge payment, currency, rate, spread or similar
36 exposure or similar agreements, float agreements, forward agreements,
37 insurance contract, surety bond, commitment to purchase or sell
38 bonds, purchase or sale agreement, or commitments or other contracts
39 or agreements, and other security agreements or instruments in any
40 amounts and upon any terms as the authority may determine and pay
41 any fees and expenses required in connection therewith;

42 dd. To charge to and collect from local units, the State and any
43 other person, any fees and charges in connection with the authority's
44 actions undertaken with respect to school facilities projects, including,
45 but not limited to, fees and charges for the authority's administrative,
46 organization, insurance, operating and other expenses incident to the
47 financing, construction and placing into service and maintenance of

1 school facilities projects.³

2 (cf: P.L.1996, c.26, s.16)

3

4 ³47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to
5 read as follows:

6 1. The New Jersey Economic Development Authority shall adopt
7 rules and regulations requiring that not less than the prevailing wage
8 rate be paid to workers employed in the performance of construction
9 contracts undertaken in connection with [Authority financial
10 assistance] any of its projects or school facilities projects. The
11 prevailing wage rate shall be the rate determined by the Commissioner
12 of Labor [and Industry] pursuant to the provisions of P.L.1963,
13 c.150 (C.34:11-56.25 et seq.).³

14 (cf: P.L.1979, c.303, s.1)

15

16 ³48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to
17 read as follows:

18 4. a. The New Jersey Economic Development Authority shall
19 adopt rules and regulations to establish an affirmative action program
20 for the hiring of minority workers employed in the performance of
21 construction contracts undertaken in connection with any of its
22 projects [receiving Authority assistance] and school facilities
23 projects, and to expand the business opportunities of socially and
24 economically disadvantaged contractors and vendors seeking to
25 provide materials and services for those contracts, consistent with the
26 provisions of the "Law Against Discrimination," P.L.1945, c.169
27 (C.10:5-1 et seq.) and the [Authority] authority shall provide for the
28 proper enforcement and administration of such rules and regulations.

29 b. Within 180 days of the effective date of P.L. , c. (C.)(now
30 pending before the Legislature as this bill), but before adoption of its
31 rules and regulations concerning its affirmative action program, the
32 authority shall submit the proposed rules and regulations to the
33 presiding officers and the standing committees on State government
34 of both houses of the Legislature for their review.³

35 (cf: P.L.1979, c.303, s.4)

36

37 ³49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read
38 as follows:

39 15. The exercise of the powers granted by this act and P.L. , c.
40 (C.)(now pending before the Legislature as this bill) shall constitute
41 the performance of an essential governmental function and the
42 authority shall not be required to pay any taxes or assessments upon
43 or in respect of a project or school facilities project, or any property
44 or moneys of the authority, and the authority, its projects and school
45 facilities projects, property and moneys and any bonds and notes
46 issued under the provisions of this act and P.L. , c. (C.)(now
47 pending before the Legislature as this bill), their transfer and the

1 income therefrom, including any profit made on the sale thereof, shall
2 at all times be free from taxation of every kind by the State except for
3 transfer, inheritance and estate taxes and by any political subdivision
4 of the State; provided, that any person occupying a project whether
5 as lessee, vendee or otherwise shall, as long as title thereto shall
6 remain in the authority, pay to the political subdivision in which such
7 project is located a payment in lieu of taxes which shall equal the
8 taxes on real and personal property, including water and sewer service
9 charges or assessments, which such person would have been required
10 to pay had it been the owner of such property during the period for
11 which such payment is made and neither the authority nor its projects,
12 properties, money or bonds and notes shall be obligated, liable or
13 subject to lien of any kind for the enforcement, collection or payment
14 thereof. If and to the extent the proceedings under which the bonds
15 authorized to be issued under the provisions of this act so provide, the
16 authority may agree to cooperate with such person occupying a
17 project, in connection with any administrative or judicial proceedings
18 for determining the validity or amount of such payments and may
19 agree to appoint or designate and reserve the right in and for such
20 person to take all action which the authority may lawfully take in
21 respect of such payments and all matters relating thereto, provided
22 such person shall bear and pay all costs and expenses of the authority
23 thereby incurred at the request of such person or by reason of any
24 such action taken by such person in behalf of the authority. If such
25 person occupying a project has paid the amounts in lieu of taxes
26 required by this section to be paid such person shall not be required
27 to pay any such taxes as to which a payment in lieu thereof has been
28 made to the State or to any political subdivision, any other statute to
29 the contrary notwithstanding.³

30 (cf: P.L.1974, c.80, s.15)

31

32 ³50. (New section) In the exercise of powers granted by P.L. ,
33 c. (C.)(now pending before the Legislature as this bill) in
34 connection with any school facilities project, any and all claims,
35 damages, losses, liabilities or costs that the authority may incur shall
36 be payable only from the amounts made available to the authority
37 pursuant to that act. In connection with any agreement or contract
38 entered into by the authority relating to any school facilities project,
39 there shall be no recovery against the authority for punitive or
40 consequential damages arising out of contract nor shall there be any
41 recovery against the authority for claims based upon implied
42 warranties or upon contracts implied in law.³

1 ³51. (New section) a. No municipality shall modify or change the
2 drawings, plans or specifications for the construction, reconstruction,
3 rehabilitation, alteration or improvement of any school facilities
4 project of the authority, or the construction, plumbing, heating,
5 lighting or other mechanical branch of work necessary to complete the
6 work in question, nor to require that any person, firm or corporation
7 employed on any such work shall perform the work in any other or
8 different manner than that provided by the drawings, plans and
9 specifications, nor to require that any person, firm or corporation
10 obtain any other or additional authority, approval, permit or certificate
11 from the municipality in relation to the work being done, and the doing
12 of the work by any person, firm or corporation in accordance with the
13 terms of the drawings, plans, specifications or contracts shall not
14 subject the person, firm or corporation to any liability or penalty, civil
15 or criminal, other than as may be stated in the contracts or incidental
16 to the proper enforcement thereof; nor shall any municipality require
17 the authority or any person, firm, partnership or corporation which
18 leases or purchases the school facilities project for lease or purchase
19 to a State agency, to obtain any other or additional authority,
20 approval, permit, certificate or certificate of occupancy from the
21 municipality as a condition of owning, using, maintaining, operating or
22 occupying any school facilities project acquired, constructed,
23 reconstructed, rehabilitated, altered or improved by the authority or by
24 any subsidiary thereof. The foregoing provisions shall not preclude
25 any municipality from exercising the right of inspection for the purpose
26 of requiring compliance by any school facilities project with local
27 requirements for operation and maintenance affecting the health, safety
28 and welfare of the occupants thereof, provided that the compliance
29 does not require changes, modifications or additions to the original
30 construction of the school facilities project.

31 b. Each municipality in which any school facilities project of the
32 authority is located shall provide for the school facilities project,
33 whether then owned by the authority, any subsidiary, any State agency
34 or any person, firm, partnership or corporation, police, fire, sanitation,
35 health protection and other municipal services of the same character
36 and to the same extent as those provided for other residents of the
37 municipality.

38 c. In carrying out any school facilities project, the authority may
39 enter into contractual agreements with local government agencies with
40 respect to the furnishing of any community, municipal or public
41 facilities or services necessary or desirable for the school facilities
42 project, and any local government agency may enter into these
43 contractual agreements with the authority and do all things necessary
44 to carry out its obligations.³

45
46 ³52. (New section) a. In undertaking any school facilities projects
47 where the cost of construction, reconstruction, rehabilitation or

1 improvement will exceed \$25,000, the authority may prepare, or cause
2 to be prepared, separate plans and specifications for: (1) the plumbing
3 and gas fitting and all work and materials kindred thereto, (2) the
4 steam and hot water heating and ventilating apparatus, steam power
5 plants and all work and materials kindred thereto, (3) the electrical
6 work, (4) structural steel and miscellaneous iron work and materials,
7 and (5) all general construction, which shall include all other work and
8 materials required to complete the building.

9 b. The authority shall advertise and receive (1) separate bids for
10 each of the branches of work specified in subsection a. of this section;
11 or (2) bids for all the work and materials required to complete the
12 school facilities project to be included in a single overall contract, in
13 which case there shall be set forth in the bid the name or names of all
14 subcontractors to whom the bidder will subcontract for the furnishing
15 of any of the work and materials specified in branches (1) through (4)
16 in subsection a. of this section; or (3) both.

17 c. Contracts shall be awarded as follows: (1) if bids are received in
18 accordance with paragraph (1) of subsection b. of this section, the
19 authority shall determine the responsible bidder for each branch whose
20 bid, conforming to the invitation for bids, will be most advantageous
21 to the authority, price and other factors considered; (2) if bids are
22 received in accordance with paragraph (2) of subsection b. of this
23 section, the authority shall determine the responsible bidder for the
24 single overall contract whose bid, conforming to the invitation for
25 bids, will be the most advantageous to the authority, price and other
26 factors considered; or (3) if bids are received in accordance with
27 paragraph (3) of subsection b. of this section, the authority shall award
28 separate contracts for each branch of work specified in subsection a.
29 of this section if the sum total of the amounts bid by the responsible
30 bidders for each branch, as determined pursuant to paragraph (1) of
31 this subsection, is less than the amount bid by the responsible bidder
32 for all of the work and materials, as determined pursuant to paragraph
33 (2) of this subsection; but if the sum total of the amounts bid by the
34 responsible bidder for each branch, as determined pursuant to
35 paragraph (1) of this subsection is not less than the amount bid by the
36 responsible bidder for all of the work and materials, as determined
37 pursuant to paragraph (2) of this subsection, the authority shall award
38 a single over-all contract to the responsible bidder for all of the work
39 and materials as determined pursuant to paragraph (2) of this
40 subsection.

41 d. For the purposes of this section, "other factors" means the
42 evaluation by the authority of the ability of the single contractor or the
43 abilities of the multiple contractors to complete the contract in
44 accordance with its requirements and includes requirements relating to
45 the experience and qualifications of the contractor or contractors and
46 their key personnel in projects of similar type and complexity; the
47 performance of the contractor or contractors on prior contracts with

1 the authority or the State; the experience and capability of the
2 contractor or contractors and their key personnel in respect to any
3 special technologies, techniques or expertise that the project may
4 require; the contractor's understanding of the means and methods
5 needed to complete the project on time and within budget; the
6 timetable to complete the project; the contractor's plan for quality
7 assurance and control; and other similar types of factors. The "other
8 factors" to be considered in evaluating bids and the weights assigned
9 to price and these "other factors" shall be determined by the authority
10 prior to the advertisement for bids for school facilities projects. In its
11 evaluation of bids, the consideration given to price by the authority
12 shall be at least equal to the consideration given to the combination of
13 all "other factors."

14 e. The authority shall require from all contractors to which it
15 awards contracts pursuant to P.L. , c. (C.)(now pending before
16 the Legislature as this bill), the delivery of a payment performance
17 bond issued in accordance with N.J.S.2A:44-143 et seq.

18 f. The authority shall adopt regulations to implement this section
19 which shall include, but not be limited to, the procedural requirements
20 for: (1) the evaluation and weighting of price and "other factors" in the
21 awarding of contracts; and (2) the appealing of a prequalification
22 classification and rating, a bid rejection and a contract award
23 recommendation.

24 g. Each evaluation committee selected by the authority to review
25 and evaluate bids shall, at a minimum, contain a representative from
26 the district in which the school facilities project is located if such
27 district elects to participate.³

28
29 ³53. (New section) a. If the authority shall find it necessary in
30 connection with the undertaking of any school facilities project to
31 change the location of any portion of any public highway or road, it
32 may contract with any government agency, or public or private
33 corporation which may have jurisdiction over the public highway or
34 road to cause the public highway or road to be constructed at such
35 locations as the authority shall deem most favorable. The cost of the
36 reconstruction and any damage incurred in changing the location of the
37 highway shall be ascertained and paid by the authority as part of the
38 cost of the school facilities project. Any public highway affected by
39 the construction of any school facilities project may be vacated or
40 relocated by the authority in the manner now provided by law for the
41 vacation or relocation of public roads, and any damages awarded on
42 account thereof shall be paid by the authority as a part of the cost of
43 the school facilities project. In all undertakings authorized by this
44 subsection, the authority shall consult and obtain the approval of the
45 Commissioner of Transportation.

46 b. The authority and its authorized agents and employees may enter
47 upon any lands, waters and premises for the purpose of making

1 surveys, soundings, drillings and examinations as it may deem
2 necessary or convenient for the purposes of this act, all in accordance
3 with due process of law, and this entry shall not be deemed a trespass
4 nor shall an entry for this purpose be deemed an entry under any
5 condemnation proceedings which may be then pending. The authority
6 shall make reimbursement for any actual damages resulting to the
7 lands, waters and premises as a result of these activities.

8 c. The authority shall have the power to make reasonable
9 regulations for the installation, construction, maintenance, repair,
10 renewal, relocation and removal of tracks, pipes, mains, conduits,
11 cables, wires, towers, poles and other equipment and appliances,
12 herein called "public utility facilities," or any public utility as defined
13 in R.S.48:2-13, in, on, along, over or under any school facilities
14 project. Whenever the authority shall determine that it is necessary
15 that any public utility facilities which now are, or hereafter may be,
16 located in, on, along, over or under any school facilities project shall
17 be relocated in the school facilities project, or should be removed from
18 the school facilities project, the public utility owning or operating the
19 facilities shall relocate or remove them in accordance with the order
20 of the authority. The cost and expenses of the relocation or removal,
21 including the cost of installing the facilities in a new location or new
22 locations, and the cost of any lands, or any rights or interests in lands,
23 and any other rights, acquired to accomplish the relocation or removal,
24 shall be ascertained and paid by the authority as a part of the cost of
25 the school facilities project. In case of any relocation or removal of
26 facilities, the public utility owning or operating them, its successors or
27 assigns, may maintain and operate the facilities, with the necessary
28 appurtenances, in the new location or new locations, for as long a
29 period, and upon the same terms and conditions, as it had the right to
30 maintain and operate the facilities in their former location or locations.
31 In all undertakings authorized by this subsection the authority shall
32 consult and obtain the approval of the Board of Public Utilities.³

33
34 ³54. (New section) Notwithstanding the provisions of any law to
35 the contrary, any bonds issued pursuant to P.L. , c. (C.)(now
36 pending before the Legislature as this bill) shall be fully negotiable
37 within the meaning and for all purposes of Title 12A of the New Jersey
38 Statutes, and each holder or owner of such a bond or other obligation,
39 or of any coupon appurtenant thereto, by accepting the bond or
40 coupon shall be conclusively deemed to have agreed that the bond or
41 coupon is and shall be fully negotiable within the meaning and for all
42 purposes of Title 12A.³

43
44 ³55. Section 22 of P.L.1975, c.291 (C.40:55D-31) is amended to
45 read as follows:

46 22. a. Whenever the planning board shall have adopted any portion
47 of the master plan, the governing body or other public agency having

1 jurisdiction over the subject matter, before taking action necessitating
 2 the expenditure of any public funds, incidental to the location,
 3 character or extent of such project, shall refer the action involving
 4 such specific project to the planning board for review and
 5 recommendation in conjunction with such master plan and shall not act
 6 thereon, without such recommendation or until 45 days have elapsed
 7 after such reference without receiving such recommendation. This
 8 requirement shall apply to action by a housing, parking, highway,
 9 special district, or other authority, redevelopment agency, school
 10 board or other similar public agency, State, county or municipal.

11 b. The planning board shall review and issue findings concerning
 12 any long-range facilities plan submitted to the board pursuant to the
 13 "Educational Facilities Construction and Financing Act," P.L. _____,
 14 c. (C. _____) (now pending before the Legislature as this bill), for the
 15 purpose of review of the extent to which the long-range facilities plan
 16 is informed by, and consistent with, at least the land use plan element
 17 and the housing element contained within the municipal master plan
 18 adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and
 19 such other elements of the municipal master plan as the planning board
 20 deems necessary to determine whether the prospective sites for school
 21 facilities contained in the long range facilities plan promote more
 22 effective and efficient coordination of school construction with the
 23 development efforts of the municipality. The planning board shall
 24 devote at least one full meeting of the board to presentation and
 25 review of the long-range facilities plan prior to adoption of a
 26 resolution setting forth the board's findings.³

27 (cf: P.L.1975, c.291, s.22)

28

29 ²[56.] ³[58. ²] 56.³ Section 4 of P.L.1997, c.264 (C.26:2H-
 30 18.58g) is amended to read as follows:

31 4. Notwithstanding the provisions of any other law to the contrary,
 32 commencing July 1, 1998: after the deposit required pursuant to
 33 section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000
 34 of revenue collected annually from the cigarette tax imposed pursuant
 35 to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of
 36 revenue collected annually from the "Tobacco Products Wholesale
 37 Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be
 38 deposited in to the Health Care Subsidy Fund established pursuant to
 39 section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next
 40 \$50,000,000 of revenue collected annually from the cigarette tax
 41 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be
 42 [deposited in the School Construction and Renovation Fund as shall
 43 be established by law] appropriated annually to the New Jersey
 44 ²[Economic Development] ³[Educational Facilities²] Economic
 45 Development³ Authority for payment of debt service incurred by the
 46 authority for school facilities projects.

47 (cf: P.L.1997, c.264, s.4)

1 ²[57. Section 4 of P.L.1966, c.30 (C.54:32B-4) is amended to read
2 as follows:

3 4. Tax bracket schedule. a. For the purpose of adding and
4 collecting the tax imposed by this act, or an amount equal as nearly as
5 possible or practicable to the average equivalent thereof, to be
6 reimbursed to the vendor by the purchaser, the following formula shall
7 be in force and effect:

8	Amount of Sale	Amount of Tax
9	\$0.01 to \$0.10	No Tax
10	0.11 to 0.22	\$0.01
11	0.23 to 0.38	0.02
12	0.39 to 0.56	0.03
13	0.57 to 0.72	0.04
14	0.73 to 0.88	0.05
15	0.89 to 1.10	0.06

16
17 In addition to a tax of \$0.06 on each full dollar, a tax shall be
18 collected on each part of a dollar in excess of a full dollar, in
19 accordance with the above formula.

20 b. For charges paid by inserting coins into a coin operated
21 telecommunications device available to the public the tax shall be
22 computed to the nearest multiple of five cents of the tax otherwise due
23 pursuant to subsection a. of this section, except that, if the amount of
24 the tax is midway between multiples of five cents, the next higher
25 multiple shall apply.

26 c. For the purpose of adding and collecting the sales and use tax at
27 the rate imposed pursuant to section 59 of P.L. , c. (C.)
28 (now pending before the Legislature as this bill) on and after August
29 1 of a fiscal year in which a certification is made to the Director of the
30 Division of Taxation pursuant to subsection b. of that section 59 of
31 P.L. , c. (C.) (now pending before the Legislature as this
32 bill), or an amount equal as nearly as possible or practicable to the
33 average equivalent thereof, the director shall promulgate tax collection
34 formulas for the purpose of collecting the tax for the rate established
35 pursuant to that section 59 of P.L. , c. (C.) (now pending
36 before the Legislature as this bill).

37 (cf: P.L.1993, c.10, s.2)]²

38
39 ²[58. Section 31 of P.L.1980, c.105 (C.54:32B-8.19) is amended
40 to read as follows:

41 31. Receipts from sales of tangible personal property and services
42 taxable under any municipal ordinance which was adopted pursuant to
43 P.L.1947, c.71 (C.40:48-8.15 et seq.) and was in effect on April 27,
44 1966 are exempt from the tax imposed under the Sales and Use Tax

1 Act, subject to the following conditions:

2 a. To the extent that the tax that is or would be imposed under
3 section 3 of P.L.1966, c.30 (C.54:32B-3) is greater than the tax
4 imposed by such ordinance, such sales shall not be exempt under this
5 section; and

6 b. Irrespective of the rate of tax imposed by such ordinance, such
7 sales shall be exempt only to the extent that the rate of taxation
8 imposed by the ordinance exceeds 6%, except that the combined rate
9 of taxation imposed under the ordinance and under this section shall
10 not exceed ~~[12%]~~ 11% on and after August 1 and through June 30 of
11 a fiscal year in which a certification is made to the Director of the
12 Division of Taxation pursuant to subsection b. of section 59 of P.L.
13 , c. (C.) (now pending before the Legislature as this bill).
14 (cf: P.L.1992, c.11, s.5)]²
15

16 ²[59. (New section) a. The annual appropriations act for each
17 State fiscal year commencing with fiscal year 2001 shall appropriate
18 and distribute during the fiscal year the amount determined by the
19 Department of Education to be the amount of State debt service aid
20 determined pursuant to sections 9 and 10 of P.L. , c. (C.)
21 (now pending before the Legislature as this bill) for the purposes of
22 those sections.

23 b. If the provisions of subsection a. of this section are not met on
24 the effective date of an annual appropriations act for the State fiscal
25 year, or if an amendment or supplement to an annual appropriations
26 act for the State fiscal year should violate the provisions of subsection
27 a. of this section, the Director of the Division of Budget and
28 Accounting in the Department of the Treasury shall, not later than five
29 days after the enactment of the annual appropriations act, or an
30 amendment or supplement thereto, that violates the provisions of
31 subsection a. of this section, certify to the Director of the Division of
32 Taxation that the requirements of subsection a. of this section have not
33 been met.

34 c. Upon certification to the Director of the Division of Taxation
35 pursuant to subsection b. of this section, then, notwithstanding the rate
36 of tax of 6% provided in section 3 of P.L.1966, c.30 (C.54:32B-3) and
37 section 6 of P.L.1966, c.30 (C.54:32B-6), or any other provision of
38 law to the contrary, the rate of tax imposed or paid on receipts from
39 sales or use within this State on or after August 1 of that fiscal year
40 through June 30 of that fiscal year shall be 5%.

41 d. The Director of the Division of Taxation, within 5 days of
42 receipt of a certification made pursuant to subsection b. of this section,
43 shall take such action as is necessary to notify all vendors of the rate
44 of tax on or after August 1 of that fiscal year through June 30 of that
45 fiscal year.

