

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

HIGHER EDUCATION

(a)

SECRETARY OF HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Facilities Trust Fund Act

Proposed Redoction with Amendments: N.J.A.C. 9A:15

Proposed New Rule: N.J.A.C. 9A:15-1.7

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

Authority: N.J.S.A. 18A:72A-49; and P.L. 1993, c. 375 and P.L. 2012, c. 42.

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

Proposal Number: PRN 2021-071.

Submit written comments by October 1, 2021, to:

Eric Taylor, Esq.
Director, Office of Licensure
Office of the Secretary of Higher Education
1 John Fitch Plaza, 10th Floor
PO Box 542
Trenton, NJ 08625-0542
Email: eric.taylor@oshe.nj.gov

The agency proposal follows:

Summary

Enacted on January 10, 1994, the Higher Education Facilities Trust Fund Act (the Act), N.J.S.A. 18A:72A-49 et seq., and P.L. 1993, c. 375, established the Higher Education Facilities Trust Fund (the Facilities Trust Fund) in the New Jersey Educational Facilities Authority (Authority). Grants from the Facilities Trust Fund assist New Jersey's public and private institutions of higher education in financing all or a portion of the cost of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities related to future industry and workforce needs at New Jersey public and private institutions of higher education. Amendments to the Act in 2012 (the Amending Act) reflect the replacement of the New Jersey Commission on Higher Education with the Secretary of Higher Education as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey.

The Act provides for the Authority to issue bonds with a maximum amount outstanding at any one time not to exceed \$220 million. As bonds are paid off, new bonding capacity is created. The Secretary of Higher Education (Secretary), in consultation with the Authority, promulgates the

implementing rules, which specify approval processes for institutional projects supported by the facilities trust fund and ensure the moneys are distributed consistent with the intent of the Act. Grants were approved for the allocations of the initial \$220 million of bonds. Some of the bonds have now been paid off, resulting in the Authority's 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.b, the rules governing the Higher Education Facilities Trust 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 redoction with amendments and a new rule, whichever is later, which date is January 29, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 104. For this notice of rules proposed for redoction with amendments and a new rule, an administrative review was conducted by the Secretary along with an extensive consultation with the Authority; this process resulted in suggested revisions to the Facilities Trust Fund.

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 redoction with amendments and a new rule are organized in seven subchapters, as follows.

N.J.A.C. 9A:15-1.1 sets forth that the rules implement the Act and establishes that the rules were adopted in order to provide the mechanism by which eligible institutions may apply for, and receive, grants from the Facilities Trust 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:15-1.2 provides definitions for the terms used in the chapter and includes a cross-reference to the definitions section of the Act and the Amending Act.

N.J.A.C. 9A:15-1.3 sets forth the eligibility requirements for the grant program.

N.J.A.C. 9A:15-1.4 delineates the grant application process, including the required contents of applications. At N.J.A.C. 9A:15-1.4, the following amendments are proposed to the application process to further align the grants with the desired outcomes associated with the State Plan for Higher Education and the incorporation of data to support the work being proposed. Paragraph (a)6 is proposed for amendment to include two additional criteria and new paragraph (a)11 is proposed to add an additional application requirement for deferred maintenance projects.

N.J.A.C. 9A:15-1.5, the application review and approval process, includes the criteria the Secretary will use in reviewing applications for

grants from the Facilities Trust Fund. Proposed amendments at N.J.A.C. 9A:15-1.5(b) realign the stated objectives with the original intent of the statute, as well as the State Plan for Higher Education. The proposed amendments to the objectives highlight the connection between the Higher Education Facilities Trust Fund and the role of New Jersey's institutions of higher education in training the work force of the future and the need to continually take steps to enhance technology and research facilities to keep up with the changes in high technology industries. It is proposed that the following amendments be made to this section. Paragraphs (b)1, 4, 5, 11, and 12 are proposed for deletion; paragraphs (b)2, 3, 6, 7, 8, 9, 11 are proposed for recodification as paragraphs (b)1, 2, 3, 4, 5, 6, and 7, respectively, without change; and new paragraphs (b)8 and 9 are added. Finally, new subsection (c) is added pertaining to preference for promotion of energy efficiency.

N.J.A.C. 9A:15-1.6 delineates the grant authorization process. New N.J.A.C. 9A:15-1.6(i) creates a clear process through which the Secretary can act to ensure that a project continues to serve the purposes of the State.

Proposed new N.J.A.C. 9A:15-1.7, Reporting requirements, updates the rules to reflect existing administrative procedures that are part of the grant process. Subsection (a) establishes a date certain for institutions to report and subsection (b) allows the Authority to request further information in order to report according to law and regulations.

Social Impact

The rules proposed for readoption with amendments and a new rule for the Higher Education Facilities Trust Fund Act will continue implementation of the fund in support of capital improvements. More than 440,000 students are enrolled in New Jersey colleges and universities. To prepare its students for careers in a global society with rapidly changing technology, New Jersey needs state-of-the-art facilities for education and research. The Facilities Trust Fund supports instructional, laboratory, communication, and research facilities, enabling New Jersey institutions to upgrade 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-49 et seq., and P.L. 1979, c. 132, may apply for grants from the Facilities Trust Fund. Having rules in place will expedite the institutional applications and project approval process, if, and when, the trust fund is renewed.

Economic Impact

Higher education plays a vital role in the economic development of the State and the nation by providing education and training for the workforce of the future by advancing science and technology through research. New Jersey has a large concentration of high-technology industry and research facilities and is home to some of the world's most productive corporations. The Facilities Trust Fund helps New Jersey institutions meet educational demands, which helps the State compete in the global marketplace. The rules proposed for readoption with amendments and a new rule prescribe how institutions may obtain Facilities Trust Fund moneys.

