

(2) For all minor development, as defined at N.J.A.C. 7:50-2.11, the following standards shall apply:

(A) Maintenance plans shall be required for all stormwater management measures installed in accordance with (a)6iv(2) and (3) above. The BMP Manual may be utilized as a guide for developing maintenance plans that shall include, at a minimum:

- I A copy of the certified plan required pursuant to (a)6iv(4) above;
 - II A description of the required maintenance activities for each stormwater management measure; and
 - III The frequency of each required maintenance activity; and
- (B) Responsibility for maintenance of stormwater management measures may be assigned or transferred to the owner or tenant of the parcel.

[viii.] ix. Unless specifically mandated pursuant to (a)6i through [vii] viii above, the New Jersey Stormwater Best Management Practices Manual [developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended,] may be utilized as a guide in determining the extent to which stormwater management activities and measures meet the standards of (a)6i through [vii] viii above.

HIGHER EDUCATION

(a)

SECRETARY OF HIGHER EDUCATION Rules and Procedures for Implementation of the Higher Education Capital Improvement Fund Act Proposed Readoption with Amendments: N.J.A.C. 9A:12

Proposed New Rule: N.J.A.C. 9A:12-1.8

Authorized By: Dr. Brian K. Bridges, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-1 et seq., and P.L. 2012, c. 42.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-065.

Submit written comments by September 17, 2021, to:

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The agency proposal follows:

Summary

Enacted in September 1999, the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 et seq., and P.L. 1999, c. 217, (Act) established the \$550 million Higher Education Capital Improvement Fund (“capital improvement fund” or “improvement fund”) in the New Jersey Educational Facilities Authority (Authority). Grants from the capital improvement fund assist New Jersey four-year public and private colleges and universities in addressing deferred maintenance and other capital needs on their campuses.

The primary purpose of the capital improvement fund is to finance the repair of academic (that is, instructional, laboratory, communications, or research) and administrative facilities. The Act also provides for alternative uses of fund moneys under certain circumstances, such as replacing a building when to do so is less costly than repairing it, and improving, expanding, constructing, or reconstructing academic facilities or technology infrastructure if the institution’s Federal grant recoveries will be maximized or if deferred maintenance is otherwise not covered. A 2002 amendment to the Act allows up to 20 percent of a grant to be used in student support facilities for deferred maintenance or for improvement, expansion, construction, or reconstruction. More recent amendments to

the Act, in 2012, (Amending Act) reflect the replacement of the Commission on Higher Education with the Secretary of Higher Education (Secretary) as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey. The Act provides for the issuance of bonds by the Authority with a maximum amount outstanding at any one time not to exceed \$550 million. As bonds are paid off, new bonding capacity is created. The Secretary of Higher Education in consultation with the Authority, promulgates the implementing rules that specify approval processes for institutional projects supported by the capital improvement fund and ensures that the moneys are distributed consistent with the intent of the Act. Grants were approved for the allocations of the initial \$550 million of bonds. Some of the bonds have now been paid off, thereby resulting in the ability to issue additional bonds to fund new projects. The issuance of additional bonds is subject to the approval of the State Treasurer.

Pursuant to N.J.S.A. 52:14B-5.1.c, the rules governing the capital improvement fund grants were scheduled to expire on May 6, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 104, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of publication of this notice of proposed readoption, whichever is later, which date is January 15, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 104.

The Secretary of Higher Education is proposing to readopt these rules with amendments and a new rule to provide for the allocation of moneys available if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority. For this rulemaking, an administrative review was conducted by the Secretary along with an extensive consultation with the Authority; this process resulted in suggested revisions to the current capital improvement fund rules.

As the Secretary has provided a 60-day comment period on this notice of the proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5. The rules proposed for readoption with amendments and a new rule are organized in seven sections, as follows.

N.J.A.C. 9A:12-1.1 sets forth that the rules implement the Act and establishes that the rules have been adopted to provide the mechanism by which eligible institutions may apply for and receive grants from the capital improvement fund. It is proposed that this section be updated to incorporate a cross-reference to the most recent legislative update to the Act.

N.J.A.C. 9A:12-1.2 provides definitions for the terms used in the rules proposed for readoption with amendments and a new rule and includes a cross-reference to the definitions section of the Act and the Amending Act. The proposed amendments would edit the definition of “technology infrastructure” to reflect current terminology, inserting the word “networking” to replace “linkages.” The words “transport services and network interconnections, as well as” are proposed for deletion to simplify the language.

N.J.A.C. 9A:12-1.3 sets forth the eligibility requirements for the grant program. Similarly, at N.J.A.C. 9A:12-1.3(e)4, the additions of the numerical values of “(1/3)” and “(1/2)” are proposed in the clause regarding debt service.

N.J.A.C. 9A:12-1.4 delineates the grant application process, including the required contents of applications. The Secretary proposes to add N.J.A.C. 9A:12-1.4(a)15 and 16. New paragraph (a)15 states that “any information regarding the prioritization of deferred maintenance projects, including those supported by a review done by an outside facilities data analytics and planning company” and paragraph (a)16 to state “documentation supporting the energy efficiency of the proposed project, including manufacturer information or engineer reports.”