46 e. Any sales and use tax erroneously collected or paid at a rate of
47 6% instead of at a rate of 5% on receipts from sales or use within this

1 State on or after August 1 of that fiscal year through June 30 of that
2 fiscal year shall be subject to refund in the manner provided in section
3 20 of P.L.1966, c.30 (C.54:32B-20).]²

4
5 ²[60. (New section) The Director of the Division of Taxation shall
6 promulgate regulations on or before August 1 of a fiscal year in which
7 a certification is made to the Director of the Division of Taxation
8 pursuant to subsection b. of that section 59 of P.L. , c. (C.)
9 (now pending before the Legislature as this bill) to provide tax rate
10 transitional provisions for the imposition of the appropriate rate of tax
11 for: sales made and property delivered or services performed,
12 occupancies pursuant to prior contracts, leases or other arrangements,
13 admission charges made for admissions, certain sales made pursuant
14 to certain contracts either of a fixed price not subject to change or
15 modification, or entered into pursuant to the obligation of a formal
16 written bid which cannot be altered or withdrawn; which involve dates
17 over periods both before and after August 1 of such a fiscal year.]²

18
19 ³[²59.] 57.³ (New section) a. Notwithstanding any provision of
20 this act or any other law or regulation to the contrary, within 90 days
21 of the effective date of this act, a board of education or a board of
22 school estimate, as appropriate, may, through the adoption of a board
23 resolution, establish a capital reserve account. The account shall be
24 established and held in accordance with GAAP and shall be subject to
25 annual audit. The funds in the capital reserve account shall be used to
26 finance the district's long-range facilities plan required pursuant to
27 subsection a. of section 4 of this act and the amount in the account
28 shall not exceed the total amount of local funds required to implement
29 the plan as indicated on the annual QAAR report.

30 b. A board of education or a board of school estimate, as
31 appropriate, may appropriate funds in the district's annual budget for
32 the establishment of the capital reserve account pursuant to subsection
33 a. of this section or to supplement the funds in the account as required
34 to meet the needs of the long-range facilities plan. The district's
35 spending growth limitation as established pursuant to section 5 of
36 P.L.1996, c.138 (C.18A:7F-5) shall be adjusted by the amount of
37 funds appropriated in the budget year to the capital reserve account.

38 c. A board of education may, by resolution of the board: transfer
39 undesignated general fund balance or excess undesignated general fund
40 balance to the capital reserve account at any time during the budget
41 year; transfer funds from the capital reserve account to the appropriate
42 line item account for the funding of capital projects as contained in the
43 district's long-range facilities plan; and transfer funds from the capital
44 reserve account to the debt service account for the purpose of
45 offsetting principal and interest payments for bonded projects which
46 are included in the district's long-range facilities plan.²

1 ³[²60.] 58.³ (New section) a. There is hereby created a special
2 fund in the Department of Education which shall be entitled the
3 "County Vocational School District Facilities Rehabilitation Fund."
4 The fund shall be maintained in a separate account and administered
5 by the commissioner to carry out the provisions of this section. The
6 fund shall consist of all moneys appropriated by the State for the
7 purposes of the fund and all interest and investment earnings received
8 on moneys in the fund.

9 b. A county vocational school district may apply to the
10 commissioner for a grant in the maximum amount of \$500,000 to be
11 matched by the district for the purposes of funding health and safety
12 school facilities rehabilitation projects. The grant and matching
13 district funds shall be maintained by the district in a special revenue
14 fund as certified by the district's board of education and its chief
15 financial officer and shall be subject to annual audit. A project funded
16 through the grant fund shall not require the approval of the
17 commissioner pursuant to section 5 of this act.

18 c. Any county vocational school district which receives grant
19 funding pursuant to subsection b. of this section shall not be eligible
20 to receive school facilities aid pursuant to any other provision of this
21 act for a period of five years from the district's receipt of the grant,
22 except that the district may receive debt service aid pursuant to section
23 10 of this act; and any county vocational school district which receives
24 aid under any provision of this act other than section 10, shall not
25 receive a grant pursuant to subsection b. of this section for five years
26 after approval of a project which is otherwise funded under this act.²
27

28 ³[²61.] 59.³ (New section) ³[a.]³ The ³[New Jersey Building
29 Authority] authority³ shall establish a process for the prequalification
30 of ³[persons as bidders] contractors that desire to bid³ on school
31 facilities projects. A ³[person] contractor³ shall not be permitted
32 to bid on ³such ³a school facilities project unless the [³person]
33 contractor³ has been prequalified pursuant to P.L. , c. (C.)(now
34 pending before the Legislature as this bill).

35 The prequalification process shall apply to general contractors,
36 construction managers, and ³[subcontractors] contractors including
37 those³ in the following areas:

38 (1) plumbing and gas fitting and all work and materials kindred
39 thereto;

40 (2) steam and hot water heating and ventilating apparatus, steam
41 power plants and all work and materials kindred thereto;

42 (3) electrical work; and

43 (4) structural steel and ³[ornamental] miscellaneous³ iron work
44 and materials.

45 ³[b. The building authority shall provide personnel trained and
46 experienced in construction procurement to conduct the

1 prequalification of bidders.²]³

2

3 ³[²62.] 60.³ (New section) a. The prequalification process shall
4 include a requirement that the ³[person] contractor³ proposing to
5 submit bids on a school facilities project submit a statement under oath
6 on a form designated by the ³[building]³ authority. The form shall
7 fully describe and establish the financial ability, responsibility, plant
8 and equipment, organization, ownership, relationships and prior
9 experience of the prospective bidder and any other pertinent and
10 material facts as may be deemed necessary by the ³[building]³
11 authority. The submission shall include:

12 (1) A certified, audited financial statement or compilation of
13 financial statements ³or other documentation of financial status
14 acceptable to the authority ³ ;

15 (2) ³[Proof of all applicable licenses, certifications and
16 registrations as required by law;] Proof of any contractor or trade
17 license required by law for any trade or specialty area in which the
18 contractor is seeking prequalification and a statement as to whether
19 any contractor or trade license has been revoked;³

20 ³[(3) Verification of all applicable insurance, including general
21 liability, workers' compensation and unemployment compensation;]³

22 ³[(4)] (3)³ A statement as to bonding capacity, which shall be
23 from a surety authorized to issue bid, performance and payment bonds
24 in the State of New Jersey in accordance with N.J.S.2A:44-143
25 through N.J.S.2A:44-147 to the ³[prospective bidder] contractor³ ,
26 and shall indicate aggregate bonding limits;

27 ³(4) A list of the names and titles of all individuals who own 10%
28 or more of any class of stock in the corporation or are a 10% or more
29 partner in the firm. If any of the aforementioned stockholders or
30 partners is itself a corporation, or a partnership, that entity shall also
31 provide the information specified herein.³

32 (5) Disclosure of any judgements, convictions or criminal
33 indictments for any conduct constituting a crime under local, State or
34 federal law;

35 (6) Disclosure of any unsatisfied judgments, injunctions or liens
36 obtained by a governmental agency including, but not limited to,
37 judgements based on taxes owed and fines and penalties assessed by
38 any government agency;

39 (7) Disclosure of any determination for violations of federal, State
40 or local laws, rules or regulations, including health laws,
41 unemployment insurance or workers' compensation coverage or claim
42 requirements, the "Employee Retirement Income Security Act of
43 1974" (Pub.L.93-406, 29 U.S.C. s. 1001 et seq.), security laws,
44 environmental laws, safety laws, licensing laws, tax laws and antitrust
45 laws;

46 (8) Disclosure of any federal, State or local debarments, non-

1 responsibility findings or denials of prequalification:

2 (9) Disclosure of any bankruptcy filings or proceedings;

3 (10) A statement as to past performance, which shall give an
4 accurate and complete record of work completed in the past five years
5 by the contractor giving the names of the projects, type of work,
6 location, contract price³, bid and final contract amount paid³ and the
7 names of the owner and of the architect or engineer in charge for the
8 owner. This statement shall also disclose any labor problems
9 experienced, any failure to complete a contract on schedule,³ [and]³
10 any penalties, judgments, orders or liens imposed by reason of any
11 contract undertaken within the five-year period³ and whether the
12 contractor has been defaulted for cause on any project as determined
13 by an unappealed or nonappealable decision³. This statement shall
14 also indicate the status of any litigation pending against the potential
15 bidder. The contractor shall be required to attach to this statement all
16 performance evaluations in his possession for any work performed by
17 the contractor on any public or private projects;

18 (11) A statement as to organization, which shall demonstrate the
19 adequacy of such organization to undertake a school facilities project.
20 This statement shall include the resumes of the management and
21 professional staff;

22 ³[(12) Information concerning quality control and quality
23 assurance programs;

24 (13) A statement setting forth the written safety and health plan
25 along with documentation that the plan is adhered to and implemented
26 on a project by project basis. Documentation shall also be provided
27 that employee safety training is provided;

28 (14)] (12)³ A statement setting forth the³ [prospective bidder's]
29 contractor's³ equipment inventory and technical resources; and

30 ³[(15)]13³ A statement on staffing capabilities, including labor
31 sources, staffing plans, turnover rates, and³ [the] any³ use of
32 registered apprenticeship programs and journeyman training programs.
33 ³[The statement shall include assurances that all apprentices are
34 registered with the federal Bureau of Apprenticeship and Training in
35 the United States Department of Labor.]³

36 b. After the receipt of the submission provided for in subsection a.
37 of this section, the³ [building]³ authority³ [shall] may³ verify
38 information provided in the³ [prospective bidder's] contractor's³
39 submission, including applicable license and certificate requirements,
40 federal or State debarments and violations of law. The³ [building]³
41 authority³ [shall] may³ also³ [., to the extent possible.]³ conduct
42 random inquiries or surveys of the³ [prospective bidder's]
43 contractor's³ prior customers.

44 c. Based upon the submission provided for in subsection a. of this
45 section³ [and the performance evaluations conducted pursuant to
46 section 65 of P.L. , c. (C.) (now pending before the Legislature as

1 this bill).³ the ³[building]³ authority shall assign a ³[prospective
2 bidder] contractor³ the following ³[ratings] classification³ and limits
3 for the purpose of determining the types of projects for which a
4 ³[prospective bidder] contractor³ is entitled to bid:

- 5 ³[(1) a performance rating;
6 (2)] (1)³ a trade ³or work³ classification; and
7 ³[(3)] (2)³ an aggregate rating limit.

8 To effectuate these requirements of the prequalification process, the
9 ³[building]³ authority ³[, in consultation with the New Jersey
10 Division of Property Management and Construction,]³ shall develop
11 rules and regulations for assigning ³[performance ratings, trade]³
12 classifications and aggregate ³[rating]³ limits. ³[These rules and
13 regulations shall be consistent with the provisions set forth in
14 N.J.A.C.17:19-2.6 through N.J.A.C.17:19-2.12 and N.J.A.C.17:19-
15 2.1(b)(1).]³

16 d. The classification shall be made and an immediate notice thereof
17 shall be sent to the ³[prospective bidder] contractor³ by registered
18 or certified mail ³[within a period of eight days after the date of
19 receipt of the submission] or other legally valid methods³ .

20 e. The ³[building]³ authority shall establish procedures to permit
21 ³[prospective bidders] contractors³ to challenge a classification
22 made pursuant to this section.

23 f. The prequalification ³[process] submission³ shall include ³[a
24 requirement that a contractor meet with the county apprenticeship
25 coordinator or the federal Bureau of Apprenticeship and Training
26 representative to review appropriate apprenticeship laws and
27 regulations. An] an³ affidavit which acknowledges receipt of
28 information regarding the appropriate federal Bureau of
29 Apprenticeship and Training apprenticeship laws and regulations as
30 adopted by the State ³[shall be submitted with the form required
31 pursuant to subsection a. of this section. The affidavit shall be signed
32 by the contractor or his official agent, the county apprenticeship
33 coordinator, the federal Bureau of Apprenticeship and Training
34 representative for the State and a Department of Education
35 representative] and information regarding the county apprenticeship
36 coordinators and the federal Bureau of Apprenticeship and
37 Training³ .

38 g. The ³[building]³ authority shall maintain a registry of all
39 ³[persons] contractors³ prequalified to bid on school facilities
40 projects. The registry shall include the classification of the bidder
41 and aggregate building limit³ .

42 ³[h. For the purposes of this section "responsibility" refers to the
43 apparent ability of the bidder to complete the contract in accordance
44 with its requirements, including but not limited to, requirements
45 pertaining to experience, moral integrity, operating capacity, financial

1 capacity, credit, and workforce, equipment, and facilities
2 availability.²³

3
4 ³[²63.] 61.³ (New section) a. A ³[person's] contractor's³
5 prequalification classification shall be valid for ³[18] 24³ months. A
6 ³[person] contractor³ shall be reclassified after the ³[18-month] 24-
7 month³ period in order to remain eligible to bid on school facilities
8 projects.

9 b. ³[A person denied prequalification may re-apply after six
10 months.

11 c.]³ Any material changes ³[in a person's operations]³ relevant to
12 the prequalification process shall be reported ³by the contractor³ to
13 the ³[building]³ authority in writing within ³[45] 10³ days. Based on
14 the information provided, the ³[building]³ authority may change the
15 classification or revoke prequalification for cause.²

16
17 ³[²64.] 62.³ (New section) a. A mandatory uniform performance
18 evaluation shall be conducted on all school facilities projects
19 ³undertaken by the authority³. The evaluation shall ³, at a minimum,³
20 include cost, schedule adherence and quality ³[data in a final project
21 report]³.

22 b. ³[A mandatory uniform performance evaluation shall be
23 conducted on all contractors and subcontractors performing work
24 in the areas set forth in subsection a. of section 61 of P.L. , c. (C.)
25 (now pending before the Legislature as this bill) on school facilities
26 projects. The evaluation shall include cost, schedule adherence,
27 quality data and compliance with the law in a final contractor report.

28 c.]³ A contractor shall be notified of a performance evaluation
29 ³[which would adversely affect the contractor's classification]³. The
30 contractor shall be afforded an opportunity to respond to an adverse
31 evaluation.

32 ³[d.] c.³ The contractor performance evaluations shall be utilized
33 in ³[reviewing prequalification renewal applications] reviewing bid
34 submissions³.²

35
36 ³[²65.] 63.³ (New section) a. A ³prequalified³ contractor
37 seeking to bid school facilities projects, and any subcontractors
38 required to be named under ³[paragraph (2) of subsection d. of section
39 11 of P.L.1981, c.120 (C.52:18A-78.11)] P.L. , c. (C.) (now
40 pending before the Legislature as this bill)³ shall, as a condition of
41 bidding, submit a sworn contractor certification regarding
42 qualifications and credentials.

43 ³[b. In the contractor certification form, a principal owner or
44 officer of the company shall list the names and titles of all individuals
45 who own 10% or more of any class stock in the corporation or are a
46 10% or more partner in the firm. If any of the aforementioned

1 stockholders or partners is itself a corporation, or a partnership, that
2 entity shall also provide the information specified herein.

3 c.] b.³ In the contractor certification form, a principal owner or
4 officer of the company shall certify that the firm has the following
5 qualifications and credentials:

6 ³[(1) A current, valid contractor classification, or any other form
7 of approval issued by and required by the New Jersey Building
8 Authority, a copy of which shall be attached to the certification form;

9 (2)] (1)³ A current, valid certificate of registration issued pursuant
10 to "The Public Works Contractor Registration Act," P.L.1999, c.238
11 (C.34:11-56.48 et seq.), a copy of which shall be attached to the
12 certification form³, if applicable³ ;

13 ³[(3)] (2)³ A current, valid "Certificate of Authority to perform
14 work in New Jersey" issued by the Department of Treasury, a copy of
15 which shall be attached to the certification form;

16 ³[(4)] (3)³ Any current, valid contractor or trade license required
17 under applicable New Jersey law for any trade or specialty area in
18 which the firm seeks to perform work, a copy of which shall be
19 attached to the certification³ ;

20 (4) During the term of construction of the school facilities project,
21 the contractor will have in place a suitable quality control and quality
22 insurance program and an appropriate safety and health plan³ .

23 ³[d. The contractor certification form shall further require that a
24 principal owner or officer of the company certify the following
25 information regarding its qualifications and past performance:

26 (1) The firm has not been suspended or debarred by any federal,
27 State or local government agency in the past three years;

28 (2) The firm has not defaulted for cause on any project, public or
29 private, in the past three years, as determined by a final adjudicated
30 non-appealable decision;

31 (3) The firm has not had any contractor or trade license revoked in
32 the past three years;

33 (4) The firm and its officers, owners and managers have not been
34 convicted of a criminal offense in the past three years.

35 e.] c.³ The contractor certification form shall further require that
36 a principal owner³ [of] or³ officer of the company certify that, at the
37 time that the firm is bidding a project, the amount of its bid proposal
38 and the value of all of its outstanding incomplete contracts does not
39 exceed the firm's existing³ [pre-qualification dollar] aggregate rating³
40 limit³ [, as determined by the Division of Property Management and
41 Construction]³ .

42 ³[f. The contractor certification form required under this section
43 shall be prepared by the Division of Property Management and
44 Construction in consultation with the New Jersey Building
45 Authority.²]³

1 ³[²66.] 64.³ (New section) a. The Commissioner of Education,
2 in conjunction with the Commissioner of Labor, shall establish a
3 program to provide additional funding for apprenticeship programs
4 registered by the federal Bureau of Apprenticeship and Training in the
5 United States Department of Labor. There shall be appropriated
6 annually in fiscal year 2001 through fiscal year 2005 the sum of
7 \$3,000,000 to accomplish this purpose.

8 b. The Apprenticeship Committee shall be established in the
9 Department of Education to assist in administering the program. The
10 committee shall be comprised of the following members appointed by
11 the Governor: one public member appointed upon the recommendation
12 of the Speaker of the General Assembly; one public member appointed
13 upon the recommendation of the President of the Senate; a
14 representative from the Department of Labor; a representative from
15 the Department of Education; a county apprenticeship coordinator; a
16 union representative; and a representative from management. The
17 Commissioner of Education shall request the participation of a
18 representative of the federal Bureau of Apprenticeship and Training in
19 the United States Department of Labor as a member of the committee.

20 The ³commissioners of the Department of Education and the
21 Department of Labor, in consultation with the³ committee shall
22 establish guidelines for the distribution of funds under the program,
23 including a provision that requires a majority of the funding to assist
24 apprenticeship programs in urban areas. The guidelines shall also
25 include a list of those types of entities eligible for funding including,
26 but not limited to, county colleges, county vocational schools, unions
27 and other sponsors of apprenticeship programs deemed appropriate.
28 Eligible entities shall be permitted to use the funding provided
29 pursuant to the program to fund student grants. Pursuant to
30 established guidelines, the ³commissioners of the Department of
31 Education and the Department of Labor, in consultation with the³
32 committee shall be responsible for the distribution of funds under the
33 program.²

34
35 ³[²67. (New section) Any decision by the building authority or
36 district that constitutes a denial of a request for prequalification or a
37 finding that a prospective bidder is not a responsible contractor or is
38 not qualified for a specific project, shall not be reversed by any review
39 court unless the determination is found to be arbitrary and
40 capricious.²]³

41
42 ³[²68.] 65.³ (New section) Any ³[person] contractor³ who
43 willfully makes, or causes to be made, a false, deceptive or fraudulent
44 statement in the ³[submissions] certifications³ required pursuant to
45 ³[section 62 of]³ P.L. , c. (C.)(now pending before the
46 Legislature as this bill). ³[on the contractor certification form

1 required pursuant to section 65 of P.L. , c. (C.)(now pending
2 before the Legislature as this bill) or in the course of any hearing held
3 concerning the prequalification process.]³ shall be guilty of a crime
4 of the fourth degree and shall be permanently disqualified from bidding
5 on all school facilities projects; ³[or] and³ , in the case of an
6 individual or the officer or employee charged with the duty of making
7 the submission for a ³[person, firm, copartnership, association or
8 corporation] contractor³ , he shall be guilty of a disorderly persons
9 offense.²

10
11 ³[²69. (New section) A contractor who submits a bid for a school
12 facilities contract pursuant to this act shall maintain a bona fide office
13 in the State.²]³

14
15 ³[²70.] 66. ³ (New section) A contractor who has been
16 prequalified as a bidder on school facilities projects in accordance with
17 the process established by the ³[building]³ authority pursuant to
18 section ³[61] 59³ of this act shall not be required to undergo any
19 other prequalification process to bid on a school facilities project.²

20
21 ³[²71. (New section) With respect to any contract or agreement
22 entered into by the building authority pursuant to P.L. , c. (C.)(now
23 pending before the Legislature as this bill), 5% of the amount due on
24 each partial payment shall be withheld by the building authority
25 pending the completion of the contract or agreement if the contractor
26 does not have a performance bond. If the contractor does have a
27 performance bond, 2% of the amount due on each partial payment
28 shall be withheld by the building authority when the outstanding
29 balance of the contract exceeds \$500,000 and 5% of the amount due
30 on each partial payment shall be withheld by the building authority
31 when the outstanding balance of the contract is \$500,000 or less.²]³

32
33 ³[²72.] 67. ³ (New section) There is appropriated \$3,000,000
34 from the General Fund to the Department of Education to effectuate
35 the apprentice training program established pursuant to ³[section 66
36 of]³ this act.²

37
38 ³[²73.] 68. ³ (New section) If a contractor on the effective date of
39 this act has a current, valid classification from the Division of
40 Property Management and Construction, it may obtain prequalified
41 status under this act by submitting a short-form application developed
42 by the ³[building]³ authority. A short-form application submitted
43 under this section must include verification of the contractor's current
44 classification ³and aggregate rating limit³ by the Division of Property
45 Management and Construction.