Federal Standards Statement

The rules proposed for readoption with amendments and a new rule do not require a Federal standards analysis pursuant to N.J.S.A. 52:14B-22 et seq., because the Facilities Trust Fund was established by New Jersey legislation, debt service on the bonds issued to fund the Facilities Trust 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 Facilities Trust Fund govern only the process eligible institutions must follow to receive approval for projects supported with leasing fund moneys. There will be short-term and long-term job increases associated with funded projects. The rules proposed for readoption with amendments and a new rule 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 rules proposed for readoption with amendments and a new rule pertain 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 are unlikely to have an impact on housing affordability because the rules proposed for readoption with amendments and a new rule govern the implementation of the Facilities Trust Fund and 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 proposed for readoption with amendments and a new rule govern the implementation of the Higher Education Facilities Trust 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:15.

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:15-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Facilities Trust Fund Act, P.L. 1993, c. 375, as amended by P.L. 2012, c. 42, **and as amended by P.L. 2017, c. 98**. This chapter is adopted in order to provide a mechanism by which eligible institutions may apply for and receive grants from the Higher Education Facilities Trust Fund.

9A:15-1.4 Grant applications

(a) Following approval by its governing board at a duly authorized meeting, an institution of higher education may apply to the Secretary for a grant from the trust fund. The institution's application shall include the following:

1.-5. (No change.)

6. The program(s) or function(s) to be served by the project, including specific educational objectives to be met **and how the proposed project supports industry-valued credentialing programs and experiential learning opportunities**;

7.-9. (No change.)

10. Any additional information the institution deems necessary to demonstrate how the institution's proposed project meets the objectives identified in N.J.A.C. 9A:15-1.5(b); [and]

11. Any information regarding priorities for or the prioritization of deferred maintenance projects, including those based on or supported by a review done by an outside facilities data analytics and planning company; and

[11.] **12.** (No change in text.)

(b)-(c) (No change.)

9A:15-1.5 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 facilities project supports the following objectives:

[1. Advancement of student education in the State of New Jersey;]
 Recodify existing 2.-3. as 1.-2. (No change in text.)

3. Consistency with the institution’s educational mission;

[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;]

Recodify existing 6.-9. as 4.-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. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and

12. Whether it serves the best interests of higher education in the State as a whole.]

7. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs;

8. The degree to which the project increases capacity for industry-valued credentialing programs and experiential learning opportunities; and

9. How the project enriches existing materials and coursework that support current academic curricula.

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

9A:15-1.6 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 to allow the Secretary to evaluate the merits of the proposed project modification against the objectives set forth at N.J.A.C. 9A:15-1.5(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. Material changes to the grant agreement will not be allowed. 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. 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:15-1.7 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 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, any information concerning the institution and the project, the operations and finances of the institution and any 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.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Transition Incentive Program Rules

Proposed Amendments: 14:8-2.2, 10.1, 10.3, 10.4, 10.5, and 10.6

Proposed New Rule: N.J.A.C. 14:8-10.7

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:3-87, 48:3-87.11, and 48:2-13.

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

BPU Docket Number: QX21040725.

Proposal Number: PRN 2021-066.

Comments may be submitted through October 1, 2021, by email in Microsoft Word format, or in a format that can be easily converted to Word, to: rule.comments@bpu.nj.gov or on paper to:

Aida Camacho-Welch, Secretary
 New Jersey Board of Public Utilities
 ATTN: BPU Docket Number: QX21040725
 44 S. Clinton Ave., 9th Floor, PO Box 350
 Trenton, NJ 08625-0350

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is proposing to amend its existing Transition Incentive Program (TI Program) rules to improve the implementation of the TI Program based on lessons learned from program implementation since May 1, 2020. The Clean Energy Act of 2018, P.L. 2018, c. 17 (Clean Energy Act), mandated that the Board close the Solar Renewable Energy Certificate (SREC) Program upon the State’s attainment of 5.1 percent of its retail electricity sales from solar electric generation facilities (5.1% Milestone). In accordance with this mandate, the Board modified the State’s solar energy program in two stages. The first is the TI Program established through rules published on October 5, 2020, at 52 N.J.R. 1048(a) and the second, a long-term solar Successor Incentive Program, which will be established through a separate rulemaking in Board Docket No. QO21040728. The TI Program delivers incentives through Transition Renewable Energy Certificates (TREC). It is designed to ensure a smooth and efficient transition from the legacy SREC Program to the new solar Successor Incentive Program by providing stability to developers and owners of solar installations in the SREC Program pipeline at the time the Board closed the SREC Program to new registrations, as well as to developers and owners of new projects until the Board implements the successor incentive program.

After a year’s experience with the TI Program, the Board realized that certain amendments to the rules promulgated in October 2020 will facilitate both administration by the Board and participation by the solar industry.

At N.J.A.C. 14:8-2.2, the Board proposes to create a new definition for the term “floating solar” to mean solar projects located on bodies of water. At N.J.A.C. 14:8-2.2, the Board proposes to delete a phrase from the definition of “Transition Incentive Eligible Project” regarding the commencement of commercial operations prior to attainment of the 5.1 % Milestone. At N.J.A.C. 14:8-2.2, the Board proposes to clarify the definition of “qualification life” to reflect that the qualification life of a project is determined by its registration date. For example, projects accepted into the legacy solar program on or before October 30, 2018, have a qualification life of 15 years, while projects that were accepted into this program after that date have a qualification life of 10 years.

The proposed amendments at N.J.A.C. 14:8-10.1 and proposed new N.J.A.C. 14:8-10.4(b) and 10.6(f), the Board proposes to amend the TI rules so that an otherwise eligible project that commenced commercial operations prior to April 30, 2020, may qualify for TRECs if the project