N.J.A.C. 9A:12-1.5 contains the application review and approval process, including the criteria the Secretary will use in reviewing applications for grants from the capital improvement fund. Amendments at N.J.A.C. 9A:12-1.5(b) are designed to realign the objectives of the capital improvement fund with the original intent of the statute, as well as

the State Plan for Higher Education. The objectives of the Capital Improvement Fund would be simplified to support the maintenance of the facilities at the State's institutions of higher education, as well as the investment in the continued expansion of economic development in New Jersey for students and business to remain competitive. It is proposed that the following amendments be made to this subsection: Paragraphs (b)1, 4, and 5 are proposed for deletion; Paragraph (b)8 is recodified as (b)4 without change; paragraphs (b)10 and 12 are deleted; new paragraphs (b)8 and 9 are added; and new subsection (c) is added to indicate that preference will be given to projects promoting energy efficiency.

N.J.A.C. 9A:12-1.6 delineates the grant authorization process. Proposed new N.J.A.C. 9A:12-1.6(i) pertains to the Secretary's ability to approve changes to a project as designed, in order to make clear the means through which the Secretary can act to ensure that a project continues to serve the purposes of the State.

N.J.A.C. 9A:12-1.7 delineates the payment process for the institutions to pay the debt service on the bonds. Regarding payment of principal and interest, it is proposed that the numerical values of "(1/3)" and "(1/2)" be added for clarity at N.J.A.C. 9A:12-1.7(a) and the word "lease" be replaced with "grant" to remain consistent with the form of agreement used. At N.J.A.C. 9A:12-1.7(b), the proposed amendments would insert the word "State" prior to "appropriation," and the word "payable" would be deleted and replaced with the word "allotted."

The Office of the Secretary of Higher Education proposes new N.J.A.C. 9A:12-1.8, Reporting requirements, to update the rules to reflect existing administrative procedures that are part of the grant process.

Social Impact

The rules proposed for readoption with amendments and a new rule for the Higher Education Capital Improvement Fund Act will continue present implementation of the Higher Education Capital Improvement Fund program. More than 440,000 students are enrolled in New Jersey colleges and universities. These students need well-maintained campus facilities to be competitive with their peers in today's global society. The Higher Education Capital Improvement Fund helps the institutions preserve and enhance classrooms, laboratories, and other existing facilities on which maintenance has been deferred, enabling them to upgrade the buildings to meet student and faculty needs. The 11 senior public colleges and universities and 14 institutions eligible for aid under the Independent College and University Assistance Act, N.J.S.A. 18A:72A-72 et seq. and P.L. 1979, c. 132, may apply for grants from the fund.

Economic Impact

Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the workforce of the future, by advancing knowledge and technology through research, and by providing lifelong learning opportunities for all citizens. There is a crucial need to repair and renovate existing campus facilities in order to preserve and enhance the higher education systems and help ensure that New Jersey colleges and universities can continue to support the State's economy. The Higher Education Capital Improvement Fund, the Higher Education Facilities Trust Fund, the Equipment Leasing Fund, and the Higher Education Technology Infrastructure Fund have helped prepare New Jersey institutions to meet educational demands, which help the State compete in the global marketplace. Significant State funding for higher education deferred maintenance needs is an investment in strengthening New Jersey's competitiveness in a global and highly technological economy. The rules proposed for readoption with amendments and a new rule maintain implementation of the program that focuses on deferred maintenance.

Federal Standards Statement

The rules proposed for readoption with amendments and a new rule do not require a Federal standards analysis under N.J.S.A. 52:14B-22 et seq., because the Higher Education Capital Improvement Fund was established by New Jersey legislation, debt service on the bonds issued to fund the Higher Education Capital Improvement Fund is wholly supported by State appropriations and is not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments and a new rule for the Higher Education Capital Improvement Fund govern only the process eligible institutions must follow to receive approval for projects supported with improvement fund moneys. There will be short-term and long-term job increases associated with funded projects. The proposed rulemaking will not result in the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a new rule have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments and a new rule do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rulemaking pertains strictly to public and publicly funded independent colleges and universities and private institutions of higher education in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a new rule do not impact housing affordability or the average costs associated with housing because the rules govern the implementation of the Higher Education Capital Improvement Fund. There is an extreme unlikelihood that the rules proposed for readoption with amendments and a new rule will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Secretary believes there is an extreme unlikelihood that the rules proposed for readoption with amendments and a new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern the implementation of the Higher Education Capital Improvement Fund Act.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Secretary has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:12.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

9A:12-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Capital Improvement Fund Act, P.L. 1999, c. 217, as amended by P.L. 2012, c. 42 **and P.L. 2017, c. 98**. This chapter is adopted in order to provide the mechanism by which eligible institutions may apply for and receive grants from the Higher Education Capital Improvement Fund.