46 Upon such application, the ³[building]³ authority shall prequalify

1 the contractor for the same trade ³or work³ classification and same
2 aggregate rating limit issued by the Division of Property Management
3 and Construction, provided the ³[building]³ authority does not
4 obtain or receive information indicating the contractor has experienced
5 recent performance deficiencies, or otherwise fails to meet the
6 qualification and responsibility standards established by this act.
7 ³Prequalification pursuant to this section shall be valid for such time
8 as determined by the authority.³

9 ³[A contractor denied prequalification under this subsection shall
10 be entitled to reapply after six months and should, upon such re-
11 application, submit sufficient evidence that any performance
12 deficiencies, or other factors supporting a denial of prequalification
13 have been corrected.²]³

14
15 ³[²74.] 69.³ All apprentices shall be registered through the
16 approved federal Bureau of Apprenticeship and Training program.²
17

18 ²[61.]³[75.²] 70.³ (New section) There is established in the
19 Office of the Attorney General the Unit of Fiscal Integrity in School
20 Construction. The Attorney General or his representative may
21 investigate, examine, and inspect the activities of the authority and
22 districts related to the financing and construction of school facilities
23 and the implementation of the provisions of P.L. , c. (C.) (now
24 pending before the Legislature as this bill). The Attorney General may
25 require the submission of duly verified reports from the authority and
26 districts, which include such information in such form as the Attorney
27 General may require. The Attorney General or his representative may
28 also consult with the authority on issues and procedures related to the
29 exercise of its duties and responsibilities under P.L. , c. (C.) (now
30 pending before the Legislature as this bill). The Legislature shall
31 annually appropriate such funds as may be necessary to finance the
32 operations of the unit.
33

34 ³[²76.] 71.³ (New section) a. In the case of any school facilities
35 project which has a State share of 100%, the ³[building]³ authority
36 may require the use of wrap-up insurance coverage for the project ³[.
37 The building authority shall administer a wrap-up insurance program
38 to provide coverage for school facilities projects]³ and shall establish
39 the terms and requirements for ³[the] any such³ coverage.

40 b. For any school facilities project which has a State share of less
41 than 100%, the ³[building]³ authority, in the case of a project
42 being constructed by the ³[building]³ authority, may require the use
43 of, or the district, in the case of a project being constructed by the
44 district, may elect to purchase, wrap-up insurance coverage for the
45 school facilities project. A district may purchase the coverage on its
46 own or may enter into a joint purchasing agreement with one or more

1 other districts to purchase coverage.

2 c. As used in this section, "wrap-up insurance coverage" means a
3 single insurance and loss control program for all parties involved in the
4 school facilities project, including the owners, administrators,
5 contractors and all tiers of subcontractors, which is controlled and
6 authorized by the owner or financing administrator and applicable to
7 defined construction work sites. Wrap-up insurance coverage
8 ³[shall] may³ include, but not be limited to, workers' compensation
9 and employers' liability, commercial general liability, umbrella/excess
10 liability, builder's risk, architects' and engineers' errors and omissions,
11 liability, environmental liability, and force majeure.²

12

13 ²[62.] ³[77.²] 72.³ This act shall take effect immediately.

14

15

16

17

18 The "Educational Facilities Construction and Financing Act."

CHAPTER 72

AN ACT concerning the construction and financing of public school facilities, revising parts of the statutory law and making an appropriation.

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

C.18A:7G-1 Short title.

1. Sections 1 through 30 and 57 through 71 of this act shall be known and may be cited as the "Educational Facilities Construction and Financing Act."

C.18A:7G-2 Findings, declarations relative to construction, financing of public school facilities.

2. The Legislature finds and declares that:

a. The Constitution of the State of New Jersey requires the Legislature to provide for the maintenance and support of a thorough and efficient system of free public schools and this legislative responsibility includes ensuring that students are educated in physical facilities that are safe, healthy, and conducive to learning.

b. Inadequacies in the quality, utility, and safety of educational facilities have arisen among local school districts of this State. In order to ensure that the Legislature's constitutional responsibility for adequate educational facilities is met, there is a need to establish an efficiency standard for educational facilities at the elementary, middle, and secondary school levels which will assure that the core curriculum content standards are taught to all of the children of the State in a setting which facilitates and promotes that learning.

c. Educational infrastructure inadequacies are greatest in the Abbott districts where maintenance has been deferred and new construction has not been initiated due to concerns about cost. To remedy the facilities inadequacies of the Abbott districts, the State must promptly engage in a facilities needs assessment and fund the entire cost of repairing, renovating, and constructing the new school facilities determined by the Commissioner of Education to be required to meet the school facilities efficiency standards in the Abbott districts. In other districts, the State must also identify need in view of anticipated growth in school population, and must contribute to the cost of the renovation and construction of new facilities to ensure the provision of a thorough and efficient education in those districts.

d. While providing that the educational infrastructure meets the requirements of a thorough and efficient education, the State must also protect the interests of taxpayers who will bear the burden of this obligation. Design of school facilities should incorporate maximum operating efficiencies and new technologies to advance the energy efficiency of school facilities and the efficiency of other school building systems, construction should be achieved in as efficient a manner as possible, and a mechanism to assure proper maintenance of new facilities should be established and implemented, in order to reduce the overall cost of the program and to preserve this infrastructure investment.

C.18A:7G-3 Definitions relative to construction, financing of public school facilities.

3. As used in sections 1 through 30 and 57 through 71 of this act, unless the context clearly requires a different meaning:

"Abbott district" means an Abbott district as defined in section 3 of P.L.1996, c.138 (C.18A:7F-3);

"Area cost allowance" means \$138 per square foot for the school year 2000-2001 and shall be inflated by an appropriate cost index for the 2001-2002 school year. For the 2002-2003 school year and subsequent school years, the area cost allowance shall be as established in the biennial Report on the Cost of Providing a Thorough and Efficient Education and inflated by an appropriate cost index for the second year to which the report applies. The area cost allowance used in determining preliminary eligible costs of school facilities projects shall be that of the year of application for approval of the project;

"Authority means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Community provider" means a private entity which has contracted to provide early childhood education programs for an ECPA district and which (a) is licensed by the Department of Human Services to provide day care services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); and (b) is a tax exempt nonprofit organization;

"Community early childhood education facilities project" means a school facilities project consisting of facilities in which early childhood education programs are provided to 3 or 4-year old children under contract with the ECPA district but which are owned and operated by a community provider;

"Commissioner" means the Commissioner of Education;

"Core curriculum content standards" means the standards established pursuant to the provisions of subsection a. of section 4 of P.L.1996, c.138 (C.18A:7F-4);

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to regulations promulgated by the authority pursuant to section 26 of this act;

"Debt service" means and includes payments of principal and interest upon school bonds issued to finance the acquisition of school sites and the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and the costs of issuance of such obligations and shall include payments of principal and interest upon school bonds heretofore issued to fund or refund such obligations, and upon municipal bonds and other obligations which the commissioner approves as having been issued for such purposes. Debt service pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.), P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177 (C.18A:58-33.2 et seq.) is excluded;

"Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of this act;

"District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.);

"District aid percentage" means the number expressed as a percentage derived from dividing the district's core curriculum standards aid calculated pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15) as of the date of the commissioner's determination of preliminary eligible costs by the district's T & E budget calculated pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-13) as of the date of the commissioner's determination of preliminary eligible costs;

"ECPA district" means a district that qualifies for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16);

"Excess costs" means the additional costs, if any, which shall be borne by the district, of a school facilities project which result from design factors that are not required to meet the facilities efficiency standards and not approved pursuant to paragraph (1) of subsection g. of section 5 of this act or are not authorized as community design features included in final eligible costs pursuant to subsection c. of section 6 of this act;

"Facilities efficiency standards" means the standards developed by the commissioner pursuant to subsection h. of section 4 of this act;

"Final eligible costs" means for school facilities projects to be constructed by the authority, the final eligible costs of the school facilities project as determined by the commissioner, in consultation with the authority, pursuant to section 5 of this act; for demonstration projects, the final eligible costs of the project as determined by the commissioner and reviewed by the authority which may include the cost of community design features determined by the commissioner to be an integral part of the school facility and which do not exceed the facilities efficiency standards, and which were reviewed by the authority and approved by the State Treasurer pursuant to section 6 of this act; and for districts whose district aid percentage is less than 55% and which elect not to have the authority construct a school facilities project, final eligible costs as determined pursuant to paragraph (1) of subsection h. of section 5 of this act;

"FTE" means a full-time equivalent student which shall be calculated as follows: in districts

that qualify for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16), each student in grades kindergarten through 12 shall be counted at 100% of the actual count of students, and each preschool student approved by the commissioner to be served in the district shall be counted at 50% or 100% of the actual count of preschool students for an approved half-day or full-day program, respectively; in districts that do not qualify for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through 12 shall be counted at 100% of the actual count of students, in the case of districts which operate a half-day kindergarten program each kindergarten student shall be counted at 50% of the actual count of kindergarten students, in the case of districts which operate a full-day kindergarten program or which currently operate a half-day kindergarten program but propose to build facilities to house a full-day kindergarten program each kindergarten student shall be counted at 100% of the actual count of kindergarten students, and preschool students shall not be counted. In addition, each preschool handicapped child who is entitled to receive a full-time program pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual count of these students in the district;

"Functional capacity" means the number of students that can be housed in a building in order to have sufficient space for it to be educationally adequate for the delivery of programs and services necessary for student achievement of the core curriculum content standards. Functional capacity is determined by dividing the existing gross square footage of a school building by the minimum area allowance per FTE student pursuant to subsection b. of section 8 of this act for the grade level students contained therein. The difference between the projected enrollment determined pursuant to subsection a. of section 8 of this act and the functional capacity is the unhoused students that are the basis upon which the additional costs of space to provide educationally adequate facilities for the entire projected enrollment are determined. The existing gross square footage for the purposes of defining functional capacity is exclusive of existing spaces that are not contained in the facilities efficiency standards but which are used to deliver programs and services aligned to the core curriculum content standards, used to provide support services directly to students, or other existing spaces that the district can demonstrate would be structurally or fiscally impractical to convert to other uses contained in the facilities efficiency standards;

"Lease purchase payment" means and includes payment of principal and interest for lease purchase agreements in excess of five years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) to finance the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and issuance costs. Approved lease purchase agreements in excess of five years shall be accorded the same accounting treatment as school bonds;

"Level II district" means a district which is directed by the commissioner to enter level II monitoring pursuant to the provisions of section 14 of P.L.1975, c.212 (C.18A:7A-14);

"Local share" means, in the case of a school facilities project to be constructed by the authority, the total costs less the State share as determined pursuant to section 5 of this act; in the case of a demonstration project, the total costs less the State share as determined pursuant to sections 5 and 6 of this act; and in the case of a school facilities project not to be constructed by the authority, but which shall be financed pursuant to section 15 of this act, the total costs less the State share as determined pursuant to that section;

"Local unit" means a county, municipality, board of education or any other political subdivision or instrumentality authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law;

"Local unit obligations" means bonds, notes, refunding bonds, refunding notes, lease obligations and all other obligations of a local unit which are issued or entered into for the purpose of paying for all or a portion of the costs of a school facilities project, including moneys payable to the authority;

"Long-range facilities plan" means the plan required to be submitted to the commissioner by a district pursuant to section 4 of this act;

"Maintenance" means expenditures which are approved for repairs and replacements for the

purpose of keeping a school facility open and safe for use or in its original condition, including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition. Maintenance shall not include contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, and the cleaning of, or repairs and replacements to, movable furnishings or equipment, or other expenditures which are not required to maintain the original condition over the school facility's useful life. Approved maintenance expenditures shall be as determined by the commissioner pursuant to regulations to be adopted by the commissioner pursuant to section 26 of this act;

"Other allowable costs" means the costs of site development, acquisition of land or other real property interests necessary to effectuate the school facilities project, fees for the services of design professionals, including architects, engineers, construction managers and other design professionals, legal fees, financing costs and the administrative costs of the authority or the district incurred in connection with the school facilities project;

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in section 7 of this act which shall be deemed to include the costs of construction and other allowable costs;

"Redevelopment entity" means a redevelopment entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.);

"Report on the Cost of Providing a Thorough and Efficient Education" or "Report" means the report issued by the commissioner pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

"School bonds" means, in the case of a school facilities project which is to be constructed by the authority, a redevelopment entity, or a district under section 15 of this act, bonds, notes or other obligations issued by a district to finance the local share; and, in the case of a school facilities project which is not to be constructed by the authority or a redevelopment entity, or financed under section 15 of this act, bonds, notes or other obligations issued by a district to finance the total costs;

"School enrollment" means the number of FTE students other than evening school students, including post-graduate students and post-secondary vocational students, who, on the last school day prior to October 16 of the current school year, are recorded in the registers of the school;

"School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration;

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project;

"Special education services pupil" means a pupil receiving specific services pursuant to chapter 46 of Title 18A of the New Jersey Statutes;

"State aid" means State municipal aid and State school aid;

"State debt service aid" means for school bonds issued for school facilities projects approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) of districts which elect not to have the authority or a redevelopment entity construct the project or which elect not to finance the project under section 15 of this act, the amount of State aid determined pursuant to section 9 of this act; and for school bonds or certificates of participation issued for school facilities projects approved by the commissioner prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) the amount of State aid determined pursuant to section 10 of this act;

"State municipal aid" means business personal property tax replacement revenues, State urban aid and State revenue sharing, as these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or other similar forms of State aid payable to the local unit and to the extent permitted by federal law, federal moneys appropriated or apportioned to the municipality or

county by the State;

"State school aid" means the funds made available to school districts pursuant to sections 15 and 17 of P.L.1996, c.138 (C.18A:7F-15 and 17);

"State share" means the State's proportionate share of the final eligible costs of a school facilities project to be constructed by the authority as determined pursuant to section 5 of this act; in the case of a demonstration project, the State's proportionate share of the final eligible costs of the project as determined pursuant to sections 5 and 6 of this act; and in the case of a school facilities project to be financed pursuant to section 15 of this act, the State share as determined pursuant to that section;

"Total costs" means, in the case of a school facilities project which is to be constructed by the authority or a redevelopment entity or financed pursuant to section 15 of this act, the final eligible costs plus excess costs if any; and in the case of a school facilities project which is not to be constructed by the authority or a redevelopment entity or financed pursuant to section 15 of this act, the total cost of the project as determined by the district.

C.18A:7G-4 Long-range facilities plan; facilities efficiency standards; time lines.

4. a. Beginning in the 1999-2000 school year and in every school year thereafter ending with a "0" or a "5", each district shall prepare and submit to the commissioner a long-range facilities plan that details the district's school facilities needs and the district's plan to address those needs for the ensuing five years. The long-range facilities plan shall incorporate the facilities efficiency standards and shall be filed with the commissioner no later than December 15, 2000 and no later than October 1 of the other filing years for approval in accordance with those standards. For those Abbott districts that have submitted long-range facilities plans to the commissioner prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), this subsection shall not be read to require an additional filing by October 1, 2000.

b. Notwithstanding any other law or regulation to the contrary, an application for a school facilities project pursuant to section 5 of this act shall not be approved unless the district has filed a long-range facilities plan that is consistent with the application and the plan has been approved by the commissioner; except that prior to October 1, 2000, the commissioner may approve an application if the project is necessary to protect the health or safety of occupants of the school facility, or is related to required early childhood education programs, or is related to a school facility in which the functional capacity is less than 90% of the facilities efficiency standards based on current school enrollment, or the district received bids on the school facilities project prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) and the district demonstrates that further delay will negatively affect the cost of the project.

c. An amendment to a long-range facilities plan may be submitted at any time to the commissioner for review and approval.

d. Each long-range facilities plan shall include a cohort survival methodology or other methodology approved by the commissioner, accompanied by a certification by a qualified demographer retained by the district that serves as the basis for identifying the capacity and program needs detailed in the long-range facilities plan.

e. The long-range facilities plan shall include an educational adequacy inventory of all existing school facilities in the district, the identification of all deficiencies in the district's current inventory of school facilities, which includes the identification of those deficiencies that involve emergent health and safety concerns, and the district's proposed plan for future construction and renovation. The long-range facilities plan submissions shall conform to the guidelines, criteria and format prescribed by the commissioner.

f. Each district shall determine the number of "unhoused students" for the ensuing five-year period calculated pursuant to the provisions of section 8 of this act.

g. Each district shall submit the long-range facilities plan to the planning board of the municipality or municipalities in which the district is situate for the planning board's review and findings.

h. The commissioner shall develop, for the March 2002 Report on the Cost of Providing a Thorough and Efficient Education and for subsequent reports, facilities efficiency standards for elementary, middle, and high schools consistent with the core curriculum school delivery

assumptions in the report and sufficient for the achievement of the core curriculum content standards, including the provision of required programs in Abbott districts and early childhood education programs in the districts in which these programs are required by the State. The area allowances per FTE student in each class of the district shall be derived from these facilities efficiency standards.

The facilities efficiency standards developed by the commissioner shall not be construction design standards but rather shall represent the instructional spaces, specialized instructional areas, and administrative spaces that are determined by the commissioner to be educationally adequate to support the achievement of the core curriculum content standards including the provision of required programs in Abbott districts and early childhood education programs in the districts in which these programs are required by the State. A district may design, at its discretion, the educational and other spaces to be included within the school facilities project. The design of the project may eliminate spaces in the facilities efficiency standards, include spaces not in the facilities efficiency standards, or size spaces differently than in the facilities efficiency standards upon a demonstration of the adequacy of the school facilities project to deliver the core curriculum content standards pursuant to paragraph (2) of subsection g. of section 5 of this act.

Within a reasonable period of time after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), the commissioner shall publish the facilities efficiency standards developed for the 2000-2001, 2001-2002, and 2002-2003 school years in the New Jersey Register. Within a reasonable period of time after 30 days after publication in the New Jersey Register, the commissioner shall file the facilities efficiency standards with the Office of Administrative Law and those standards shall become effective immediately upon filing with the Office of Administrative Law. During the 30-day period the commissioner shall provide an opportunity for public comment on the proposed facilities efficiency standards.

i. Within 90 days of the commissioner's receipt of a long-range facilities plan for review, the commissioner shall determine whether the plan is fully and accurately completed and whether all information necessary for a decision on the plan has been filed by the district. If the commissioner determines that the plan is complete, the commissioner shall promptly notify the district in writing and shall have 60 days from the date of that notification to determine whether to approve the plan or not. If the commissioner determines that the plan is not complete, the commissioner shall notify the district in writing. The district shall provide to the commissioner whatever information the commissioner determines is necessary to make the plan accurate and complete. The district shall submit that information to the commissioner, and the commissioner shall have 60 days from the date of receipt of accurate and complete information to determine whether to approve the plan or not.

j. Notwithstanding any provision in subsection i. of this section, if at any time the number of long-range facilities plans filed by school districts with the commissioner and pending review exceeds 20% of the number of school districts in New Jersey, the commissioner may extend by 60 days the deadline for reviewing each plan pending at that time.

k. By March 1, 2002 and every five years thereafter, the commissioner shall recommend to the Legislature criteria to be used in the designation of districts as Abbott districts. The criteria may include, but not be limited to: the number of residents per 1,000 within the municipality or municipalities in which the district is situate who receive TANF; the district's equalized valuation per resident pupil as equalized valuation is defined in section 3 of P.L.1996, c.138 (C.18A:7F-3); the district's income per resident pupil as district income is defined in section 3 of P.L.1996, c.138 (C.18A:7F-3); the population per square mile of the municipality or municipalities in which the district is situate; and the municipal overburden of the municipality or municipalities in which the district is situate as that term is defined by the New Jersey Supreme Court in *Abbott v. Burke*.

l. By July 1, 2001, the commissioner shall provide the Legislature with recommendations to address the circumstances of districts which are contiguous with two or more Abbott districts. The recommendations shall address the issues of the financing of school facilities projects and the funding of the educational and other programs required within these districts as a result of their unique demographic situation.

m. By July 1, 2001, the commissioner shall study the Safe Schools Design Guidelines, prepared by the Florida Center for Community Design and Research, which address the issues of school safety and security through the design of school facilities. Based upon the commissioner's study, the commissioner shall issue recommendations to districts on the appropriateness of including the Safe Schools Design Guidelines in the design and construction of school facilities projects.

C.18A:7G-5 Financing, construction of school facilities in certain districts by authority.

5. a. The authority shall construct and finance the school facilities projects of Abbott districts, level II districts, and districts with a district aid percentage equal to or greater than 55%.

b. Any district whose district aid percentage is less than 55% may elect to have the authority undertake the construction of a school facilities project in the district and the State share shall be determined pursuant to this section. In the event that the district elects not to have the authority undertake the construction of the project, State support for the project shall be determined pursuant to section 9 or section 15 of this act, as applicable.

c. Notwithstanding any provision of N.J.S.18A:18A-16 to the contrary, the procedures for obtaining approval of a school facilities project shall be as set forth in this act; provided that any district whose district aid percentage is less than 55%, which elects not to have the authority or a redevelopment entity undertake the construction of the project, shall also be required to comply with the provisions of N.J.S.18A:18A-16.

d. Any district seeking to initiate a school facilities project shall apply to the commissioner for approval of the project. The application shall, at a minimum, contain the following information: a description of the school facilities project; a schematic drawing of the project or, at the option of the district, preliminary plans and specifications; a delineation and description of each of the functional components of the project; the number of unhoused students to be housed in the project; the area allowances per FTE student as calculated pursuant to section 8 of this act; and the estimated cost to complete the project as determined by the district.

e. The commissioner shall review each proposed school facilities project to determine whether it is consistent with the district's long-range facilities plan and whether it complies with the facilities efficiency standards and the area allowances per FTE student derived from those standards. The commissioner shall make a decision on a district's application within 90 days from the date he determines that the application is fully and accurately completed and that all information necessary for a decision has been filed by the district, or from the date of the last revision made by the district. If the commissioner is not able to make a decision within 90 days, he shall notify the district in writing explaining the reason for the delay and indicating the date on which a decision on the project will be made, provided that the date shall not be later than 60 days from the expiration of the original 90 days set forth in this subsection. If the decision is not made by the subsequent date indicated by the commissioner, then the project shall be deemed approved and the preliminary eligible costs for new construction shall be calculated by using the proposed square footage of the building as the approved area for unhoused students.

f. If the commissioner determines that the school facilities project complies with the facilities efficiency standards and the district's long-range facilities plan and does not exceed the area allowance per FTE student derived from those standards, the commissioner shall calculate the preliminary eligible costs of the project pursuant to the formulas set forth in section 7 of this act; except that in the case of a county special services school district or a county vocational school district, the commissioner shall calculate the preliminary eligible costs to equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to section 14 of P.L.1971, c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

g. If the commissioner determines that the school facilities project is inconsistent with the facilities efficiency standards or exceeds the area allowances per FTE student derived from those standards, the commissioner shall notify the district.

