

CHAPTER 12

RULES IMPLEMENTING THE HIGHER
EDUCATION CAPITAL IMPROVE-
MENT FUND ACT

Authority

N.J.S.A. 18A:72A-5, P.L. 1999 c.217 and N.J.S.A. 18A:72A-80.

Source and Effective Date

R.2005 d.386, effective October 14, 2005.
See: 37 N.J.R. 1670(a), 37 N.J.R. 4260(a).

Chapter Expiration Date

Chapter 12, Rules Implementing the Higher Education Capital Improvement Fund Act, expires on October 14, 2010.

Chapter Historical Note

Chapter 12, Educational Opportunity Fund: Program Support, was adopted as R.1978 d.201, effective for the academic year beginning the fall of 1978. See: 9 N.J.R. 570(a), 10 N.J.R. 281(d).

Subchapter 2, Educational Opportunity Fund Summer Program Regulations, was adopted as R.1979 d.235, effective June 14, 1979. See: 11 N.J.R. 67(d), 11 N.J.R. 343(a).

Pursuant to Executive Order No. 66(1978), Chapter 12, Educational Opportunity Fund: Program Support, was readopted as R.1983 d.646, effective January 17, 1984. See: 15 N.J.R. 1428(a), 16 N.J.R. 143(b).

Pursuant to Executive Order No. 66(1978), Chapter 12, Educational Opportunity Fund: Program Support, was readopted as R.1989 d.222, effective April 17, 1989. See: 20 N.J.R. 2506(a), 21 N.J.R. 1012(a).

Pursuant to Executive Order No. 66(1978), Chapter 12, Educational Opportunity Fund: Program Support, was readopted as R.1994 d.226, effective April 11, 1994. See: 26 N.J.R. 711(a), 26 N.J.R. 1857(a).

Chapter 12, Educational Opportunity Fund: Program Support, was recodified as N.J.A.C. 9A:12 by R.1995 d.248, effective May 15, 1995. See: 27 N.J.R. 812(a), 27 N.J.R. 1993(a).

Chapter 12, Educational Opportunity Fund: Program Support, was repealed by R.1999 d.46, effective February 1, 1999. See: 30 N.J.R. 3771(a), 31 N.J.R. 420(a).

Chapter 12, Rules Implementing the Higher Education Capital Improvement Fund Act, was adopted as new rules by R.2000 d.164, effective April 17, 2000. See: 32 N.J.R. 433(a), 32 N.J.R. 1423(a).

Chapter 12, Rules Implementing the Higher Education Capital Improvement Fund Act, was readopted by R.2005 d.386, effective October 14, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

9A:12-1.1 Purpose and authority

The following rules implement the Higher Education Capital Improvement Fund Act, P.L. 1999, c.217, an act supplementing the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

9A:12-1.2 Definitions

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

“Act” means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

“Amending Act” means the Higher Education Capital Improvement Fund Act, P.L. 1999, c.217.

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

“Bond” or “bonds” means bonds or notes of the Authority issued pursuant to the authority granted by the Amending Act.

“Capital improvement fund” means the Higher Education Capital Improvement Fund as created by P.L. 1999, c.217.

“Capital improvement project” means a project approved by the Commission on Higher Education for a capital improvement fund grant.

“Commission” means the New Jersey Commission on Higher Education.

“Deferred maintenance” means scheduled or unscheduled maintenance to facilities that was not performed.

“Executive Director” means the Executive Director of the New Jersey Commission on Higher Education.

“Grant” means funds requiring approval by the Commission for a project pursuant to the Amending Act from the Higher Education Capital Improvement Fund.

“Institution” means a public or private four-year institution of higher education that is eligible to receive State aid.

“Renewal and renovation” means making the changes necessary to address deferred maintenance needs; to meet all State and Federal health, safety, fire, and building code standards; or to provide a safe and appropriate educational or working environment.

“Student support facilities” means student residence halls, student dining facilities, student activity centers, and student health centers.

“Technology infrastructure” means video, voice, and data telecommunications equipment and linkages with a life expectancy of at least 10 years.

9A:12-1.3 Allocation of funds

(a) Grants from the capital improvement fund shall be used only for capital improvement projects.

(b) The initial allocations from the fund among the institutions were made by the Amending Act and the Commission on Higher Education.

(c) Pursuant to the Amending Act, the Commission shall determine the allocation of moneys available if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority.

(d) The Commission may reallocate any balance in the amounts allocated if the Commission has not approved a grant within 24 months of the date of the allocations made by the Commission.

(e) No reallocation shall be made pursuant to (d) above if:

1. The Commission has received the grant application within 24 months of the allocation;
2. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or
3. In the sole determination of the Commission, there are other compelling and documentable reasons.

(f) The Executive Director shall provide three months notice to all institutions to which capital improvement funds have been allocated to indicate what, if any, funds shall become available for reallocation after 24 months.

Amended by R.2005 d.386, effective November 7, 2005.
See: 37 N.J.R. 1670(a), 37 N.J.R. 4260(a).

Deleted former (a), (c) and (g); recodified former (b) as (a); added new (b) and (c); rewrote (d); in (e)1, added “within 24 months of the allocation”.