9A:12-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...
 "Technology infrastructure" means video, voice, and data telecommunications equipment and [linkages] **networking** with a life expectancy of at least [ten] **10** years, including [transport services and network interconnections, as well as] future developments in multimedia equipment and [linkages] **networking**. Only computer software that is part of the operating or data base management systems is considered part of technology infrastructure for the purpose of the Act; application software, for purposes such as word processing, spreadsheets, desktop publishing, and email, does not qualify as technology infrastructure.

9A:12-1.3 Project eligibility

- (a)-(d) (No change.)
- (e) For a project to be eligible to receive a grant, the institution must:
 - 1.-3. (No change.)
 - 4. Commit to paying one-third (1/3) of debt service on the bonds issued to fund the capital improvement project if a public institution and one-half (1/2) of debt service if a private institution.

9A:12-1.4 Grant applications

(a) Following approval by its governing board at a duly authorized meeting, an institution may apply to the Secretary for a grant from the capital improvement fund. The institution’s application shall include the following items:

- 1.-13. (No change.)
- 14. Any additional information the institution deems necessary to demonstrate how the institution’s proposed project meets the objectives identified [in] at N.J.A.C. 9A:12-1.5(b); [and]

15. Any information regarding the prioritization of deferred maintenance projects, including those supported by a review done by an outside facilities data analytics and planning company;

16. Documentation supporting the energy efficiency of the proposed project, including manufacturer information or engineer reports; and

- [15.] 17. (No change in text.)
- (b)-(c) (No change.)

9A:12-1.5 Application review and approval process

- (a) (No change.)
- (b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed capital improvement project supports the following objectives:
 - [1. Advancement of student education in the State of New Jersey;] Recodify existing 2. and 3. as **1. and 2.** (No change in text.)
 - [4. Promotion of innovation and improvement in the delivery of higher education;
 - 5. Advancement of study at all levels in science, technology, engineering, and mathematics education;]
 - [6.] **3.** (No change in text.)
 - 4. The cost-effectiveness of the project;**
 - [7.] **5.** (No change in text.)
 - [8. The cost-effectiveness of the project;]
 - [9.] **6.** (No change in text.)
 - [10. Consistency of the project with the State’s goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice, and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents;]
 - [11.] **7.** (No change in text.)
 - [12. Whether it serves the best interests of higher education in the State as a whole.]

8. Directly addresses deferred maintenance concerns or projects that will mitigate the need for future maintenance; and

9. Any other information relating to a specific application that the Secretary may require.

(c) Preference will be given to projects that promote energy efficiency.

9A:12-1.6 Authorization process

- (a)-(h) (No change.)
- (i) **In the event that an institution requires a modification to an approved project, a formal request must be sent to the Secretary prior to any action being taken by the institution, in order for the Secretary to evaluate the merits of the proposed project modification against the objectives set forth at N.J.A.C. 9A:12-1.5(b). The Secretary may exercise discretion to allow a grantee to modify its project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the grant**

agreement, tax certificate, and any other applicable bond documents. Material modifications to the grant agreement are prohibited. Additionally, the Secretary may, in a manner consistent with the allocations provided in the Act, allocate any balance in an approved grant to another approved grant of the same institution.

9A:12-1.7 Payment of principal and interest

(a) Each four-year public institution shall pay the Authority, or the bond trustee, if so directed by the Authority, one-third (1/3) and each four-year private institution shall pay the Authority, or bond trustee, if so directed by the Authority, one-half (1/2) of the amount necessary to pay the principal and interest on the portion of bonds allocated to finance the capital improvement projects for the institution and in accordance with its [lease] **grant** agreement.

(b) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or any other State appropriation [payable] **allotted** to the institution. As used in this subsection, “obligation of an institution” means any amount payable by the institution for the principal and interest on the bonds, notes, or other obligations of the Authority issued to finance projects for the institution under this program. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Secretary.

9A:12-1.8 Reporting requirements

(a) **Each institution shall annually submit, by May 31st or such other date, as determined by the Secretary, a report to the Authority pursuant to and in accordance with the requirements set forth by the grant agreement.**

(b) **Each institution shall, whenever requested by the Authority, provide and certify, in a form satisfactory to the Authority, such information concerning the institution and the project, the operations and finances of the institution, and such other matters that the Authority considers to be necessary in order to enable the Authority to make any reports, including reports to the Secretary, which are required by any law or governmental regulations in connection with the bonds issued under the Act.**

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Traffic Control and Parking on State Property in Trenton

Proposed Readoption with Amendments: N.J.A.C. 13:56

Authorized By: Colonel Patrick Callahan, Office of the Superintendent, Division of State Police, with the approval of Gurbir S. Grewal, Attorney General.

Authority: N.J.S.A. 39:4-208.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-061.

Submit comments by September 17, 2021, to:

Colonel Patrick Callahan, Office of the Superintendent
 Attn: State House Complex Security Unit
 New Jersey State Police
 225 W. State St.
 Trenton, New Jersey 08608
 or by email to: ParkingRegulations@njsp.org

The agency proposal follows: