

## 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; un housed 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:

$$AU = (\text{UEC} \times \text{SEC}) + (\text{UE} \times \text{SE}) + (\text{UM} \times \text{SM}) + (\text{UH} \times \text{SH}) \text{ where}$$

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.