(1) The commissioner shall approve area allowances in excess of the area allowances per FTE student derived from the facilities efficiency standards if the board of education or State

district superintendent, as appropriate, demonstrates that school facilities needs related to required programs cannot be addressed within the facilities efficiency standards and that all other proposed spaces are consistent with those standards. The commissioner shall approve area allowances in excess of the area allowances per FTE student derived from the facilities efficiency standards if the additional area allowances are necessary to accommodate centralized facilities to be shared among two or more school buildings within the district and the centralized facilities represent a more cost effective alternative.

(2) The commissioner may waive a facilities efficiency standard if the board of education or State district superintendent, as appropriate, demonstrates to the commissioner's satisfaction that the waiver will not adversely affect the educational adequacy of the school facility, including the ability to deliver the programs and services necessary to enable all students to achieve the core curriculum content standards.

(3) To house the district's central administration, a district may request an adjustment to the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total district school enrollment if the proposed administrative offices will be housed in a school facility and the district demonstrates either that the existing central administrative offices are obsolete or that it is more practical to convert those offices to instructional space. To the extent that existing administrative space will continue to be used for administrative purposes, the space shall be included in the formulas set forth in section 7 of this act.

If the commissioner approves excess facilities efficiency standards or additional area allowances pursuant to paragraph (1), (2), or (3) of this subsection, the commissioner shall calculate the preliminary eligible costs based upon the additional area allowances or excess facilities efficiency standards pursuant to the formulas set forth in section 7 of this act. In the event that the commissioner does not approve the excess facilities efficiency standards or additional area allowances, the district may either: modify its submission so that the school facilities project meets the facilities efficiency standards; or pay for the excess costs.

(4) The commissioner shall approve spaces in excess of, or inconsistent with, the facilities efficiency standards, hereinafter referred to as nonconforming spaces, upon a determination by the district that the spaces are necessary to comply with State or federal law concerning individuals with disabilities. A district may apply for additional State aid for nonconforming spaces that will permit pupils with disabilities to be educated to the greatest extent possible in the same buildings or classes with their nondisabled peers. The nonconforming spaces may: (a) allow for the return of pupils with disabilities from private facilities; (b) permit the retention of pupils with disabilities who would otherwise be placed in private facilities; (c) provide space for regional programs in a host school building that houses both disabled and nondisabled pupils; and (d) provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission, or other agency authorized by law to provide regional educational services in a school building that houses both disabled and nondisabled pupils. A district's State support ratio shall be adjusted to equal the lesser of the sum of its district aid percentage as defined in section 3 of this act plus 0.25, or 100% for any nonconforming spaces approved by the commissioner pursuant to this paragraph.

h. Upon approval of a school facilities project and determination of the preliminary eligible costs:

(1) In the case of a district whose district aid percentage is less than 55% and which has elected not to have the authority undertake the construction of the school facilities project, the commissioner shall notify the district whether the school facilities project is approved and, if so approved, the preliminary eligible costs and the excess costs, if any. Following the determination of preliminary eligible costs and the notification of project approval, the district may appeal to the commissioner for an increase in those costs if the detailed plans and specifications completed by a design professional for the school facilities project indicate that the cost of constructing that portion of the project which is consistent with the facilities efficiency standards and does not exceed the area allowances per FTE student exceeds the preliminary eligible costs as determined by the commissioner for the project by 10% or more. The district shall file its appeal within 30 days of the preparation of the plans and specifications.

If the district chooses not to file an appeal, then the final eligible costs shall equal the preliminary eligible costs.

The appeal shall outline the reasons why the preliminary eligible costs calculated for the project are inadequate and estimate the amount of the adjustment which needs to be made to the preliminary eligible costs. The commissioner shall forward the appeal information to the authority for its review and recommendation. If the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards, the authority shall recommend to the commissioner that the preliminary eligible costs be accepted as the final eligible costs. If the authority determines the additional costs are not within the control of the district or are the result of design factors required to meet the facilities efficiency standards, the authority shall recommend to the commissioner a final eligible cost based on its experience for districts with similar characteristics, provided that, notwithstanding anything to the contrary, the commissioner shall not approve an adjustment to the preliminary eligible costs which exceeds 10% of the preliminary eligible costs. The commissioner shall make a determination on the appeal within 30 days of its receipt. If the commissioner does not approve an adjustment to the school facilities project's preliminary eligible costs, the commissioner shall issue his findings in writing on the reasons for the denial and on why the preliminary eligible costs as originally calculated are sufficient.

(2) In all other cases, the commissioner shall promptly prepare and submit to the authority a preliminary project report which shall consist, at a minimum, of the following information: a complete description of the school facilities project; the actual location of the project; the total square footage of the project together with a breakdown of total square footage by functional component; the preliminary eligible costs of the project; the project's priority ranking determined pursuant to subsection m. of this section; any other factors to be considered by the authority in undertaking the project; and the name and address of the person from the district to contact in regard to the project.

i. Upon receipt by the authority of the preliminary project report, the authority, upon consultation with the district, shall prepare detailed plans and specifications and schedules which contain the authority's estimated cost and schedule to complete the school facilities project. The authority shall transmit to the commissioner the authority's recommendations in regard to the project which shall, at a minimum, contain the detailed plans and specifications; whether the school facilities project can be completed within the preliminary eligible costs; and any other factors which the authority determines should be considered by the commissioner. (1)

In the event that the authority determines that the school facilities project can be completed within the preliminary eligible costs: the final eligible costs shall be deemed to equal the preliminary eligible costs; the commissioner shall be deemed to have given final approval to the project; and the preliminary project report shall be deemed to be the final project report delivered to the authority pursuant to subsection j. of this section.

(2) In the event that the authority determines that the school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of the authority's recommendations to the commissioner, the authority shall, in consultation with the district and the commissioner, determine whether changes can be made in the project which will result in a reduction in costs while at the same time meeting the facilities efficiency standards approved by the commissioner.

(a) If the authority determines that changes in the school facilities project are possible so that the project can be accomplished within the scope of the preliminary eligible costs while still meeting the facilities efficiency standards, the authority shall so advise the commissioner, whereupon the commissioner shall: calculate the final eligible costs to equal the preliminary eligible costs; give final approval to the project with the changes noted; and issue a final project report to the authority pursuant to subsection j. of this section.

(b) If the authority determines that it is not possible to make changes in the school facilities project so that it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the district or the additional costs are required to meet the facilities efficiency standards, the authority shall recommend to the commissioner that the preliminary eligible costs be increased accordingly, whereupon the

commissioner shall: calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the authority; give final approval to the project; and issue a final project report to the authority pursuant to subsection j. of this section.

(c) If the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards or approved pursuant to paragraph (1) of subsection g. of this section, the authority shall recommend to the commissioner that the preliminary eligible costs be accepted, whereupon the commissioner shall: calculate the final eligible costs to equal the preliminary eligible costs and specify the excess costs which are to be borne by the district; give final approval to the school facilities project; and issue a final project report to the authority pursuant to subsection j. of this section; provided that the commissioner may approve final eligible costs which are in excess of the preliminary eligible costs if, in his judgment, the action is necessary to meet the educational needs of the district.

(d) For a school facilities project constructed by the authority, the authority shall be responsible for any costs of construction, but only from the proceeds of bonds issued by the authority pursuant to this act, which exceed the amount originally projected by the authority and approved for financing by the authority, provided that the excess is the result of an underestimate of labor or materials costs by the authority. After receipt by the authority of the final project report, the district shall be responsible only for the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

j. The authority shall not commence the acquisition or construction of a school facilities project unless the commissioner transmits to the authority a final project report and the district complies with the approval requirements for the local share, if any, pursuant to section 11 of this act. The final project report shall contain all of the information contained in the preliminary project report and, in addition, shall contain: the final eligible costs; the excess costs, if any; the total costs which equals the final eligible costs plus excess costs, if any; the State share; and the local share.

k. For the Abbott districts, the State share shall be 100% of the final eligible costs. For all other districts, the State share shall be an amount equal to 115% of the district aid percentage; except that the State share shall not be less than 40% of the final eligible costs.

If any district which is included in district factor group A or B, other than an Abbott district, is having difficulty financing the local share of a school facilities project, the district may apply to the commissioner to receive 100% State support for the project and the commissioner may request the approval of the Legislature to increase the State share of the project to 100%.

l. The local share for school facilities projects constructed by the authority or a redevelopment entity shall equal the final eligible costs plus any excess costs less the State share.

m. The commissioner shall establish, in consultation with the Abbott districts, a priority ranking of all school facilities projects in the Abbott districts based upon his determination of critical need, and shall establish priority categories for all school facilities projects in non-Abbott districts. The commissioner shall rank projects from Tier I to Tier IV in terms of critical need according to the following prioritization:

Tier I: health and safety, including electrical system upgrades; required early childhood education programs; unboxed students/class size reduction as required to meet the standards of the "Comprehensive Educational Improvement and Financing Act of 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

Tier II: educational adequacy - specialized instructional spaces, media centers, cafeteriums, and other non-general classroom spaces contained in the facilities efficiency standards; special education spaces to achieve the least restrictive environment;

Tier III: technology projects; regionalization or consolidation projects;

Tier IV: other local objectives.

n. The provisions of the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities project constructed by a district but shall not be applicable to projects constructed by the authority or a redevelopment entity pursuant to the provisions of this act.

o. In the event that a district whose district aid percentage is less than 55% elects not to have

the authority undertake construction of a school facilities project, any proceeds of school bonds issued by the district for the purpose of funding the project which remain unspent upon completion of the project shall be used by the district to reduce the outstanding principal amount of the school bonds.

p. Upon completion by the authority of a school facilities project, if the cost of construction and completion of the project is less than the total costs, the district shall be entitled to receive a portion of the local share based on a pro rata share of the difference based on the ratio of the State share to the local share.

q. The authority shall determine the cause of any costs of construction which exceed the amount originally projected by the authority and approved for financing by the authority.

r. In the event that a district has engaged architectural services to prepare the documents required for initial proposal of a school facilities project, the district shall, if permitted by the terms of the district's contract for architectural services, and at the option of the authority assign the contract for architectural services to the authority if the authority determines that the assignment would be in the best interest of the school facilities project.

s. Notwithstanding anything to the contrary contained in P.L.2000, c.72 (C.18A:7G-1 et al.), an ECPA district, at its option, may provide in its long-range facilities plan submitted pursuant to section 4 of this act, for one or more community early childhood education facilities projects. If the district has requested designation of a demonstration project pursuant to section 6 of this act and is eligible to submit a plan for a community early childhood education facilities project pursuant to this section, the district shall be permitted to include the community early childhood education facilities project as part of the demonstration project.

(1) An ECPA district seeking to initiate a community early childhood education facilities project shall apply to the commissioner for approval of the project. The application shall, at a minimum, contain the following information: the name of the community provider; evidence that the community provider is licensed by the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) and is a tax exempt nonprofit organization; evidence that the community provider is or shall provide early childhood education programs for the district; a description of the community early childhood education facilities project; a schematic drawing of the project, or at the option of the district, preliminary plans and specifications; a delineation and description of each of the functional components of the project; identification of those portions of the proposed project which shall be devoted in whole or in part to the provision of early childhood education programs to 3 or 4-year old children from the ECPA district; the estimated cost to complete the project as determined by the district in consultation with the community provider; and whether the facility provides services other than early childhood education programs for 3 and 4-year old children, pursuant to a contract with the ECPA district.

(2) The commissioner shall review the proposed early childhood education facilities project to determine whether it is consistent with the district's long-range facilities plan, whether it will provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operational plan to meet the standards for early childhood education programs established by the department and whether there is a need for increased capacity or to rehabilitate existing space to meet these standards. Only those facilities which are used for 3 or 4-year old children pursuant to a contract with the ECPA district shall be eligible for approval, provided that facilities which are jointly used by 3 or 4-year old children from the ECPA district and from other districts shall also be eligible for approval.

(3) If the commissioner approves the project, the commissioner shall determine, in consultation with the authority, the cost to complete the approved project, which shall be the reasonable, estimated cost of the renovation or new construction necessary to provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operation plan to meet the standards for early childhood education programs established by the department. For projects initiated by an Abbott district, the State support shall be 100% of such reasonable, estimated cost. For projects initiated by an ECPA district that is not an Abbott district, the State support shall be an amount equal to 115% of the district aid

percentage of that ECPA district, of such reasonable, estimated cost except that the State support shall not be less than 40% of such reasonable, estimated cost. The commissioner shall issue a final project report to the authority which shall contain a complete description of the project, the actual location of the project, the total square footage of the project together with a breakdown of total square footage by functional component; any other factors to be considered by the authority in undertaking the project; the names and addresses of the people to contact from the district and the community provider; the amount of State support for the project; and the amount of local support required from the community provider to pay for costs, if any, of the project which have not been approved by the commissioner for State support.

(4) Upon submission to the authority of a final project report, the authority shall undertake the financing, acquisition, construction and all other appropriate actions necessary to complete the community early childhood education facilities project, provided, that if there is local support required for the project, such actions shall not commence until the authority receives the local support from the community provider. The authority may, in its discretion, and upon consultation with the commissioner, authorize a community provider to undertake the acquisition, construction and all other appropriate action necessary to complete the project, in which case the authority shall not provide State support until the community provider provides the local support, if any.

(5) In order to implement the arrangements established for community early childhood education facilities projects, the authority shall enter into an agreement with the district, the commissioner and the community provider containing the terms and conditions determined by the parties to be necessary to effectuate the project.

(6) The authority shall require as a condition of providing State support for any community early childhood education facilities project that the State support must be repaid by the community provider in the event that (a) the commissioner determines that the project is no longer being used for the purposes for which it was intended; or (b) the project is sold, leased or otherwise conveyed to an individual or organization that does not have tax exempt nonprofit or government status.

C.18A:7G-6 Applicability of C.18A:7G-5 to demonstration projects; exceptions.

6. The provisions of section 5 of P.L.2000, c.72 (C.18A:7G-5) shall pertain to school facilities projects designated to be demonstration projects except as otherwise provided in this section.

a. For the initial three full fiscal years following the effective date of this act, the State Treasurer may designate up to six school facilities projects which the State Treasurer determines to be in the best interests of the State and of the districts to be demonstration projects pursuant to the provisions of this section.

b. A district and municipality may apply to the authority for the designation of a school facilities project contained in a long-range facilities plan submitted to the commissioner pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4) to be a demonstration project to provide for the coordination of local economic development, redevelopment or community development with a school facilities project. The application shall be accompanied by resolutions requesting the designation adopted by the board of education of the district and the governing body of the municipality. The application shall set forth:

(1) a plan for carrying out the redevelopment project as a whole, including the construction of the school facilities project;

(2) the name of the redevelopment entity to undertake the project under the "Local Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et seq.);

(3) a description of how the project fits into a redevelopment plan adopted or to be adopted by the municipal governing body pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7); and (4) a description of the community design features to be included in the school facilities project.

c. The authority shall evaluate the request to determine whether the school facilities project is suitable for designation as a demonstration project and whether the proposed redevelopment entity is suitable for designation as the entity to construct the demonstration project based upon

consideration of the following factors:

- (1) whether the demonstration project furthers definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;
- (2) whether the demonstration project provides significant social and economic benefits to the municipality, its neighborhoods and residents;
- (3) whether the development of the school facilities project is consistent with the local development plan;
- (4) the extent to which the school facilities project contains community design features which can be used by the community;
- (5) whether the redevelopment entity has the current capacity to construct the demonstration project;
- (6) whether the redevelopment entity has the appropriate prior experience in developing similar types of projects; and
- (7) whether there exist donations from private entities for the purpose of the demonstration project.

d. The authority's review of the proposed school facilities project for designation as a demonstration project under this section shall commence upon approval by the commissioner of the school facilities project pursuant to section 5 of P.L.2000, c.72 (C.18A:7G-5). Upon approval by the commissioner of the school facilities project, and recommendation by the authority that the school facilities project be a demonstration project, the recommendation of the authority shall be forwarded to the State Treasurer who shall determine whether the school facilities project should be designated as a demonstration project. At the same time as the authority forwards its recommendation to the State Treasurer, the authority shall forward its recommendation to the Urban Coordinating Council for review pursuant to subsection i. of this section.

e. In addition to the requirements set forth in section 5 of this act, a demonstration project may request inclusion in the final eligible costs of the school facilities project, of all or any portion of the cost of any community design features including any area, rooms, equipment, recreational area or playground included in the school facilities project which are to be used in common by students of the district and by residents of the community, but there shall not be included in the final eligible costs any portion of the cost of any features which are not an integral part of the school building and grounds or exceed the facilities efficiency standards. The commissioner shall approve the inclusion of the community design features as part of the school facilities project if he finds that the inclusion of the community design features as part of the school facilities project would be conducive to the usefulness and success of the project for both the students of the district and the residents of the community. The commissioner may condition his approval upon the adoption by the district of policies suitable for assuring continuing community or educational access to the community design features.

f. The cost of the community design features approved by the commissioner shall be reviewed by the authority. The district shall submit the documentation required by the authority for the authority to make its determination. The authority shall, in its recommendation to the commissioner pursuant to section 5 of this act, include its recommendation with respect to the cost of the community design features. The commissioner shall make the final determination with respect to the inclusion of the cost of community design features in the final eligible costs.

g. The authority shall provide funding for the State's share of the final eligible costs of a school facilities project to be constructed as part of a demonstration project pursuant to an agreement among the authority, the redevelopment entity and the district which shall, in addition to any other terms and conditions, set forth the terms for disbursement of the State share and provide for the monitoring of construction by the authority.

h. Upon completion of a demonstration project by a redevelopment entity, the district shall submit to the commissioner a plan to provide for the maintenance of the project and shall enter into a contract which provides for that maintenance.

i. The Urban Coordinating Council shall review the recommendations of the authority with respect to the demonstration projects and shall advise the authority, redevelopment entity and

the district regarding the potential availability of funding for the demonstration project, including, but not limited to, sources of funds for acquisition, clearance, site remediation, and assemblage of land and the development, redevelopment, construction or rehabilitation of any structure or improvement included in the project.

j. Any district may consult with the Urban Coordinating Council with respect to the potential availability of funding for aspects of the school facilities project, including, but not limited to, sources of funds for acquisition, clearance, site remediation, and assemblage of land and the development, redevelopment, construction or rehabilitation of any structure or improvement included in the project.

C.18A:7G-7 Approval of preliminary eligible costs.

7. a. Preliminary eligible costs for construction of new school facilities and additions to school facilities, characterized by an increase in the square footage of the school facility, shall be approved only if necessary for reasons of unhoused students. Unhoused students are the number of students to be housed in a school building, but which cannot be housed in an existing building without additional space or a new building in order to maintain educational adequacy; or which are temporarily being housed in space that was originally designed or intended for instruction in specialized areas including, but not limited to, science, art, music, other hands-on learning experiences and comprehensive health and physical education. Unhoused students are calculated by subtracting the projected enrollment for a school building from its functional capacity.

Preliminary eligible costs for construction of new school facilities and additions to school facilities pursuant to this subsection shall be calculated as follows:

Preliminary eligible costs = AU x C

where

AU is the approved area for unhoused students; and

C is the area cost allowance.

b. Preliminary eligible costs shall be approved for a rehabilitation project which means the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities but only for the purpose of keeping the school building functional for its original purpose or for new purposes that can be accomplished without increasing the gross square footage of the original facility.

Preliminary eligible costs for rehabilitation projects pursuant to this subsection shall be calculated as follows:

Preliminary eligible costs = estimated actual costs.

All school facilities shall be deemed suitable for rehabilitation unless a pre-construction evaluation undertaken by the district demonstrates to the satisfaction of the commissioner that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective. Whenever a district determines to undertake new construction rather than a rehabilitation project, the district shall undertake a preconstruction evaluation to determine whether, because of health and safety or efficiency, it would be more feasible to replace rather than renovate the school facility. When the district demonstrates to the satisfaction of the commissioner that replacement is more feasible, the district shall be authorized to have the school facility replaced rather than renovated and the preliminary eligible costs shall be determined pursuant to subsection a. of this section. The estimated costs of a rehabilitation project shall contain only those costs necessary for compliance with the Uniform Construction Code, health and safety, and educational adequacy as determined pursuant to the facilities efficiency standards and paragraph (1) of subsection g. of section 5 of this act.

c. When construction done in lieu of rehabilitation projects qualifies as new construction, the approved area for unhoused students shall be determined by the commissioner, with consideration of the existing school facilities in the district.

d. Preliminary eligible costs for new construction done in lieu of rehabilitation projects which does not meet the requirements of subsection b. of this section shall be determined in accordance with the methodology for aiding rehabilitation projects, with the preliminary eligible costs determined pursuant to subsection b. of this section.

e. Preliminary eligible costs for purchase of an existing facility to be used as a school facility shall be determined in accordance with the methodology for new construction, with preliminary eligible costs determined pursuant to subsection a. of this section.

f. Notwithstanding the provisions of subsections a. and b. of this section, preliminary eligible costs for any addition or reconstruction, remodeling, alteration, modernization, renovation or repair made to a purchased facility within five years of purchase shall be determined as follows:

$$\text{Preliminary eligible costs} = (\text{ACP-PC}) \times (\text{C/CP})$$

where

ACP is the preliminary eligible costs for the facilities purchase pursuant to subsection e. of this section;

PC is the purchase cost for the facility;

C is the area cost allowance at the time of application for the renovation; and

CP is the area cost allowance at the time of purchase of the facility.

Preliminary eligible costs so calculated shall not be less than zero.

C.18A:7G-8 Calculation of number of unhoused students.

8. a. The number of unhoused students shall be calculated as the number of FTE students who are projected to be enrolled in preschool handicapped, preschool, kindergarten, grades 1 through 12, and special education services pupil educational programs provided in a district within five years, which are in excess of the functional capacity of the district's current school facilities or the functional capacity of the school facilities which will be available within five years other than the school facilities for which the preliminary eligible costs are determined, based upon the district's long-range facilities plan. The determination of unhoused capacity shall separately consider projected enrollments and functional capacities at the early childhood and elementary (preschool through grade 5), middle (grades 6 through 8), and high school (grades 9 through 12) levels. For the purpose of calculating the district's unhoused students, special education services students shall be considered part of the grade level to which the students' chronological age corresponds. In the event that the commissioner approves a school facilities project which involves the construction of a new school facility to replace an existing school facility, which shall accommodate both the unhoused students and the students in the existing school facility, the calculation of the number of unhoused students shall include the number of students currently attending the existing facility which is to be replaced.

b. Approved area for unhoused students (AU) shall be determined according to the following formula:

$$\text{AU} = (\text{UEC} \times \text{SEC}) + (\text{UE} \times \text{SE}) + (\text{UM} \times \text{SM}) + (\text{UH} \times \text{SH}) \text{ where}$$

UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and

SEC, SE, SM, SH are the area allowances per FTE student in preschool and kindergarten, grades 1 through 5, grades 6 through 8, and grades 9 through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations used in the school buildings of the district.