9A:12-1.4 Funding criteria

(a) The Commission shall approve a grant from the capital improvement fund providing the institution meets the following criteria. The institution must:

1. Have an up-to-date long-range capital plan approved by the institution’s governing board that includes provisions to address deferred maintenance and other capital renewal requirements and use the capital improvement fund grant to advance that plan;

2. Commit, by resolution of its governing board, to maintaining the capital improvement funded by the grant;

3. Use the funds for renewal or renovation of instructional, laboratory, communication, research, and administrative facilities, or for the following alternatives provided for by law:

i. Replacing an instructional, laboratory, communication, research, or administrative facility provided that the institution demonstrates that the projected renewal and renovation costs exceed the projected cost of replacement;

ii. Renewing and renovating or improving, expanding, constructing, and reconstructing student-support facilities provided that no more than 20 percent of an institution’s total grant is so used;

iii. Improving, expanding, constructing, and reconstructing instructional, laboratory, communication, and research facilities, or technology infrastructure provided that the institution demonstrates that all renewal and renovation at instructional, laboratory, communication, research, or administrative facilities is completed or is accounted for through other funding sources; or

iv. Improving, expanding, constructing, and reconstructing instructional, laboratory, communication, and research facilities, or technology infrastructure provided that the institution demonstrates that the project will maximize Federal grant fund recoveries; and

4. Commit to paying one-third of debt service if a public institution and one-half of debt service if a private institution.

(b) An institution may use up to five percent of its grant for moveable capital equipment that has a life of 10 or more years and is directly related to approved projects.

Amended by R.2005 d.386, effective November 7, 2005.
See: 37 N.J.R. 1670(a), 37 N.J.R. 4260(a).
Rewrote (a)3ii and iii.

9A:12-1.5 Grant application

(a) The Commission shall consider for approval grant requests that meet the funding criteria in N.J.A.C. 9A:12-1.4.

(b) Upon approval by its governing board at a duly authorized meeting, an institution of higher education shall apply to the Commission for a grant from the capital improvement fund. The institution’s proposal shall include the following items:

1. A complete description of the proposed capital improvement project, including design information, and for renewal and renovation projects, an explanation of modifications to the facilities other than repairs;

2. A copy of the institutional governing board's resolution approving the institution's application and committing the institution to support the annual operating costs of and maintenance requirements for the proposed project;

3. A summary of the institution's capital plan, including the total estimated need for renewal and renovation;

4. A description of how the proposed project addresses the institution's capital plan and meets the estimated need for renewal and renovation;

5. The estimated schedule for completing the project, including cash flow requirements;

6. Cost data for the project, along with identification of all sources of revenue to be used for any costs not funded by the grant;

7. Identification of all sources of revenue to be used for the institution's share of debt service on the bonds for the project;

8. The useful life of any equipment as determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revised Procedure 87-56, as amended, supplemented or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate;

9. Certification by the institution that the project will comply with existing codes, statutes, and government guidelines, including the principles of affirmative action and equal employment opportunity where applicable, as specified in the Amending Act;

10. Certification by the institution of how the project addresses, as appropriate, the sustainability goals outlined in New Jersey Future's 1999 report on the Sustainable State Project, *Living with the Future in Mind: Goals and Indicators for New Jersey's Quality of Life*, as cited in Governor Christine Whitman's Executive Order Number 96(1999). (Copies of the report are available at libraries or from New Jersey Future, 204 West State Street, Trenton, NJ 08608; phone: 609-393-0008; e-mail: njfuture@njfuture.org.); and

11. Other information as the Executive Director may require on a case-by-case basis and relating to a specific proposal.

(c) For any building replacement proposed as an alternative to renewing or renovating a specific facility, the proposal shall include a justification for the replacement, including a comparison of the replacement costs with the costs of renewing or renovating that facility.

(d) For any project that involves student support facilities, the proposal shall include a budget indicating that no more

than 20 percent of the institution's total grant shall be used for this purpose.

(e) For any improvement, expansion, construction, reconstruction, or technology infrastructure projects proposed as alternatives or additions to renewal and renovation projects, the proposal shall explain how the institution shall meet its total estimated need for renewal and renovation as contained in its capital plan. The explanation shall identify specific renewal and renovation projects, their funding sources, and a timetable for their completion.

(f) For any improvement, expansion, construction, or reconstruction projects proposed for the purpose of maximizing Federal grant recoveries, the proposal shall explain how the capital improvement project shall maximize such recoveries. The explanation shall include both sources of funds and dollar estimates of the Federal grant fund recoveries that shall be generated by the project.

(g) Only projects that incurred expenses after July 1, 1999 are eligible for approval provided that the projects meet the requirements of the law and N.J.A.C. 9A:12-1.4; only project expenses incurred after July 1, 1999 shall be eligible for reimbursement.

(h) Grant requests shall be submitted in a format provided by the Commission.

Amended by R.2005 d.386, effective November 7, 2005.

See: 37 N.J.R. 1670(a), 37 N.J.R. 4260(a).

In (d), substituted "20" for "five" and deleted "and shall identify the specific State or Federal fire, health-safety, building, or other codes that will be remediated"; in (g), deleted "or will incur" following "incurred".

9A:12-1.6 Authorization process

(a) Grant applications shall be approved at a public meeting of the Commission.

(b) The total dollar amount of a grant approved for any institution shall not exceed the institution's allocation as approved by the Commission.

(c) The Commission shall forward to the President of the Senate and the Speaker of the Assembly a copy of the grant application and a copy of the resolution approved by the Commission, including the amount of the grant. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 45 days of receipt of the grant application and Commission resolution, the grant shall be deemed to be authorized.

(d) Each grant awarded shall be contingent upon the recipient governing board's entering into a contract or contracts to construct the capital improvement within one year of the date on which the grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the corresponding bond or on the date of the Commission's authorization of the grant, whichever is later.

(e) The board of the Authority shall approve the contract between the Authority and the institution for the disbursement of funds.

(f) The Authority shall not issue bonds to finance equipment purchases with terms exceeding the useful life of the acquisitions.

(g) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

9A:12-1.7 Reporting requirements

The Authority shall annually report to the Commission on the disbursements resulting from the Amending Act. The Commission then shall report to the Governor and Legislature on the use of the funds from the Amending Act.