



CHAPTER 15

Rules and Procedures for Implementation of the Higher Education

Facilities Trust Fund Bond Act

Office of the Secretary of Higher Education

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:15-1.2 Definitions

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

"Act" means the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 through 58.

"Amending Act" means P.L. 2012, c. 42, the law that supplements and amends the Act.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Bond" means a bond or note of the Authority issued pursuant to the authority granted by the Act.

"Construction ready" means the extent to which the planning and design work have been completed and construction is able to begin, and the degree to which a project shall be completed expeditiously once begun. An evaluation of whether a project is construction ready shall include the status of the design work, project site readiness, zoning and permitting approvals, as well as the anticipated timeframe during which the project will be completed, and the pacing of related construction.

"Cost-effectiveness" means the degree to which a project produces a positive economic analysis when considering the construction expenses, operating, and maintenance expenses, compared to the project's resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

"Facilities trust fund" or "trust fund" means the Higher Education Facilities Trust Fund as created by the Act.

"Grant" means a grant of moneys from the facilities trust fund approved by the Secretary for a facilities project.

"Grant agreement" means the grant agreement between the institution and the Authority, which shall set forth the terms and conditions of the grant, amount of the grant, and disbursement schedule.

"Institution" means a public or private institution of higher education that is eligible to receive State aid.

"Project" means a capital construction project to construct, reconstruct, develop, extend, or improve instructional, laboratory, communication, or research facilities.

"Secretary" means the Secretary of Higher Education.

9A:15-1.3 Project eligibility

(a) Moneys from the trust fund shall be awarded in the form of grants to New Jersey's public and private institutions of higher education for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

(b) For a project to be eligible to receive a grant, the institution must:

1. Have an up-to-date long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements and pledges to use the facilities trust fund grant to advance that plan;
2. Commit, by resolution of its governing board, to maintaining the facilities project funded by the grant; and
3. Certify that it will use the funds for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

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. A certification that the eligibility requirements provided in N.J.A.C. 9A:15-1.3 have been met;
2. A complete description of the project, including design information if appropriate for the project;
3. A copy of the institution's governing board's resolution approving the application and committing to support the annual operating costs of and maintenance requirements for the proposed project;
4. A copy of the institution's current long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements or a certification that such a plan has already been submitted to the Secretary pursuant to P.L. 2009, c. 90;
5. A description of how the proposed project relates to the current institutional mission, plans, and priorities;
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. The estimated schedule for the completion of the project;
8. Cost data for the project along with the identification of all sources of revenue to be used to pay any cost not funded by the grant;

9. Certification by the institution that the project would be in compliance with all applicable laws, rules, codes, statutes, and government guidelines;
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);
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
12. Any other information as may be required by the Secretary on a case-by-case basis and relating to a specific application.

(b) Grant applications shall be submitted in a format provided by the Secretary.

(c) Only grant applications that are complete will be reviewed by the Secretary.

9A:15-1.5 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;
2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.

(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. Improvement and expansion of educational opportunities for students;
2. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
3. Consistency with the institution's educational mission;

4. Consistency with the institution's long-range facilities plan;
5. The cost-effectiveness of the project;
6. The degree to which the project is construction ready;
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) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the grant, pursuant to N.J.A.C. 9A:15-1.5(b), and the amount of the grant.

(c) The Secretary shall submit to the Legislature a copy of the grant application, a copy of the written certification approving the grant, and the amount of the grant, with a copy of such material to the Authority. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days of receipt from the Secretary, the grant shall be deemed to be approved by the Legislature and by the Secretary.

(d) Upon authorization of the grant pursuant to (c) above, the institution shall enter into a grant agreement with the Authority, which shall set forth the terms of the grant award and be provided to the board of the Authority for approval by resolution.

(e) Each grant award shall be contingent upon the recipient governing board's entering into a contract or contracts to construct the facilities project within one year of the date on which the grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the bonds to fund the facilities project or on the date of the authorization of the grant, whichever is later.

(f) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

(g) The Secretary may reduce or cancel entirely the amount of a grant:

1. If an institution determines not to undertake a project for which a grant was awarded;
 2. To adjust for actual project expenses in a manner consistent with the approved grant;
- or
3. If the project is not substantially completed and the grant substantially disbursed six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the institution entering into a construction contract consistent with (d) above.

(h) No reduction in the grant amount shall be made pursuant to (g)3 above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or
2. In the sole determination of the Secretary, there are other compelling and documentable reasons.

(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.