The minimum area allowance per FTE student shall be as follows:

Preschool through grade 5	125 sq. ft.
Grades 6 through 8	134 sq. ft.
Grades 9 through 12	151 sq. ft.

The commissioner, in consultation with the State Treasurer and the Commissioner of the Department of Community Affairs, shall adopt regulations that establish a process for the consideration of special circumstances, in addition to those provided in section 5 of this act, in which the area allowances per FTE student established pursuant to this subsection may be adjusted. Any decision made by the commissioner pursuant to those regulations shall be made in consultation with the State Treasurer and the Commissioner of the Department of Community Affairs.

C.18A:7G-9 Distribution of State debt service aid.

9. a. State debt service aid for capital investment in school facilities for a district whose district aid percentage is less than 55% and which elects not to have the authority construct a school facilities project or to finance the project under section 15 of this act, shall be distributed upon a determination of preliminary eligible costs by the commissioner, according to the following formula:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) where

$$A = B \times AC/P \times (DAP \times 1.15) \times M, \text{ with } AC/P = 1$$

whenever AC/P would otherwise yield a number greater than one, and where:

B is the district's debt service for the individual issuance for the fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of this act;

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district's district aid percentage as defined pursuant to section 3 of this act; and

M is a factor representing the degree to which a district has fulfilled maintenance requirements for a school facilities project determined pursuant to subsection b. of this section.

For county special services school districts, DAP shall be that of the county vocational school district in the same county. Notwithstanding any provision of this subsection to the contrary, State debt service aid shall not be less than 40% of the preliminary eligible costs.

b. The maintenance factor (M) shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:

(1) Effective ten years from the date of the enactment of P.L.2000, c.72 (C.18A:7G-1 et al.), the maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the district fails to demonstrate over the ten years preceding issuance a net investment in maintenance of the related school facility of at least 2% of the replacement cost of the school facility, determined pursuant to subsection b. of section 7 of this act using the area cost allowance of the year ten years preceding the year in which the school bonds are issued.

(2) For new construction, additions, and school facilities aided under subsection b. of section 7 of this act supported by financing issued for projects approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the following schedule for all school facilities projects for which the district fails to demonstrate in the prior fiscal year an investment in maintenance of the related school facility of at least two-tenths of 1 % of the replacement cost of the school facility, determined pursuant to subsection b. of section 7 of this act.

Maintenance Percentage	Maintenance Factor (M)
.199% - .151%	75%
.150% - .100%	50%
Less than .100%	Zero

(3) Within one year of the enactment of P.L.2000, c.72 (C.18A:7G-1 et al.), the commissioner shall promulgate rules requiring districts to develop a long-range maintenance plan and specifying the expenditures that qualify as an appropriate investment in maintenance for the purposes of this subsection.

c. Any district which obtained approval from the commissioner since September 1, 1998 and prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) of the educational specifications for a school facilities project or obtained approval from the Department of Community Affairs or the appropriately licensed municipal code official since September 1, 1998 of the final construction plans and specifications, and the district has issued debt, may elect to have the final eligible costs of the project determined pursuant to section 5 of this act and to receive debt

service aid under this section or under section 10 of this act.

Any district which received approval from the commissioner for a school facilities project at any time prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), and has not issued debt, other than short term notes, may submit an application pursuant to section 5 of this act to have the final eligible costs of the project determined pursuant to that section and to have the authority construct the project; or, at its discretion, the district may choose to receive debt service aid under this section or under section 10 of this act or to receive a grant under section 15 of this act.

For the purposes of this subsection, the "issuance of debt" shall include lease purchase agreements in excess of five years.

C.18A:7G-10 Issuance of school bonds, certificates of participation, determination of aid.

10. For each issuance of school bonds or certificates of participation issued for a school facilities project approved by the commissioner prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.):

Aid is the sum of A

where

$A = B \times \text{CCSAID/TEBUD}$

and where

B is the district's total debt service or lease purchase payment for the individual issuance for the fiscal year;

CCSAID is the district's core curriculum standards aid amount determined pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15); and

TEBUD is the district's T&E budget determined pursuant to section 13 of P.L.1996, c.138(C.18A:7F-13).

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.

C.18A:7G-11 Approval of local share of project.

11. A school facilities project shall not be constructed unless the local share of the project, if any, is approved in accordance with the provisions for the approval of capital projects pursuant to N.J.S.18A:22-1 et seq., N.J.S.18A:24-1 et seq. and P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as applicable to the district.

C.18A:7G-12 Submission of project to commissioner for approval of local share.

12. A district, other than a State-operated school district, that sought approval pursuant to section 11 of this act of a school facilities project without excess costs but failed to receive that approval, and within the three years prior to that, sought and failed to receive approval of that school facilities project with or without excess costs, may submit the project to the commissioner and request that the commissioner approve the project and authorize the issuance of school bonds for the local share of the project. Upon receipt of the request, the commissioner shall review the school facilities project and determine whether the project is necessary for the provision of a thorough and efficient system of education in the district. If the commissioner concludes that the project is necessary, the commissioner may approve the project without excess costs and authorize the issuance of school bonds to fund the local share. In addition to the amount of taxes determined by the legal voters of the district at the annual school election, the secretary of the board of education shall certify the amount required for the repayment of the interest and principal of the bonds required to fund the local share amount approved by the commissioner in the same manner required for interest and debt redemption charges pursuant to N.J.S.18A:22-33, and the amount so certified shall be included in the taxes assessed, levied and collected in the municipality or municipalities comprising the school district for those purposes.

Any school facilities project authorized pursuant to this section shall be constructed by the authority. Nothing in this section shall preclude a State-operated school district from using the process established pursuant to section 2 of P.L.1991, c.139 (C.18A:7A-46.2) to obtain the approval of the commissioner to undertake a school facilities project.

C.18A:7G-13 Responsibilities of authority.

13. a. The authority shall be responsible for the financing , planning, design, construction management, acquisition, construction, and completion of school facilities projects .Upon submission to the authority of a final project report, the authority shall undertake the acquisition, construction, and all other appropriate actions necessary to complete the project. When the final eligible costs of a school facilities project are less than or equal to \$500,000, the authority may, in its discretion, authorize a district to undertake the acquisition, construction and all other appropriate actions necessary to complete the project and enter into a grant agreement with the district for the payment of the State share.

b. The authority shall undertake the financing of school facilities projects pursuant to the provisions of this act. The authority may, in its discretion and upon consultation with the district, finance only the State share of the school facilities project or the State share and the local share of the project. In the event that the authority finances only the State share of a project, the authority shall not commence acquisition or construction of the project until the authority receives the local share from the district.

c. In order to implement the arrangements established for school facilities projects which are to be constructed by the authority and financed pursuant to this section, a district shall enter into an agreement with the authority and the commissioner containing the terms and conditions determined by the parties to be necessary to effectuate the project.

d. Upon completion by the authority of a school facilities project, the district shall enter into an agreement with the authority to provide for the maintenance of the project by the district. In the event that the school facilities project is constructed by a district, upon the completion of the project, the district shall submit to the commissioner a plan to provide for the maintenance of the project by the district. Any agreement or plan shall contain, in addition to any other terms and provisions, a requirement for the establishment of a maintenance reserve fund, the funding levels of which shall be as set forth in regulations adopted by the commissioner pursuant to section 26 of this act.

C.18A:7G-14 Powers of authority concerning financing.

14. Notwithstanding any other provisions of law to the contrary:

a. The authority shall have the power, pursuant to the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by moneys received pursuant to sections 17, 18 and 19 of this act for the purposes of: financing all or a portion of the costs of school facilities projects and any costs related to the issuance thereof, including, but not limited to, the administrative, insurance, operating and other expenses of the authority to undertake the financing, design, construction and maintenance of school facilities projects; lending moneys to local units to pay the costs of all or a portion of school facilities projects and any costs related to the issuance thereof; funding the grants to be made pursuant to section 15 of this act; and financing the acquisition of school facilities projects to permit the refinancing of debt by the district pursuant to section 16 of this act. The aggregate principal amount of the bonds, notes or other obligations issued by the facilities authority shall not exceed: \$100,000,000 for the State share of costs for county vocational school district school facilities projects; \$6,000,000,000 for the State share of costs for Abbott district school facilities projects; and \$2,500,000,000 for the State share of costs for school facilities projects in all other districts. This limitation shall not include any bonds, notes or other obligations issued for refunding purposes.

The authority may establish reserve funds to further secure bonds and refunding bonds issued pursuant to this section and may issue bonds to pay for the administrative, insurance and operating costs of the authority in carrying out the provisions of this act. In addition to its bonds and refunding bonds, the authority shall have the power to issue subordinated indebtedness, which shall be subordinate in lien to the lien of any or all of its bonds or refunding bonds as the authority may determine.

b. The authority shall issue the bonds or refunding bonds in such manner as it shall determine in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.); provided that notwithstanding any other law to the contrary, no resolution adopted by the

authority authorizing the issuance of bonds or refunding bonds pursuant to this section shall be adopted or otherwise made effective without the approval in writing of the State Treasurer; and refunding bonds issued to refund bonds issued pursuant to this section shall be issued on such terms and conditions as may be determined by the authority and the State Treasurer. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued pursuant to this section, pledge the contract with the State Treasurer provided for pursuant to section 18 of this act, or any part thereof, or may pledge all or any part of the repayments of loans made to local units pursuant to section 19 of this act for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payment of the bonds and refunding bonds. All costs associated with the issuance of bonds and refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds, and from amounts it receives pursuant to sections 17, 18, and 19 of this act. The costs may include, but shall not be limited to, any costs relating to the issuance of the bonds or refunding bonds, administrative costs of the authority attributable to the making and administering of loans and grants to fund school facilities projects, and costs attributable to the agreements entered into pursuant to subsection d. of this section.

c. Each issue of bonds or refunding bonds of the authority shall be special obligations of the authority payable out of particular revenues, receipts or funds, subject only to any agreements with the holders of bonds or refunding bonds, and may be secured by other sources of revenue, including, but not limited to, one or more of the following:

(1) Pledge of the revenues and other receipts to be derived from the payment of local unit obligations and any other payment made to the authority pursuant to agreements with any local unit, or a pledge or assignment of any local unit obligations, and the rights and interest of the authority therein;

(2) Pledge of rentals, receipts and other revenues to be derived from leases or other contractual arrangements with any person or entity, public or private, including one or more local units, or a pledge or assignment of those leases or other contractual arrangements and the rights and interests of the authority therein;

(3) Pledge of all moneys, funds, accounts, securities and other funds, including the proceeds of the bonds;

(4) Pledge of the receipts to be derived from payments of State aid to the authority pursuant to section 21 of this act;

(5) Pledge of the contract or contracts with the State Treasurer pursuant to section 18 of this act;

(6) Pledge of any sums remitted to the local unit by donation from any person or entity, public or private, subject to the approval of the State Treasurer;

(7) A mortgage on all or any part of the property, real or personal, comprising a school facilities project then owned or thereafter to be acquired, or a pledge or assignment of mortgages made to the authority by any person or entity, public or private, including one or more local units and rights and interests of the authority therein; and

(8) The receipt of any grants, reimbursements or other payments from the federal government.

d. The resolution authorizing the issuance of bonds or refunding bonds pursuant to this section may also provide for the authority to enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contracts, surety bonds, commitments to purchase or sell bonds, purchase or sale agreements, or commitments or other contracts or agreements and other security agreements approved by the authority in connection with the issuance of the bonds or refunding bonds pursuant to this section. In addition, the authority may, in anticipation of the issuance of the bonds or the receipt of appropriations, grants, reimbursements or other funds, including, without limitation, grants from the federal government for school facilities projects, issue notes, the principal of or interest on which, or both, shall be payable out of the

proceeds of notes, bonds or other obligations of the authority or appropriations, grants, reimbursements or other funds or revenues of the authority.

e. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of financial advisors and experts, placement agents, underwriters, appraisers, and other advisors, consultants and agents as may be necessary to effectuate the financing of school facilities projects.

f. Bonds and refunding bonds issued by the authority pursuant to this section shall be special and limited obligations of the authority payable from, and secured by, funds and moneys determined by the authority in accordance with this section. Notwithstanding any other provision of law or agreement to the contrary, any bonds and refunding bonds issued by the authority pursuant to this section shall not be secured by the same property as bonds and refunding bonds issued by the authority to finance projects other than school facilities projects. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to this section shall not be a debt or liability of the State or any agency or instrumentality thereof, except as otherwise provided by this subsection, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

g. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to this act that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of the holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of the bonds or refunding bonds or agreements made pursuant to subsection d. of this section; except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

h. The authority may charge to and collect from local units, districts, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, planning, design, construction management, acquisition, construction, completion and placing into service and maintenance of school facilities projects. Notwithstanding any provision of this act to the contrary, no Level II district or a district whose district aid percentage is greater than or equal to 55% but less than 100% shall be responsible for the payment of any fees and charges related to the authority's operating expenses.

C.18A:7G-15 Election by district to receive one-time grant for State share.

15. In the case of a district whose district aid percentage is less than 55% and which elects not to have the authority undertake the construction of the school facilities project, for any project approved by the commissioner after the effective date of this act, the district may elect to receive a one-time grant for the State share of the project rather than annual debt service aid under section 9 of this act. The State share payable to the district shall equal the product of the project's final eligible costs and 115% of the district aid percentage or 40%, whichever is greater. The authority shall provide grant funding for the State's share of the final eligible costs of a school facilities project pursuant to an agreement between the district and the authority which shall, in addition to other terms and conditions, set forth the terms of disbursement of the State share. The funding of the State share shall not commence until the district secures financing for the local share.

C.18A:7G-16 Additional powers, duties of authority concerning financing.

16. In addition to the other powers and duties which have been granted to the authority, whenever any local unit finances the construction or acquisition of a school facilities project which would otherwise qualify under this act except that the debt was issued prior to the

effective date of this act, the authority may refinance the debt issued by the local unit through the issuance of bonds secured by repayments of loans made to the local units and may purchase the work or improvement and lease the same to the district, subject to the approval of the State Treasurer; except that the amount of the purchase price for a school facilities project shall not exceed the original cost. Each loan to a local unit pursuant to this section shall be evidenced by local unit obligations and shall be authorized and issued as provided by law. Notwithstanding the provisions of any law to the contrary, the local unit obligations may be sold at private sale to the authority at any price, whether or not less than par value, and shall be subject to redemption prior to maturity at any times and at any prices as the authority and the local unit may agree. All powers, rights, obligations and duties granted to or imposed upon the authority, districts, State departments and agencies or others by this act in respect to school facilities projects shall apply to the same extent with respect to any refinance of debt pursuant to this section; except that any action otherwise required to be taken at a particular time in the implementation of a school facilities project may, when the circumstances require in connection with a refinance of debt pursuant to this section, be taken with the same effect as if taken at that particular time. Upon repayment of the bonds or provision for repayment of bonds issued by the authority to refinance the debt of the local unit, the school facilities project shall be transferred to the district.

C.18A:7G-17 Annual payment to authority by State.

17. In each fiscal year the State Treasurer shall pay from the General Fund to the authority, in accordance with a contract between the State Treasurer and the authority as authorized pursuant to section 18 of this act, an amount equal to the debt service amount due to be paid in the State fiscal year on the bonds or refunding bonds of the authority issued or incurred pursuant to section 14 of this act and any additional costs authorized pursuant to that section; provided that all such payments from the General Fund shall be subject to and dependent upon appropriations being made from time to time by the Legislature for those purposes, and provided further that all payments shall be used only to pay for the costs of school facilities projects and the costs of financing those projects.

C.18A:7G-18 Authority to enter into contracts for State payments.

18. The State Treasurer and the authority are authorized to enter into one or more contracts to implement the payment arrangement provided for in section 17 of this act. The contract shall provide for payment by the State Treasurer of the amounts required pursuant to section 17 of this act and shall set forth the procedure for the transfer of moneys for the purpose of that payment. The contract shall contain terms and conditions as determined by the parties and shall, where appropriate, contain terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued or incurred pursuant to this act; provided that notwithstanding any other provision of law or regulation of the authority to the contrary, the authority shall be paid only such funds as shall be determined by the contract, and the incurrence of any obligation of the State under the contract, including any payments to be made thereunder from the General Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

C.18A:7G-19 Loans to local units.

19. a. The authority may make and contract to make loans to local units in accordance with and subject to the provisions of this act to finance all or any portion of the cost of a school facilities project which the local unit may lawfully undertake or acquire and for which the local unit is authorized by law to borrow money; or to refund obligations of the local unit which were issued to provide funds to pay for the cost of a school facilities project. The loans may be made subject to the terms and conditions the authority determines to be consistent with the purposes of this act. Each loan by the authority and the terms and conditions thereof shall be subject to approval by the State Treasurer.

b. Each loan to a local unit shall be evidenced by local unit obligations and shall be authorized and issued as provided by law. Notwithstanding the provisions of any other law to

the contrary, the local unit obligations may be sold at private sale to the authority at any price, whether or not less than par value, and shall be subject to redemption prior to maturity at any times and at any prices as the authority and the local unit may agree. Each loan to a local unit and the local unit obligations issued to evidence the loan shall bear interest at a rate or rates per annum, including zero interest, and shall be repaid in whole or in part, as the authority and the local unit may agree, with the approval of the State Treasurer.

C.18A:7G-20 Acquisition of school facilities by local unit.

20. A local unit may purchase, lease, rent, sublease or otherwise acquire any school facilities project or any space within a project and pay the amounts as may be agreed upon between the local unit and the authority as the purchase price, rent or other charge therefor; provided that the terms and conditions of the agreement between the authority and the local unit relating to the purchase, lease, rental or sublease shall be subject to the approval of the State Treasurer.

C.18A:7G-21 Payment to authority to cover deficiency.

21. a. In the event that a local unit has failed or is unable to pay to the authority in full when due any local unit obligations issued by the local unit to the authority, including, but not limited to, any lease or sublease obligations, or any other moneys owed by the district to the authority, to assure the continued operation and solvency of the authority, the State Treasurer shall pay directly to the authority an amount sufficient to satisfy the deficiency from State aid payable to the local unit; provided that if the local unit is a school district, the State aid shall not include any State aid which may otherwise be restricted pursuant to the provisions of P.L.1996, c.138 (C.18A:7F-1 et seq.). As used in this section, local unit obligations include the principal or interest on local unit obligations or payment pursuant to a lease or sublease of a school facilities project to a local unit, including the subrogation of the authority to the right of the holders of those obligations, any fees or charges payable to the authority, and any amounts payable by a local unit under a service contract or other contractual arrangement the payments under which are pledged to secure any local unit obligations issued to the authority by another local unit.

b. If the authority requires, and if there has been a failure or inability of a local unit to pay its local unit obligations to the authority for a period of 30 days, the chairman or the executive director of the authority shall certify to the State Treasurer, with written notice to the fiscal officer of the local unit, the amount remaining unpaid, and the State Treasurer shall pay that amount to the authority; or if the right to receive those payments has been pledged or assigned to a trustee for the benefit of the holders of bonds or refunding bonds of the authority, to that trustee, out of the State aid payable to the local unit, until the amount so certified has been paid. Notwithstanding any provision of this act to the contrary, the State Treasurer's obligation to pay the authority pursuant to this section shall not extend beyond the amount of State aid payable to the local unit.

c. The amount paid to the authority pursuant to this section shall be deducted from the appropriation or apportionment of State aid payable to the local unit and shall not obligate the State to make, nor entitle the local unit to receive, any additional appropriation or apportionment. The obligation of the State Treasurer to make payments to the authority or trustee and the right of the authority or trustee to receive those payments shall be subject and subordinate to the rights of holders of qualified bonds issued prior to the effective date of this act pursuant to P.L.1976, c.38 (C.40A:3-1 et seq.) and P.L.1976, c.39 (C.18A:24-85 et seq.).

C.18A:7G-22 Authority's power to accept, use funds.

22. a. The authority shall have the power to accept and use any funds appropriated and paid by the State to the authority for the purposes for which the appropriations are made. The authority shall have the power to apply for and receive and accept appropriations or grants of property, money, services or reimbursements for money previously spent and other assistance offered or made available to it by or from any person, government agency, public authority or any public or private entity whatever for any lawful corporate purpose of the authority, including, without limitation, grants, appropriations or reimbursements from the federal government, and to apply and negotiate for the same upon such terms and conditions as may be

required by any person, government agency, authority or entity as the authority may determine to be necessary, convenient or desirable.

b. The authority shall establish a financial incentive program for the purpose of promoting donations to school facilities projects. Any entity which makes a donation approved by the State Treasurer to the preliminary eligible costs of a school facilities project shall receive an incentive payment pursuant to the provisions of this subsection. The amount of the incentive payment shall equal 50% of the fair market value of the donation but shall not in any one year exceed one-half of the amount of taxes paid or otherwise due from the donor pursuant to the provisions of the "New Jersey Gross Income Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.), or the "Corporation Business Tax Act," P.L.1945, c.162 (C.54:10A-1 et seq.), as applicable, for the tax year in which the donation is made. The fair market value of a non-cash donation shall be determined by the State Treasurer. The carry-forward for incentive payments shall not be inconsistent with that allowed by P.L.1976, c.47 (C.54A:1-1 et seq.) in the case of a donation by an individual, or P.L.1945, c.162 (C.54:10A-1 et seq.) in the case of a donation by a corporation.

All incentive payments made pursuant to this section shall be funded by and shall be subject to annual appropriations to the authority for this purpose, and shall in no way rely upon funds raised by the issuance of bonds for school facilities projects.

C.18A:7G-23 Prevailing wage rates on construction contracts.

23. a. Not less than the prevailing wage rate determined by the Commissioner of Labor pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) shall be paid to workers employed in the performance of construction contracts in connection with any school facilities project that is undertaken by the authority, a redevelopment entity, or a district and any contractor who violates the provisions of this subsection shall be prohibited from subsequently bidding on any State or district contract.

b. Registration fees collected pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) shall be applied toward the enforcement and administrative costs of the Division of Workplace Standards, Office of Wage and Hour Compliance, Public Contracts section and Registration section within the Department of Labor.

C.18A:7G-24 Annual report on school facilities construction program.

24. The commissioner, in consultation with the State Treasurer, shall annually submit to the Governor, the Joint Budget Oversight Committee, the President of the Senate and the Speaker of the General Assembly a report on the school facilities construction program established pursuant to the provisions of this act. The report shall be submitted no later than August 1 of each year and shall include, but not be limited to, the following information for the prior fiscal year: the number of school facilities projects approved by the commissioner pursuant to section 5 of this act; the number of projects constructed by the authority and the amount of time that it has taken the authority to complete those projects; the aggregate principal amount of bonds, notes or other obligations issued by the authority for the State share of construction and renovation of school facilities and whether there is a need to adjust the aggregate principal amount of bonds, notes or other obligations authorized for issuance pursuant to subsection a. of section 14 of this act; the number of projects constructed by districts; the number of demonstration projects approved; the number of approved projects which exceeded the facilities efficiency standards, the components of those projects which exceeded the standards, and the amount of construction by individual districts and Statewide estimated to have exceeded the standards; and recommendations for changes in the school facilities construction program established pursuant to this act.

C.18A:7G-25 Appropriation of unexpended balance.

25. Notwithstanding the provisions of the annual appropriations act to the contrary concerning the conditions on the appropriation and reappropriation of the balance in the School Construction and Renovation Fund, the unexpended balance in the School Construction and Renovation Fund on the effective date of this act is appropriated to the authority to be used to pay for school facilities projects and the administrative, insurance, and other operating costs of

the authority incurred in connection with school facilities projects. In addition, there is appropriated from the General Fund to the Department of Law and Public Safety, Office of the Attorney General, an amount not to exceed \$1,000,000, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, for the Unit of Fiscal Integrity in School Construction, established pursuant to section 70 of this act, and any additional amounts as may be required by the unit, subject to the approval of the Director of the Division of Budget and Accounting and the Joint Budget Oversight Committee.

C.18A:7G-26 Rules, regulations.

26. a. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of sections 1 through 12 and 57 and 58 and 64 of this act; except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the commissioner deems necessary to implement the provisions of sections 1 through 12 and 57 and 58 and 64 of this act which shall be effective for a period not to exceed 12 months. Determinations made by the commissioner pursuant to this act and the rules and regulations adopted by the commissioner to implement this act shall be considered to be final agency action and appeal of that action shall be directly to the Appellate Division of the Superior Court. The regulations shall thereafter be amended, adopted or re-adopted by the State Board of Education in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act that apply to the authority; except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the authority deems necessary to implement the provisions of this act that apply to the authority which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted by the authority, in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Any regulations adopted to implement this act shall include provisions to ensure that all programs necessary to comply with *Abbott v. Burke*, 153 N.J. 480 (1998) (*Abbott V*), are approved.

C.18A:7G-27 Authority's property exempt from levy, sale.

27. All property of the authority shall be exempt from levy and sale by virtue of an execution and no execution of other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its property; provided that nothing herein contained shall apply to or limit the rights of the holder of any bonds, notes or other obligations to pursue any remedy for the enforcement of any pledge or lien given by the authority on or with respect to any project, school facilities project, or any revenues or other moneys.

C.18A:7G-28 Severability.

28. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

C.18A:7G-29 Liberal construction.

29. This act shall be construed liberally to effectuate the legislative intent and the purposes of this act as complete and independent authority for the performance of each act and thing herein authorized and all powers herein granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

C.18A:7G-30 Annual appropriation from tobacco settlement.

30. There shall be appropriated annually for the purposes of this act up to \$100,000,000 from

moneys made available to the State from tobacco companies under the nationwide settlement of the respective actions by the various states against those companies, entered into by this State in the Master Settlement Agreement in State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No.C.254-96.

31. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to read as follows:

C.18A:7A-11 Annual report by school districts, commissioner.

11. Each school district and county vocational school district shall make an annual report of its progress in conforming to the standards for the evaluation of school performance adopted pursuant to section 10 of P.L.1975, c.212 (C.18A:7A-10). Each district's annual report shall include but not be limited to:

- a. Demographic data related to each school;
- b. Results of designated assessment programs, including Statewide assessment programs established pursuant to law and regulation;
- c. Information on each school's fiscal operation, including the budget of each school;
- d. (Deleted by amendment, P.L.1996, c.138).
- e. Plans and programs for professional improvement;
- f. Plans to carry out innovative educational programs designed to improve the quality of education;
- g. Recommendations for school improvements during the ensuing year; and
- h. Such additional information as may be prescribed by the commissioner.

The district reports shall be submitted to the commissioner annually on a date to be prescribed by the commissioner, who shall make them the basis for an annual report to the Governor and the Legislature, describing the condition of education in New Jersey, the efforts of New Jersey schools in meeting the standards of a thorough and efficient education, the steps underway to correct deficiencies in school performance, and the progress of New Jersey schools in comparison to other state education systems in the United States.

32. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to read as follows:

C.18A:7A-46.1 Capital Project Control Board established.

1. a. In any State-operated school district created pursuant to the provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there shall be established a Capital Project Control Board, hereinafter the board, which shall be responsible for the review of any capital project proposed by the State district superintendent provided that the State district superintendent proposes that the capital project be financed in whole or in part by school bonds or notes, or through a lease purchase agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board shall also be responsible for the certification to the State district superintendent of schools and the Commissioner of Education of the necessity for the capital project and the certification of the appropriation to be made by the governing body of the municipality.

b. The board shall consist of five voting members. One member shall be appointed by the Commissioner of Education and two members shall be appointed by the chief executive officer with the consent of a majority of the full membership of the local governing body of the municipality or municipalities in which the school district is located. If the school district is comprised of two municipalities, each municipality shall be entitled to one member, appointed by the executive officer with the consent of the governing body. If the school district is comprised of more than two municipalities, each of the two municipalities with the largest population according to the most recent federal decennial census shall be entitled to one member, appointed by the executive officer with the consent of the governing body. However, if a local governing body fails to agree upon the selection of either board member appointed by an executive officer, then the Commissioner of Education shall make the appointment. One member shall be appointed by the Director of the Division of Local Government Services in the Department of Community Affairs who shall have experience in the area of local finance and capital projects. The fifth member shall be the State district superintendent of schools who shall serve ex-officio and shall act as chairperson of the board. The board members, except for the

State district superintendent, shall each serve for a term of one year commencing on July 1 of each year and expiring on June 30 of the following year. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided by the original appointment. Members of the board may be employees of the State or any subdivision thereof. All members of the board shall serve without compensation.

c. The board shall meet from time to time upon the request of the State district superintendent. All meetings of the board shall be conducted pursuant to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district superintendent, or his designee, shall be charged with the responsibility of preparing a transcript of the proceedings and all votes shall be recorded in writing.

33. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to read as follows:

C.18A:7A-46.2 Board to hear recommendations concerning proposed capital projects.

2. The board shall hear the recommendation of the State district superintendent concerning any proposed capital project, which is to be financed in whole or in part by school bonds or notes, or through a lease purchase agreement pursuant to subsection f. of N.J.S.18A:20-4.2, and shall undertake all actions necessary to review the proposed capital project to determine whether the project will assist the State-operated school district in providing a thorough and efficient system of education in that district. In making this determination it may take into consideration factors such as the conditions in the school district, any applicable educational goals, the objectives and standards established by the State, the need for the capital project, the reasonableness of the amount to be expended for the capital project, the estimated time for the undertaking and completion of the capital project, and any other factors which the board may deem necessary including the relationship of the capital project to the long-term capital budget or plan of the school district and the fiscal implications thereof.

Following its review and within 60 days of the date on which the State district superintendent submits the recommendation to the board, the board shall adopt a resolution as to whether the State-operated school district should undertake the capital project and providing its reasons therefor. The board shall adopt a resolution indicating the necessity for the capital project and shall also fix and determine by resolution the amount necessary to be raised locally for the capital project. If the board fails to act within 60 days of the submission date, the State district superintendent shall submit the recommendation to the commissioner who shall approve or disapprove the capital project. If the board makes a decision which is contrary to the recommendation of the superintendent, the superintendent may, within 30 days from the date of the board's action, submit the matter to the commissioner for final decision. If the commissioner determines that a capital project should be undertaken, the commissioner shall so notify the board and shall indicate the amount necessary to be raised locally for the capital project. Upon notification, the board shall adopt a resolution indicating the necessity for the capital project and shall also fix and determine by resolution the amount necessary for the capital project as indicated by the commissioner. Certified copies of any resolution requesting the authorization and issuance of bonds and notes or the authorization of a lease purchase agreement shall be delivered to the State district superintendent, the Commissioner of Education, the Director of the Division of Local Government Services in the Department of Community Affairs and the governing body of the municipality or municipalities in which the school district is located. The board shall not approve or recommend any capital project which is inconsistent with the provisions of N.J.S.18A:21-1.

34. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to read as follows:

C.18A:7A-46.3 Capital projects financed by issuance of bonds, notes.

3. Notwithstanding the provisions of any law to the contrary, the cost of any capital project authorized pursuant to this act which is to be funded by bonds or notes and certified by the board to the State district superintendent, the Commissioner of Education, the Director of the Division of Local Government Services in the Department of Community Affairs and the governing body of the municipality or municipalities in which the school district is located shall be financed by

the issuance of school bonds or notes pursuant to the provisions of chapter 24 of Title 18A of the New Jersey Statutes and the "Local Bond Law" (N.J.S.40A:2-1 et seq.) and the notes, school bonds or other obligations shall be authorized, issued, sold and delivered in the manner prescribed by the "Local Bond Law" (N.J.S.40A:2-1 et seq.).

35. N.J.S.18A:20-4.2 is amended to read as follows:

Powers of boards concerning real property.

18A:20-4.2. The board of education of any school district may, for school purposes:

(a) Purchase, take and condemn lands within the district and lands not exceeding 50 acres in extent without the district but situate in a municipality or municipalities adjoining the district, but no more than 25 acres may be so acquired in any one such municipality, without the district, except with the consent, by ordinance, of such municipality;

(b) Grade, drain and landscape lands owned or to be acquired by it and improve the same in like manner;

(c) Erect, lease for a term not exceeding 50 years, enlarge, improve, repair or furnish buildings;

(d) Borrow money therefor, with or without mortgage; in the case of a type II district without a board of school estimate, when authorized so to do at any annual or special school election; and in the case of a type II district having a board of school estimate, when the amount necessary to be provided therefor shall have been fixed, determined and certified by the board of school estimate; and in the case of a type I district, when an ordinance authorizing expenditures for such purpose is finally adopted by the governing body of a municipality comprised within the district; provided, however, that no such election shall be held nor shall any such resolution of a school estimate board or ordinance of a municipal governing body be introduced to authorize any lease of any building for a term exceeding one year, until the proposed terms of such lease have been reviewed and approved by the Commissioner of Education and the Local Finance Board in the Department of Community Affairs;

(e) Construct, purchase, lease or otherwise acquire a building with the federal government, the State, a political subdivision thereof or any other individual or entity properly authorized to do business in the State; provided that: (1) the noneducational uses of the building are compatible with the establishment and operation of a school, as determined by the Commissioner of Education; (2) the portion of the building to be used as a school meets regulations of the Department of Education; (3) the board of education has complied with the provisions of law and regulations relating to the selection and approval of sites; and (4) in the case of a lease, that any lease in excess of five years shall be approved by the Commissioner of Education and the Local Finance Board in the Department of Community Affairs;

(f) Acquire, with the approval of either the commissioner, or voters or board of school estimate, as applicable, improvements or additions to school buildings through lease purchase agreements not in excess of five years. The agreement shall be recorded as an expenditure of the General Fund of the district. The commissioner shall approve the agreement only upon a demonstration by the district that the lease purchase payments and any operating expenses related to the agreement can be included within the district's net budget spending growth limitation and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs and extracurricular activities. If the commissioner cannot approve the agreement, the board of education may frame a separate question to authorize the lease purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. A district may, without separate prior approval of the commissioner, also acquire equipment through a lease purchase agreement not in excess of five years, provided that the amount of the first installment and each subsequent installment for the lease purchase payments is included in the budget that is advertised and submitted for approval to the voters of the district or the board of school estimate, as appropriate. As used herein, a "lease purchase agreement" refers to any agreement which gives the board of education as lessee the option of purchasing the leased equipment or improvements or additions to existing school buildings during or upon termination of the lease, with credit toward the purchase price of all or part of rental payments which have been made by

the board of education in accordance with the lease. As part of such a transaction, the board of education may transfer or lease land or rights in land, including any building thereon, after publicly advertising for proposals for the transfer for nominal or fair market value, to the party selected by the board of education, by negotiation or otherwise, after determining that the proposal is in the best interest of the taxpayers of the district, to construct or to improve and to lease or to own or to have ownership interests in the site and the school building to be leased pursuant to such lease purchase agreement, notwithstanding the provisions of any other law to the contrary. The land and any building thereon which is described in a lease purchase agreement entered into pursuant to this amendatory act, shall be deemed to be and treated as property of the school district, used for school purposes pursuant to R.S.54:4-3.3, and shall not be considered or treated as property leased to another whose property is not exempt, and shall not be assessed as real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any lease purchase agreement authorized by this section shall contain a provision making payments thereunder subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause and shall require all construction contracts let by public school districts or let by developers or owners of property used for school purposes to be competitively bid, pursuant to N.J.S.18A:18A-1 et seq.;

(g) Establish with an individual or entity authorized to do business in the State a tenancy in common, condominium, horizontal property regime or other joint ownership arrangement on a site contributed by the school district; provided the following conditions are met:

(1) The individual or entity agrees to construct on the site, or provide for the construction thereon, a building or buildings for use of the board of education separately or jointly with the individual or entity, which shall be subject to the joint ownership arrangement;

(2) The provision of the building shall be at no cost or at a reduced cost to the board of education;

(3) The school district shall not make any payment for use of the building other than its pro rata share of costs of maintenance and improvements;

(4) The noneducational uses of the building are compatible with the establishment and operation of a school, as determined by the Commissioner of Education;

(5) The portion of the building to be used as a school, and the site, meet regulations of the Department of Education; and

(6) Any such agreement shall be approved by the Commissioner of Education and the Local Finance Board in the Department of Community Affairs;

(h) Acquire through sale and lease-back textbooks and non-consumable instructional materials provided that the sale price and principal amount of the lease-back do not exceed the fair market value of the textbooks and instructional materials and that the interest rate applied in the lease-back is consistent with prevailing market rates or is less.

36. N.J.S.18A:22-18 is amended to read as follows:

Capital projects; appropriations; estimation.

18A:22-18. When a board of education of a type I district shall determine by resolution that it is necessary to sell school bonds to raise money for any capital project authorized by law, it shall prepare and deliver to each member of the board of school estimate a statement of the amount of money estimated to be necessary for such purpose. The statement shall include the amount needed to be raised by school bonds, the final eligible costs of the project as approved by the commissioner pursuant to section 5 of P.L.2000,c.72 (C.18A:G-5) and in the case of a demonstration project pursuant to sections 5 and 6 of P.L.2000, c.72 (C.18A:7G-5 and C.18A:7G-6), and, if applicable, the amount of any costs of the project which are in addition to the final eligible costs.

37. N.J.S.18A:22-19 is amended to read as follows:

Determination of local share amount.

18A:22-19. The board of school estimate shall fix and determine the local share amount necessary for said purpose and shall certify such amount separately to the board of education and

to the governing body of the municipality.

38. N.J.S.18A:22-27 is amended to read as follows:

Type II districts with boards of school estimate; estimate by board of education; certification of estimate.

18A:22-27. Whenever the board of education in a type II school district having a board of school estimate shall, by resolution adopted by recorded roll call affirmative vote of two thirds of its full membership, determine that it is necessary to sell school bonds to raise money for any capital project, it shall, by such resolution, estimate the amount necessary to be raised for such project or projects, itemizing such estimate so as to make it readily understandable, and the secretary of the board of education shall certify a copy of such resolution to each member of the board of school estimate of the district. The resolution shall include the amount needed to be raised by school bonds, the final eligible costs of the project as approved by the commissioner pursuant to section 5 of P.L.2000, c.72 (C.18A:7G-5) and in the case of a demonstration project pursuant to sections 5 and 6 of P.L.2000, c.72 (C.18A:7G-5 and C.18A:7G-6) , and, if applicable, the amount of any costs of the project which are in addition to the final eligible costs.

39. N.J.S.18A:22-28 is amended to read as follows:

Public hearing by board of school estimate; notice.

18A:22-28. The board of education of such district shall also, upon delivery of such certificate to the members of the board of school estimate, fix a date, place and time for the holding of a public hearing by the board of school estimate with respect to the amount of money to be raised locally for such project or projects, which date shall be not less than 15 nor more than 30 days after the date of such delivery, and shall cause notice of such public hearing and such resolution, including a statement that said resolution will be on file and open to examination to the public between reasonable hours to be fixed and at a place to be named therein from the date of such notice until the date of said public hearing, to be published at least once and not less than seven days before such public hearing in at least one newspaper, published in each municipality comprised within the school district, and if no newspaper is published in any such municipality, then, as to such municipality, in at least one newspaper circulating in the municipality, and said board of education shall cause said resolution to be on file and open to the examination of the public accordingly and to be produced at said public hearing for the information of those attending the same.

40. N.J.S.18A:22-29 is amended to read as follows:

Public hearing, public participation.

18A:22-29. On the date and at the time and place so fixed for such public hearing, the board of school estimate shall grant the taxpayers and other interested persons an opportunity to present objections and to be heard with respect to said resolution and the amount of money necessary to be raised locally for such project or projects and with respect to the various items and projects for which the same is to be raised.

41. N.J.S.18A:22-30 is amended to read as follows:

Determination of amount to be raised locally.

18A:22-30. At or after such hearing the board of school estimate shall fix and determine the amount of money necessary to be raised locally for said project or projects, and the secretary of said board shall certify said amount to the board of education of the district and to the board or body of each municipality comprised therein which has power to make appropriations of money to be raised by taxes in such municipality. The board of education of the district and the governing body of each such municipality comprising the district shall apportion the amount so to be appropriated, assessed, levied and raised in each of such municipalities, as nearly as may

be, on the same basis and by the application of the same standards as are provided by law for apportionment of appropriations by county tax boards.

42. N.J.S.18A:22-39 is amended to read as follows:

Type II districts without board of school estimate; submission of capital projects.

18A:22-39. Whenever the undertaking of any capital project or projects to be paid for from the proceeds of an issue or issue of bonds is submitted to the voters of a type II district at an annual or special school election for their approval or disapproval, the board shall frame and adopt by a recorded roll call majority vote of its full membership the question or questions to be submitted so that each project is submitted in a separate question, or all or any number of them are submitted in one question, which shall state the project or projects so submitted and the amounts to be raised for each of the projects so separately submitted or for each or for all of the projects so jointly submitted, as the case may be, but any proposal for the purchase of land shall be sufficient to authorize the taking and condemning of such land. If the project is to be constructed by the New Jersey Economic Development Authority or a redevelopment entity or by the district with a grant pursuant to section 15 of P.L.2000, c.72 (C.18A:7G-15), the referendum shall, when framed as a single question, request approval for the local share and shall disclose the final eligible costs of the project as approved by the commissioner pursuant to section 5 of P.L.2000, c.72 (C.18A:7G-5) and in the case of a demonstration project pursuant to sections 5 and 6 of P.L.2000, c.72 (C.18A:7G-5 and C.18A:7G-6), and, if applicable, the amount of any costs of the project which are in addition to the final eligible costs. If the school facilities project is not to be constructed by the New Jersey Economic Development Authority or a redevelopment entity or by the district with a grant pursuant to section 15 of P.L.2000, c.72 (C.18A:7G-15), the referendum shall, when framed as a single question, request approval for the total costs of the project, shall disclose State debt service aid for the project and, if applicable, the amount of any costs of the project which are in addition to the final eligible costs of the project. When a project is framed in more than one question, a summary shall be included in the explanatory statement which accompanies the questions that includes the total costs of the project, total State debt service aid, and, if applicable, the amount of the costs of the project which are in addition to the final eligible costs of the project, and any individual question containing costs in addition to the final eligible costs shall include the amount of those additional costs.

The statement of additional costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the additional costs as follows: "This project includes \$(insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education."

43. Section 2 of P.L.1974, c.80 (C.34:1B-2) is amended to read as follows:

C.34:1B-2 Legislative findings, determinations.

2. The Legislature hereby finds and determines that:

a. Department of Labor statistics of recent years indicate a continuing decline in manufacturing employment within the State, which is a contributing factor to the drastic unemployment existing within the State, which far exceeds the national average, thus adversely affecting the economy of the State and the prosperity, safety, health and general welfare of its inhabitants and their standard of living; that there is an urgent need to protect and enhance the quality of the natural environment and to reduce, abate and prevent environmental pollution derived from the operation of industry, utilities and commerce within the State; and that the availability of financial assistance and suitable facilities are important inducements to new and varied employment promoting enterprises to locate in the State, to existing enterprises to remain and expand in the State, and to industry, utilities and commerce to reduce, abate and prevent environmental pollution.

b. The provision of buildings, structures and other facilities to increase opportunity for employment in manufacturing, industrial, commercial, recreational, retail and service enterprises in the State is in the public interest and it is a public purpose for the State to induce and to

accelerate opportunity for employment in such enterprises.

c. In order to aid in supplying these needs and to assist in the immediate reduction of unemployment and to provide sufficient employment for the citizens of the State in the future, it is necessary and in the public interest to aid and encourage the immediate commencement of new construction projects of all types, to induce and facilitate the acquisition and installation at an accelerated rate of such devices, equipment and facilities as may be required to reduce, abate and prevent environmental pollution by industry, utilities and commerce.

d. The availability of financial assistance by the State will reduce present unemployment and improve future employment opportunities by encouraging and inducing the undertaking of such construction projects, the location, retaining or expanding of employment promoting enterprises within the State, and the accelerated acquisition and installation of energy saving improvements and pollution control devices, equipment and facilities.

e. In many municipalities in our State substantial and persistent unemployment exists; and many existing residential, industrial, commercial and manufacturing facilities within such municipalities are either obsolete, inefficient, dilapidated or are located without regard to the master plans of such municipalities; and the obsolescence and abandonment of existing facilities will increase with further technological advances, the provision of modern, efficient facilities in other states and the difficulty which many municipalities have in attracting new facilities; and that many existing and planned employment promoting facilities are far from or not easily accessible to the places of residence of substantial numbers of unemployed and underemployed persons.

f. By virtue of their architectural and cultural heritage, their positions as principal centers of communication and transportation and their concentration of productive and energy efficient facilities, many municipalities are capable of ameliorating the conditions of deterioration which impede sound community growth and development; and that building a proper balance of housing, industrial and commercial facilities and increasing the attractiveness of such municipalities to persons of all income levels is essential to restoring such municipalities as desirable places to live, work, shop and enjoy life's amenities; that the accomplishment of these objectives is beyond remedy solely by the regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the powers provided herein, and that the exercise of the powers herein provided is critical to continuing the process of revitalizing such municipalities and will serve an urgent public use and purpose.

The Legislature further determines that in order to aid in remedying the aforesaid conditions and to further and implement the purposes of this act, that there shall be created a body politic and corporate having the powers, duties and functions provided in this act; and that the authority and powers conferred under this act, and the expenditure of moneys pursuant thereto constitute a serving of a valid public purpose; and that the enactment of the provisions hereinafter set forth is in the public interest and for the public benefit and good, and is hereby so declared to be as a matter of express legislative determination.

The Legislature further finds and determines that:

g. It is essential that this and future generations of young people be given the fullest opportunity to learn and develop their intellectual capacities; that institutions of public elementary and secondary education within the State be provided with the appropriate additional means required to assist these young citizens in achieving the required levels of learning and the complete development of their intellectual abilities; and that the resources of the State be employed to meet the tremendous demand for public elementary and secondary educational opportunities.

h. Public elementary and secondary educational facilities are an integral part of the effort in this State to provide educational opportunities; it is the purpose of P.L.2000, c.72 (C.18A:7G-1 et al.) to provide a measure of assistance and an alternative method of financing to enable school districts to provide the facilities which are so critically needed; the inventory of public elementary and secondary school buildings and the equipment and capital resources currently available are aging, both chronologically and technologically; and the current funding at the federal, State, and local levels and the current mechanisms for construction of these capital projects are inadequate to meet the demonstrated need for school facilities, and these inadequacies necessitate additional sources of funding and the coordination of construction

activities at the State level to meet those needs.

i. While the credit status of New Jersey's school districts is sound, it can be economically more reasonable to finance the costs of developing the educational infrastructure of the State's public elementary and secondary schools by providing for the funding of capital projects through the issuance of bonds, notes or other obligations by the New Jersey Economic Development Authority, to be retired through annual payments made by the State subject to appropriation by the State Legislature, and to provide for the use of the proceeds of those bonds, notes or other obligations to pay for educational infrastructure projects; and such a structure would substantially reduce the costs of financing and provide for a more efficient use of the funds available for the development of the educational infrastructure.

j. The New Jersey Economic Development Authority has substantial and significant experience in undertaking major capital construction projects, has a system of internal controls and procedures to ensure the integrity of construction activities, and is therefore the appropriate entity to undertake the planning, design, construction, and operation of educational infrastructure projects; and by authorizing the New Jersey Economic Development Authority to undertake these activities, there will be achieved economies of scale, better coordination of resources, more effective financial management and control and increased monitoring and quality control of school district construction.

44. Section 3 of P.L.1974, c.80 (C.34:1B-3) is amended to read as follows:

C.34:1B-3 Definitions.

3. As used in this act, unless a different meaning clearly appears from the context:

a. "Authority" means the New Jersey Economic Development Authority, created by section 4 of this act.

b. "Bonds" means bonds or other obligations issued by the authority pursuant to this act, "Economic Recovery Bonds or Notes" issued pursuant to P.L.1992, c.16 (C.34:1B-7.10 et al.), or bonds, notes, other obligations and refunding bonds issued by the authority pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.).

c. "Cost" means the cost of the acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility including water transmission facilities, or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of energy saving improvements or pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development deemed by the authority to be necessary or useful and convenient for any project or school facilities project or in connection therewith; discount on bonds; cost of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the authority or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or school facilities project or part thereof, and also such provision for reserves for payment or security of principal of or interest on bonds during or after such acquisition or construction as the authority may determine.

d. "County" means any county of any class.

e. "Development property" means any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment acquired or to be acquired by purchase, gift or otherwise by the authority within an urban growth zone.

f. "Person" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, or other legal entities, including public or governmental bodies, as well as natural persons. "Person" shall include the plural as well as the singular.

g. "Pollution control project" means any device, equipment, improvement, structure or facility, or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or the refinancing

thereof in order to facilitate improvements or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, thermal pollution control facility, radiation contamination control facility, wastewater collection system, wastewater treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site; provided that the authority shall have received from the Commissioner of the State Department of Environmental Protection or his duly authorized representative a certificate stating the opinion that, based upon information, facts and circumstances available to the State Department of Environmental Protection and any other pertinent data, (1) said pollution control facilities do not conflict with, overlap or duplicate any other planned or existing pollution control facilities undertaken or planned by another public agency or authority within any political subdivision, and (2) that such facilities, as designed, will be a pollution control project as defined in this act and are in furtherance of the purpose of abating or controlling pollution.

h. "Project" means: (1) (a) acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility, including water transmission facilities or other improvement, whether or not in existence or under construction, (b) purchase and installation of equipment and machinery, (c) acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; and (2) (a) the acquisition, financing, or refinancing of inventory, raw materials, supplies, work in process, or stock in trade, or (b) the financing, refinancing or consolidation of secured or unsecured debt, borrowings, or obligations, or (c) the provision of financing for any other expense incurred in the ordinary course of business; all of which are to be used or occupied by any person in any enterprise promoting employment, either for the manufacturing, processing or assembly of materials or products, or for research or office purposes, including, but not limited to, medical and other professional facilities, or for industrial, recreational, hotel or motel facilities, public utility and warehousing, or for commercial and service purposes, including, but not limited to, retail outlets, retail shopping centers, restaurant and retail food outlets, and any and all other employment promoting enterprises, including, but not limited to, motion picture and television studios and facilities and commercial fishing facilities, commercial facilities for recreational fishermen, fishing vessels, aquaculture facilities and marketing facilities for fish and fish products and (d) acquisition of an equity interest in, including capital stock of, any corporation; or any combination of the above, which the authority determines will: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State, or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State, or (iii) maintain or increase the tax base of the State or of any political subdivision of the State, or (iv) maintain or diversify and expand employment promoting enterprises within the State; and (3) the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of an energy saving improvement or pollution control project which the authority determines will tend to reduce the consumption in a building devoted to industrial or commercial purposes, or in an office building, of nonrenewable sources of energy or to reduce, abate or prevent environmental pollution within the State; and (4) the acquisition, construction, reconstruction, repair, alteration, improvement, extension, development, financing or refinancing of infrastructure and transportation facilities or improvements related to economic development and of cultural, recreational and tourism facilities or improvements related to economic development and of capital facilities for primary and secondary schools and of mixed use projects consisting of housing and commercial development; and (5) the establishment, acquisition, construction, rehabilitation, improvement, and ownership of port facilities as defined in section 3 of P.L.1997, c.150 (C.34:1B-146). Project may also include: (i) reimbursement to any person for costs in connection with any project, or the refinancing of any project or portion thereof, if determined by the authority as necessary and in the public interest to maintain employment and the tax base of any political subdivision and will facilitate improvements thereto or the completion thereof, and (ii) development property and any construction, reconstruction, improvement, alteration, equipment or maintenance or repair, or planning and designing in connection therewith. For the purpose of carrying out mixed use projects consisting of both

housing and commercial development, the authority may enter into agreements with the New Jersey Housing and Mortgage Finance Agency for loan guarantees for any such project in accordance with the provisions of P.L.1995, c.359 (C.55:14K-64 et al.), and for that purpose shall allocate to the New Jersey Housing and Mortgage Finance Agency, under such agreements, funding available pursuant to subsection a. of section 4 of P.L.1992, c.16 (C.34:1B-7.13). Project shall not include a school facilities project.

i. "Revenues" means receipts, fees, rentals or other payments to be received on account of lease, mortgage, conditional sale, or sale, and payments and any other income derived from the lease, sale or other disposition of a project, moneys in such reserve and insurance funds or accounts or other funds and accounts, and income from the investment thereof, established in connection with the issuance of bonds or notes for a project or projects, and fees, charges or other moneys to be received by the authority in respect of projects or school facilities projects and contracts with persons.

j. "Resolution" means any resolution adopted or trust agreement executed by the authority, pursuant to which bonds of the authority are authorized to be issued.

k. "Energy saving improvement" means the construction, purchase and installation in a building devoted to industrial or commercial purposes of any of the following, designed to reduce the amount of energy from nonrenewable sources needed for heating and cooling that building: insulation, replacement burners, replacement high efficiency heating and air conditioning units, including modular boilers and furnaces, water heaters, central air conditioners with or without heat recovery to make hot water for industrial or commercial purposes or in office buildings, and any solar heating or cooling system improvement, including any system which captures solar radiation to heat a fluid which passes over or through the collector element of that system and then transfers that fluid to a point within the system where the heat is withdrawn from the fluid for direct usage or storage. These systems shall include, but not necessarily be limited to, systems incorporating flat plate, evacuated tube or focusing solar collectors.

The foregoing list shall not be construed to be exhaustive, and shall not serve to exclude other improvements consistent with the legislative intent of this amendatory act.

l. "Urban growth zone" means any area within a municipality receiving State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) or a municipality certified by the Commissioner of Community Affairs to qualify under such law in every respect except population, which area has been so designated pursuant to an ordinance of the governing body of such municipality.

m. "District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.).

n. "Local unit" means a county, municipality, board of education or any other political entity authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law.

o. "Refunding bonds" means bonds, notes or other obligations issued to refinance bonds previously issued by the authority pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.).

p. "School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

q. "School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

45. Section 4 of P.L.1974, c.80 (C.34:1B-4) is amended to read as follows:

C.34:1B-4 New Jersey Economic Development Authority.

4. a. There is hereby established in, but not of, the Department of the Treasury a public body corporate and politic, with corporate succession, to be known as the "New Jersey Economic Development Authority." The authority is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The authority shall consist of the Commissioner of Banking and Insurance, the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, the Commissioner of Labor, the Commissioner of Education, and the State Treasurer, who shall be members ex officio, and eight public members appointed by the Governor as follows: two public members (who shall not be legislators) shall be appointed by the Governor upon recommendation of the Senate President; two public members (who shall not be legislators) shall be appointed by the Governor upon recommendation of the Speaker of the General Assembly; and four public members shall be appointed by the Governor, all for terms of three years. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only. In the event the authority shall by resolution determine to accept the declaration of an urban growth zone by any municipality, the mayor or other chief executive officer of such municipality shall ex officio be a member of the authority for the purpose of participating and voting on all matters pertaining to such urban growth zone.

The Governor shall appoint three alternate members of the authority, of which one alternate member (who shall not be a legislator) shall be appointed by the Governor upon the recommendation of the Senate President, and one alternate member (who shall not be a legislator) shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly; and one alternate member shall be appointed by the Governor, all for terms of three years. The chairperson may authorize an alternate member, in order of appointment, to exercise all of the powers, duties and responsibilities of such member, including, but not limited to, the right to vote on matters before the authority.

Each alternate member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. An alternate member shall be eligible for reappointment. Any vacancy in the alternate membership occurring other than by the expiration of a term shall be filled in the same manner as the original appointment but for the unexpired term only. Any reference to a member of the authority in this act shall be deemed to include alternate members unless the context indicates otherwise.

The terms of office of the members and alternate members of the authority appointed by the Governor who are serving on the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) shall expire upon the appointment by the Governor of eight public members and three alternate members. The initial appointments of the eight public members shall be as follows: the two members appointed upon the recommendation of the President of the Senate and the two members appointed upon the recommendation of the Speaker of the General Assembly shall serve terms of three years; two members shall serve terms of two years; and two members shall serve terms of one year. The initial appointments of the alternate members shall be as follows: the alternate member appointed upon the recommendation of the President of the Senate shall serve a term of three years; the alternate member appointed upon the recommendation of the Speaker of the General Assembly shall serve a term of two years; and one alternate member shall serve a term of one year. No member shall be appointed who is holding elective office.

c. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

d. A chairperson shall be appointed by the Governor from the public members. The members of the authority shall elect from their remaining number a vice chairperson and a treasurer thereof. The authority shall employ an executive director who shall be its secretary and chief executive officer. The powers of the authority shall be vested in the members thereof in office from time to time and seven members of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the authority at any meeting thereof by the affirmative vote of at least seven members of the authority. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the authority.

e. Each member of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member in such form and amount as may be prescribed by the Director of the Division of Budget and Accounting in the Department of the Treasury. Such bonds shall be filed in the office of the Secretary of State. At all times thereafter the members and treasurer of the authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the authority.

f. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have forfeited or shall forfeit his office or employment or any benefits or emoluments thereof by reason of his acceptance of the office of ex officio member of the authority or his services therein.

g. Each ex officio member of the authority may designate an officer or employee of his department to represent him at meetings of the authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such designation shall be in writing delivered to the authority and shall continue in effect until revoked or amended by writing delivered to the authority.

h. The authority may be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority, all property, funds and assets thereof shall be vested in the State.

i. A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at such meeting by the authority shall have force or effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the copy of the minutes shall have been so delivered, unless during such 10-day period the Governor shall approve the same in which case such action shall become effective upon such approval. If, in that 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and void and of no effect. The powers conferred in this subsection i. upon the Governor shall be exercised with due regard for the rights of the holders of bonds and notes of the authority at any time outstanding, and nothing in, or done pursuant to, this subsection i. shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or notes or for the benefit, protection or security of the holders thereof.

j. On or before March 31 in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and cause a copy thereof to be filed with the Secretary of State and the Director of the Division of Budget and Accounting in the Department of the Treasury.

k. The Director of the Division of Budget and Accounting in the Department of the Treasury and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts, books and records of the authority including its receipts,

disbursements, contracts, sinking funds, investments and any other matters relating thereto and to its financial standing.

l. No member, officer, employee or agent of the authority shall be interested, either directly or indirectly, in any project or school facilities project, or in any contract, sale, purchase, lease or transfer of real or personal property to which the authority is a party.

46. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project or school facilities project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project or the school facilities project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project;

g. To sell, convey or lease to any person all or any portion of a project or school facilities project, for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project , school facilities project or revenues, whenever it shall find such action to be in furtherance of the purposes of this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

i. To grant options to purchase or renew a lease for any of its projects or school facilities projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of this act and P.L.2000, c.72 (C.18A:7G-1 et al.), with the terms and conditions thereof;

k. In connection with any application for assistance under this act or P.L.2000, c.72 (C.18A:7G-1 et al.) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority to carry out the purposes of this act and P.L.2000, c.72 (C.18A:7G-1 et al.), and to fix and pay their compensation from funds available to the authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by this act and P.L.2000, c.72 (C.18A:7G-1 et al.) under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this act and P.L.2000, c.72 (C.18A:7G-1 et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the authority to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

aa. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.);

bb. To make and contract to make loans or leases and to make grants to local units to finance

the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith; and

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, construction and placing into service and maintenance of school facilities projects.

47. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to read as follows:

C.34:1B-5.1 Rules, regulations relative to payment of prevailing wage rate.

1. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of construction contracts undertaken in connection with any of its projects or school facilities projects. The prevailing wage rate shall be the rate determined by the Commissioner of Labor pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

48. Section 4 of P.L.1979, c.303 (C.34:1B-5.4) is amended to read as follows:

C.34:1B-5.4 Rules, regulations relative to establishment of affirmative action program.

4. a. The New Jersey Economic Development Authority shall adopt rules and regulations to establish an affirmative action program for the hiring of minority workers employed in the performance of construction contracts undertaken in connection with any of its projects and school facilities projects, and to expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for those contracts, consistent with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the authority shall provide for the proper enforcement and administration of such rules and regulations.

b. Within 180 days of the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), but before adoption of its rules and regulations concerning its affirmative action program, the authority shall submit the proposed rules and regulations to the presiding officers and the standing committees on State government of both houses of the Legislature for their review.

49. Section 15 of P.L.1974, c.80 (C.34:1B-15) is amended to read as follows:

C.34:1B-15 Powers constitute essential governmental function; tax exempt status.

15. The exercise of the powers granted by this act and P.L.2000, c.72 (C.18A:7G-1 et al.) shall constitute the performance of an essential governmental function and the authority shall not be required to pay any taxes or assessments upon or in respect of a project or school facilities project, or any property or moneys of the authority, and the authority, its projects and school facilities projects, property and moneys and any bonds and notes issued under the provisions of this act and P.L.2000, c.72 (C.18A:7G-1 et al.), their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every

kind by the State except for transfer, inheritance and estate taxes and by any political subdivision of the State; provided, that any person occupying a project whether as lessee, vendee or otherwise shall, as long as title thereto shall remain in the authority, pay to the political subdivision in which such project is located a payment in lieu of taxes which shall equal the taxes on real and personal property, including water and sewer service charges or assessments, which such person would have been required to pay had it been the owner of such property during the period for which such payment is made and neither the authority nor its projects, properties, money or bonds and notes shall be obligated, liable or subject to lien of any kind for the enforcement, collection or payment thereof. If and to the extent the proceedings under which the bonds authorized to be issued under the provisions of this act so provide, the authority may agree to cooperate with such person occupying a project, in connection with any administrative or judicial proceedings for determining the validity or amount of such payments and may agree to appoint or designate and reserve the right in and for such person to take all action which the authority may lawfully take in respect of such payments and all matters relating thereto, provided such person shall bear and pay all costs and expenses of the authority thereby incurred at the request of such person or by reason of any such action taken by such person in behalf of the authority. If such person occupying a project has paid the amounts in lieu of taxes required by this section to be paid such person shall not be required to pay any such taxes as to which a payment in lieu thereof has been made to the State or to any political subdivision, any other statute to the contrary notwithstanding.

C.34:1B-5.5 Limitation of claims, damages, losses, liabilities, costs for school facilities projects.

50. In the exercise of powers granted by P.L.2000, c.72 (C.18A:7G-1 et al.) in connection with any school facilities project, any and all claims, damages, losses, liabilities or costs that the authority may incur shall be payable only from the amounts made available to the authority pursuant to that act. In connection with any agreement or contract entered into by the authority relating to any school facilities project, there shall be no recovery against the authority for punitive or consequential damages arising out of contract nor shall there be any recovery against the authority for claims based upon implied warranties or upon contracts implied in law.

C.34:1B-5.6 Role of municipality relative to school facilities projects.

51. a. No municipality shall modify or change the drawings, plans or specifications for the construction, reconstruction, rehabilitation, alteration or improvement of any school facilities project of the authority, or the construction, plumbing, heating, lighting or other mechanical branch of work necessary to complete the work in question, nor to require that any person, firm or corporation employed on any such work shall perform the work in any other or different manner than that provided by the drawings, plans and specifications, nor to require that any person, firm or corporation obtain any other or additional authority, approval, permit or certificate from the municipality in relation to the work being done, and the doing of the work by any person, firm or corporation in accordance with the terms of the drawings, plans, specifications or contracts shall not subject the person, firm or corporation to any liability or penalty, civil or criminal, other than as may be stated in the contracts or incidental to the proper enforcement thereof; nor shall any municipality require the authority or any person, firm, partnership or corporation which leases or purchases the school facilities project for lease or purchase to a State agency, to obtain any other or additional authority, approval, permit, certificate or certificate of occupancy from the municipality as a condition of owning, using, maintaining, operating or occupying any school facilities project acquired, constructed, reconstructed, rehabilitated, altered or improved by the authority or by any subsidiary thereof. The foregoing provisions shall not preclude any municipality from exercising the right of inspection for the purpose of requiring compliance by any school facilities project with local requirements for operation and maintenance affecting the health, safety and welfare of the occupants thereof, provided that the compliance does not require changes, modifications or additions to the original construction of the school facilities project.

b. Each municipality in which any school facilities project of the authority is located shall provide for the school facilities project, whether then owned by the authority, any subsidiary, any

State agency or any person, firm, partnership or corporation, police, fire, sanitation, health protection and other municipal services of the same character and to the same extent as those provided for other residents of the municipality.

c. In carrying out any school facilities project, the authority may enter into contractual agreements with local government agencies with respect to the furnishing of any community, municipal or public facilities or services necessary or desirable for the school facilities project, and any local government agency may enter into these contractual agreements with the authority and do all things necessary to carry out its obligations.

C.34:1B-5.7 Preparation of separate plans, specifications; bids.

52. a. In undertaking any school facilities projects where the cost of construction, reconstruction, rehabilitation or improvement will exceed \$25,000, the authority may prepare, or cause to be prepared, separate plans and specifications for: (1) the plumbing and gas fitting and all work and materials kindred thereto, (2) the steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto, (3) the electrical work, (4) structural steel and miscellaneous iron work and materials, and (5) all general construction, which shall include all other work and materials required to complete the building.

b. The authority shall advertise and receive (1) separate bids for each of the branches of work specified in subsection a. of this section; or (2) bids for all the work and materials required to complete the school facilities project to be included in a single overall contract, in which case there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials specified in branches (1) through (4) in subsection a. of this section; or (3) both.

c. Contracts shall be awarded as follows: (1) if bids are received in accordance with paragraph (1) of subsection b. of this section, the authority shall determine the responsible bidder for each branch whose bid, conforming to the invitation for bids, will be most advantageous to the authority, price and other factors considered; (2) if bids are received in accordance with paragraph (2) of subsection b. of this section, the authority shall determine the responsible bidder for the single overall contract whose bid, conforming to the invitation for bids, will be the most advantageous to the authority, price and other factors considered; or (3) if bids are received in accordance with paragraph (3) of subsection b. of this section, the authority shall award separate contracts for each branch of work specified in subsection a. of this section if the sum total of the amounts bid by the responsible bidders for each branch, as determined pursuant to paragraph (1) of this subsection, is less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection; but if the sum total of the amounts bid by the responsible bidder for each branch, as determined pursuant to paragraph (1) of this subsection is not less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection, the authority shall award a single over-all contract to the responsible bidder for all of the work and materials as determined pursuant to paragraph (2) of this subsection.

d. For the purposes of this section, "other factors" means the evaluation by the authority of the ability of the single contractor or the abilities of the multiple contractors to complete the contract in accordance with its requirements and includes requirements relating to the experience and qualifications of the contractor or contractors and their key personnel in projects of similar type and complexity; the performance of the contractor or contractors on prior contracts with the authority or the State; the experience and capability of the contractor or contractors and their key personnel in respect to any special technologies, techniques or expertise that the project may require; the contractor's understanding of the means and methods needed to complete the project on time and within budget; the timetable to complete the project; the contractor's plan for quality assurance and control; and other similar types of factors. The "other factors" to be considered in evaluating bids and the weights assigned to price and these "other factors" shall be determined by the authority prior to the advertisement for bids for school facilities projects. In its evaluation of bids, the consideration given to price by the authority shall be at least equal to the consideration given to the combination of all "other factors."

e. The authority shall require from all contractors to which it awards contracts pursuant to

P.L.2000, c.72 (C.18A:7G-1 et al.), the delivery of a payment performance bond issued in accordance with N.J.S.2A:44-143 et seq.

f. The authority shall adopt regulations to implement this section which shall include, but not be limited to, the procedural requirements for: (1) the evaluation and weighting of price and "other factors" in the awarding of contracts; and (2) the appealing of a prequalification classification and rating, a bid rejection and a contract award recommendation.

g. Each evaluation committee selected by the authority to review and evaluate bids shall, at a minimum, contain a representative from the district in which the school facilities project is located if such district elects to participate.

C.34:1B-5.8 Authority's powers relative to property and execution of school facilities project.

53. a. If the authority shall find it necessary in connection with the undertaking of any school facilities project to change the location of any portion of any public highway or road, it may contract with any government agency, or public or private corporation which may have jurisdiction over the public highway or road to cause the public highway or road to be constructed at such locations as the authority shall deem most favorable. The cost of the reconstruction and any damage incurred in changing the location of the highway shall be ascertained and paid by the authority as part of the cost of the school facilities project. Any public highway affected by the construction of any school facilities project may be vacated or relocated by the authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the authority as a part of the cost of the school facilities project. In all undertakings authorized by this subsection, the authority shall consult and obtain the approval of the Commissioner of Transportation.

b. The authority and its authorized agents and employees may enter upon any lands, waters and premises for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this act, all in accordance with due process of law, and this entry shall not be deemed a trespass nor shall an entry for this purpose be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damages resulting to the lands, waters and premises as a result of these activities.

c. The authority shall have the power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, herein called "public utility facilities," or any public utility as defined in R.S.48:2-13, in, on, along, over or under any school facilities project. Whenever the authority shall determine that it is necessary that any public utility facilities which now are, or hereafter may be, located in, on, along, over or under any school facilities project shall be relocated in the school facilities project, or should be removed from the school facilities project, the public utility owning or operating the facilities shall relocate or remove them in accordance with the order of the authority. The cost and expenses of the relocation or removal, including the cost of installing the facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the authority as a part of the cost of the school facilities project. In case of any relocation or removal of facilities, the public utility owning or operating them, its successors or assigns, may maintain and operate the facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate the facilities in their former location or locations. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the Board of Public Utilities.

C.34:1B-5.9 Bonds deemed fully negotiable.

54. Notwithstanding the provisions of any law to the contrary, any bonds issued pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.) shall be fully negotiable within the meaning and for all purposes of Title 12A of the New Jersey Statutes, and each holder or owner of such a bond or other obligation, or of any coupon appurtenant thereto, by accepting the bond or coupon shall

be conclusively deemed to have agreed that the bond or coupon is and shall be fully negotiable within the meaning and for all purposes of Title 12A.

55. Section 22 of P.L.1975, c.291 (C.40:55D-31) is amended to read as follows:

C.40:55D-31 Review by planning board.

22. a. Whenever the planning board shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar public agency, State, county or municipal.

b. The planning board shall review and issue findings concerning any long-range facilities plan submitted to the board pursuant to the "Educational Facilities Construction and Financing Act," P.L.2000, c.72 (C.18A:7G-1 et al.), for the purpose of review of the extent to which the long-range facilities plan is informed by, and consistent with, at least the land use plan element and the housing element contained within the municipal master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and such other elements of the municipal master plan as the planning board deems necessary to determine whether the prospective sites for school facilities contained in the long-range facilities plan promote more effective and efficient coordination of school construction with the development efforts of the municipality. The planning board shall devote at least one full meeting of the board to presentation and review of the long-range facilities plan prior to adoption of a resolution setting forth the board's findings.

56. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to read as follows:

C.26:2H-18.58g Disposition of revenue collected from cigarette tax.

4. Notwithstanding the provisions of any other law to the contrary, commencing July 1, 1998: after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited in to the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next \$50,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually to the New Jersey Economic Development Authority for payment of debt service incurred by the authority for school facilities projects.

C.18A:7G-31 Establishment of capital reserve account.

57. a. Notwithstanding any provision of this act or any other law or regulation to the contrary, within 90 days of the effective date of this act, a board of education or a board of school estimate, as appropriate, may, through the adoption of a board resolution, establish a capital reserve account. The account shall be established and held in accordance with GAAP and shall be subject to annual audit. The funds in the capital reserve account shall be used to finance the district's long-range facilities plan required pursuant to subsection a. of section 4 of this act and the amount in the account shall not exceed the total amount of local funds required to implement the plan as indicated on the annual QAAR report.

b. A board of education or a board of school estimate, as appropriate, may appropriate funds in the district's annual budget for the establishment of the capital reserve account pursuant to subsection a. of this section or to supplement the funds in the account as required to meet the needs of the long-range facilities plan. The district's spending growth limitation as established pursuant to section 5 of P.L.1996, c.138 (C.18A:7F-5) shall be adjusted by the amount of funds

appropriated in the budget year to the capital reserve account.

c. A board of education may, by resolution of the board: transfer undesignated general fund balance or excess undesignated general fund balance to the capital reserve account at any time during the budget year; transfer funds from the capital reserve account to the appropriate line item account for the funding of capital projects as contained in the district's long-range facilities plan; and transfer funds from the capital reserve account to the debt service account for the purpose of offsetting principal and interest payments for bonded projects which are included in the district's long-range facilities plan.

C.18A:7G-32 "County Vocational School District Facilities Rehabilitation Fund."

58. a. There is hereby created a special fund in the Department of Education which shall be entitled the "County Vocational School District Facilities Rehabilitation Fund." The fund shall be maintained in a separate account and administered by the commissioner to carry out the provisions of this section. The fund shall consist of all moneys appropriated by the State for the purposes of the fund and all interest and investment earnings received on moneys in the fund.

b. A county vocational school district may apply to the commissioner for a grant in the maximum amount of \$500,000 to be matched by the district for the purposes of funding health and safety school facilities rehabilitation projects. The grant and matching district funds shall be maintained by the district in a special revenue fund as certified by the district's board of education and its chief financial officer and shall be subject to annual audit. A project funded through the grant fund shall not require the approval of the commissioner pursuant to section 5 of this act.

c. Any county vocational school district which receives grant funding pursuant to subsection b. of this section shall not be eligible to receive school facilities aid pursuant to any other provision of this act for a period of five years from the district's receipt of the grant, except that the district may receive debt service aid pursuant to section 10 of this act; and any county vocational school district which receives aid under any provision of this act other than section 10, shall not receive a grant pursuant to subsection b. of this section for five years after approval of a project which is otherwise funded under this act.

C.18A:7G-33 Process for prequalification of contractors.

59. The authority shall establish a process for the prequalification of contractors that desire to bid on school facilities projects. A contractor shall not be permitted to bid on such a school facilities project unless the contractor has been prequalified pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.).

The prequalification process shall apply to general contractors, construction managers, and contractors including those in the following areas:

- (1) plumbing and gas fitting and all work and materials kindred thereto;
- (2) steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto;
- (3) electrical work; and
- (4) structural steel and miscellaneous iron work and materials.

C.18A:7G-34 Prequalification process, submission requirements.

60. a. The prequalification process shall include a requirement that the contractor proposing to submit bids on a school facilities project submit a statement under oath on a form designated by the authority. The form shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and any other pertinent and material facts as may be deemed necessary by the authority. The submission shall include:

- (1) A certified, audited financial statement or compilation of financial statements or other documentation of financial status acceptable to the authority;
- (2) Proof of any contractor or trade license required by law for any trade or specialty area in which the contractor is seeking prequalification and a statement as to whether any contractor or trade license has been revoked;

(3) A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey in accordance with N.J.S.2A:44-143 through N.J.S.2A:44-147 to the contractor , and shall indicate aggregate bonding limits;

(4) A list of the names and titles of all individuals who own 10% or more of any class of stock in the corporation or are a 10% or more partner in the firm. If any of the aforementioned stockholders or partners is itself a corporation, or a partnership, that entity shall also provide the information specified herein;

(5) Disclosure of any judgments, convictions or criminal indictments for any conduct constituting a crime under local, State or federal law;

(6) Disclosure of any unsatisfied judgments, injunctions or liens obtained by a governmental agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any government agency;

(7) Disclosure of any determination for violations of federal, State or local laws, rules or regulations, including health laws, unemployment insurance or workers' compensation coverage or claim requirements, the "Employee Retirement Income Security Act of 1974" (Pub.L.93-406, 29 U.S.C. s. 1001 et seq.), security laws, environmental laws, safety laws, licensing laws, tax laws and antitrust laws;

(8) Disclosure of any federal, State or local debarments, non-responsibility findings or denials of prequalification;

(9) Disclosure of any bankruptcy filings or proceedings;

(10) A statement as to past performance, which shall give an accurate and complete record of work completed in the past five years by the contractor giving the names of the projects, type of work, location, contract price , bid and final contract amount paid and the names of the owner and of the architect or engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any penalties, judgments, orders or liens imposed by reason of any contract undertaken within the five-year period and whether the contractor has been defaulted for cause on any project as determined by an unappealed or nonappealable decision . This statement shall also indicate the status of any litigation pending against the potential bidder. The contractor shall be required to attach to this statement all performance evaluations in his possession for any work performed by the contractor on any public or private projects;

(11) A statement as to organization, which shall demonstrate the adequacy of such organization to undertake a school facilities project. This statement shall include the resumes of the management and professional staff;

(12) A statement setting forth the contractor's equipment inventory and technical resources; and

(13) A statement on staffing capabilities, including labor sources, staffing plans, turnover rates, and any use of registered apprenticeship programs and journeyman training programs.

b. After the receipt of the submission provided for in subsection a. of this section, the authority may verify information provided in the contractor's submission, including applicable license and certificate requirements, federal or State debarments and violations of law. The authority may also conduct random inquiries or surveys of the contractor's prior customers.

c. Based upon the submission provided for in subsection a. of this section the authority shall assign a contractor the following classification and limits for the purpose of determining the types of projects for which a contractor is entitled to bid:

(1) a trade or work classification; and

(2) an aggregate rating limit.

To effectuate these requirements of the prequalification process, the authority shall develop rules and regulations for assigning classifications and aggregate limits.

d. The classification shall be made and an immediate notice thereof shall be sent to the contractor by registered or certified mail or other legally valid methods .

e. The authority shall establish procedures to permit contractors to challenge a classification made pursuant to this section.

f. The prequalification submission shall include an affidavit which acknowledges receipt of information regarding the appropriate federal Bureau of Apprenticeship and Training

apprenticeship laws and regulations as adopted by the State and information regarding the county apprenticeship coordinators and the federal Bureau of Apprenticeship and Training.

g. The authority shall maintain a registry of all contractors prequalified to bid on school facilities projects. The registry shall include the classification of the bidder and aggregate building limit.

C.18A:7G-35 Validity of contractor's prequalification classification.

61. a. A contractor's prequalification classification shall be valid for 24 months. A contractor shall be reclassified after the 24-month period in order to remain eligible to bid on school facilities projects.

b. Any material changes relevant to the prequalification process shall be reported by the contractor to the authority in writing within 10 days. Based on the information provided, the authority may change the classification or revoke prequalification for cause.

C.18A:7G-36 Mandatory uniform performance evaluation of contractors.

62. a. A mandatory uniform performance evaluation shall be conducted on all school facilities projects undertaken by the authority. The evaluation shall, at a minimum, include cost, schedule adherence and quality.

b. A contractor shall be notified of a performance evaluation. The contractor shall be afforded an opportunity to respond to an adverse evaluation.

c. The contractor performance evaluations shall be utilized in reviewing bid submissions.

C.18A:7G-37 Submission of sworn contractor certification; requirements.

63. a. A prequalified contractor seeking to bid school facilities projects, and any subcontractors required to be named under P.L.2000, c.72 (C.18A:7G-1 et al.) shall, as a condition of bidding, submit a sworn contractor certification regarding qualifications and credentials.

b. In the contractor certification form, a principal owner or officer of the company shall certify that the firm has the following qualifications and credentials:

(1) A current, valid certificate of registration issued pursuant to "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), a copy of which shall be attached to the certification form, if applicable;

(2) A current, valid "Certificate of Authority to perform work in New Jersey" issued by the Department of the Treasury, a copy of which shall be attached to the certification form;

(3) Any current, valid contractor or trade license required under applicable New Jersey law for any trade or specialty area in which the firm seeks to perform work, a copy of which shall be attached to the certification;

(4) During the term of construction of the school facilities project, the contractor will have in place a suitable quality control and quality insurance program and an appropriate safety and health plan.

c. The contractor certification form shall further require that a principal owner or officer of the company certify that, at the time that the firm is bidding a project, the amount of its bid proposal and the value of all of its outstanding incomplete contracts does not exceed the firm's existing aggregate rating limit.

C.18A:7G-38 Program to provide additional funding for apprenticeship programs.

64. a. The Commissioner of Education, in conjunction with the Commissioner of Labor, shall establish a program to provide additional funding for apprenticeship programs registered by the federal Bureau of Apprenticeship and Training in the United States Department of Labor. There shall be appropriated annually in fiscal year 2001 through fiscal year 2005 the sum of \$3,000,000 to accomplish this purpose.

b. The Apprenticeship Committee shall be established in the Department of Education to assist in administering the program. The committee shall be comprised of the following members appointed by the Governor: one public member appointed upon the recommendation of the Speaker of the General Assembly; one public member appointed upon the recommendation of

the President of the Senate; a representative from the Department of Labor; a representative from the Department of Education; a county apprenticeship coordinator; a union representative; and a representative from management. The Commissioner of Education shall request the participation of a representative of the federal Bureau of Apprenticeship and Training in the United States Department of Labor as a member of the committee.

The commissioners of the Department of Education and the Department of Labor, in consultation with the committee shall establish guidelines for the distribution of funds under the program, including a provision that requires a majority of the funding to assist apprenticeship programs in urban areas. The guidelines shall also include a list of those types of entities eligible for funding including, but not limited to, county colleges, county vocational schools, unions and other sponsors of apprenticeship programs deemed appropriate. Eligible entities shall be permitted to use the funding provided pursuant to the program to fund student grants. Pursuant to established guidelines, the commissioners of the Department of Education and the Department of Labor, in consultation with the committee shall be responsible for the distribution of funds under the program.

C.18A:7G-39 False, deceptive, fraudulent statement by contractor in certifications, penalty.

65. Any contractor who willfully makes, or causes to be made, a false, deceptive or fraudulent statement in the certifications required pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.), shall be guilty of a crime of the fourth degree and shall be permanently disqualified from bidding on all school facilities projects; and, in the case of an individual or the officer or employee charged with the duty of making the submission for a contractor, he shall be guilty of a disorderly persons offense.

C.18A:7G-40 Prequalified contractors exempt from other prequalifying process.

66. A contractor who has been prequalified as a bidder on school facilities projects in accordance with the process established by the authority pursuant to section 59 of this act shall not be required to undergo any other prequalification process to bid on a school facilities project.

67. There is appropriated \$3,000,000 from the General Fund to the Department of Education to effectuate the apprentice training program established pursuant to this act.

C.18A:7G-41 Procedure for obtaining prequalified status; short-form application.

68. If a contractor on the effective date of this act has a current, valid classification from the Division of Property Management and Construction, it may obtain prequalified status under this act by submitting a short-form application developed by the authority. A short-form application submitted under this section must include verification of the contractor's current classification and aggregate rating limit by the Division of Property Management and Construction.

Upon such application, the authority shall prequalify the contractor for the same trade or work classification and same aggregate rating limit issued by the Division of Property Management and Construction, provided the authority does not obtain or receive information indicating the contractor has experienced recent performance deficiencies, or otherwise fails to meet the qualification and responsibility standards established by this act. Prequalification pursuant to this section shall be valid for such time as determined by the authority.

C.18A:7G-42 Registration of apprentices.

69. All apprentices shall be registered through the approved federal Bureau of Apprenticeship and Training program.

C.18A:7G-43 Unit of Fiscal Integrity in School Construction, established.

70. There is established in the Office of the Attorney General the Unit of Fiscal Integrity in School Construction. The Attorney General or his representative may investigate, examine, and inspect the activities of the authority and districts related to the financing and construction of school facilities and the implementation of the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.).

The Attorney General may require the submission of duly verified reports from the authority and districts, which include such information in such form as the Attorney General may require. The Attorney General or his representative may also consult with the authority on issues and procedures related to the exercise of its duties and responsibilities under P.L.2000, c.72 (C.18A:7G-1 et al.). The Legislature shall annually appropriate such funds as may be necessary to finance the operations of the unit.

C.18A:7G-44 Requirement for "wrap-up insurance coverage."

71. a. In the case of any school facilities project which has a State share of 100%, the authority may require the use of wrap-up insurance coverage for the project and shall establish the terms and requirements for any such coverage.

b. For any school facilities project which has a State share of less than 100%, the authority, in the case of a project being constructed by the authority, may require the use of, or the district, in the case of a project being constructed by the district, may elect to purchase, wrap-up insurance coverage for the school facilities project. A district may purchase the coverage on its own or may enter into a joint purchasing agreement with one or more other districts to purchase coverage.

c. As used in this section, "wrap-up insurance coverage" means a single insurance and loss control program for all parties involved in the school facilities project, including the owners, administrators, contractors and all tiers of subcontractors, which is controlled and authorized by the owner or financing administrator and applicable to defined construction work sites. Wrap-up insurance coverage may include, but not be limited to, workers' compensation and employers' liability, commercial general liability, umbrella/excess liability, builder's risk, architects' and engineers' errors and omissions, liability, environmental liability, and force majeure.

72. This act shall take effect immediately.

Approved July 18, 2000.

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NEWS RELEASE

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RELEASE: July 18, 2000

Governor Signs School Construction Bill Making \$8.6 Billion Available to School Districts

-- Delivers on Promise of Safe, Sturdy and Secure Schools for All Children --

Governor Christie Whitman today made history in the signing of the school construction bill at Cranford High School in Cranford, making \$8.6 billion available to school districts throughout the state in the largest, most comprehensive school construction program nationwide. Afterwards, the Governor went to Wilbur Watts Intermediate School in Burlington City where she toured and delivered a similar message of safe, sturdy and secure schools for all children in New Jersey.

"Crumbling buildings are no place to send our students," said Gov. Whitman. "That's certainly true in the 30 Abbott districts, which will receive full State funding for all necessary facility improvements. But we know that many more schools are showing their age and need attention."

"This bill answers the Court's Abbott mandate responsively and responsibly," continued the Governor. "What's more, through the teamwork of the Legislature and my administration, our program will enable every district in New Jersey - urban, suburban, and rural - to give our children safe and secure classrooms. In the process, it will relieve pressure on the property tax for these projects."

The bill, S-200, which creates the Educational Facilities Construction and Financing Act, was sponsored by Senators William L. Gormley (R-Atlantic) and John A. Lynch (D-Middlesex/Somerset/Union) and Assembly Members Jack Collins (R-Salem/Cumberland/Gloucester) and Joseph R. Malone, III (R- Burlington/Monmouth/Ocean).

Gov. Whitman had previously conditionally vetoed the bill to provide that the construction program be operated by the New Jersey Economic Development Authority (EDA), which has a strong record in financing and building major capital projects according to the Governor.

The school construction program will address the facilities' needs in the Abbott districts as directed by the New Jersey Supreme Court, as well as the needs of non-Abbott districts. Any district which wants to undertake a school construction project will be required to apply to the Commissioner of Education for approval of that project, who will review the proposed project to determine eligibility for aid.

While the bill addresses the needs in the Abbott school districts as directed by the New Jersey Supreme Court, such as Burlington City, it also provides a mechanism for the funding and construction of school facilities statewide like in Cranford. In 1998, the Supreme Court ruled in the Abbott vs. Burke case that the schools in 30 of the state's neediest districts (or Abbott districts) needed rebuilding.

Under the bill, Abbott districts will be required to use the EDA for the construction of school facilities projects and will have all of their eligible costs paid by the State. In addition, districts which have a State support ratio equal to or greater than 55 percent will also be required to use the EDA for the construction of school facilities projects.

Meanwhile, a district which has a State support ratio of less than 55 percent can construct the project on its own or use the services of the EDA for construction. If the district determines to handle the project on its own, then the district has the option of either receiving a one-time grant for the State share of the project or annual debt service aid on the project's final eligible costs.

Yet school construction is only the State's latest effort to give kids their deserved education according to Gov. Whitman, who also cited tough academic standards, the integration of technology into classrooms to prepare children for the high-tech workforce and the elevation of teacher quality under her administration.

In her remarks, the Governor thanked the sponsors of the legislation and praised the efforts of Senate President Donald DiFrancesco as well as others in her administration and concerned citizens, and said " No other state can equal the commitment we are making, and it's all in the name of our children."

The Governor concluded by saying "Thanks to all of you, we are keeping another promise. We are investing our prosperity dividend wisely. We are once again making New Jersey an even better place in which to learn, work, and raise a family."