

3. The total costs which equals the final eligible costs plus excess costs, if any;
4. The State share of the final eligible costs; and
5. The local share of the total costs.

(j) The Department will review school facilities projects with excess costs for Abbott districts in order to coordinate the funding of such costs with the districts' requests for additional Abbott v. Burke State aid, pursuant to N.J.A.C. 6A:24-7.1 and/or 6A:10-3.1.

Amended by R.2001 d.367, effective October 1, 2001.
See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (b), inserted reference to State share; in (g), added last two sentences; in (i)4, substituted "final eligible" for "total"; and updated N.J.A.C. references throughout.

Amended by R.2004 d.214, effective June 7, 2004.
See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (d), deleted ", the Commissioner shall be deemed to have given final approval to the project" following "eligible costs"; in (e), deleted ii and recodified former iii as ii in 1 through 3; in (g), inserted ", cost overruns related to excess costs, if any," in the first sentence; added (j).

6A:26-3.6 Determination of final eligible costs for nonauthority school facilities projects

(a) Prior to a determination of final eligible costs, a district that is not using the Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing that portion of the school facilities project which has been approved for State support exceeds the preliminary eligible costs as determined by the Commissioner for the project by 10 percent or more. The district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.

(b) The appeal shall outline the reasons why the preliminary eligible costs calculated for the school facilities project are inadequate, provide documentation to support such reasons and estimate the amount of the adjustment that needs to be made to the preliminary eligible costs. Upon a determination that the appeal information is complete, the Commissioner shall forward the appeal information to the Authority for its review and recommendation.

(c) The Commissioner shall make a determination on the appeal within 30 days after receipt of the Authority's recommendation. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the district, the Commissioner shall issue his or her findings in writing setting forth the reasons for the denial and why the

preliminary eligible costs as originally calculated, or an adjustment to the preliminary eligible costs that is smaller than sought by the district, is sufficient.

(d) If a district determines not to appeal the determination of preliminary eligible costs, it may, at any time after approval of the school facilities project and determination of preliminary eligible costs, request that the Commissioner determine final eligible costs for the project.

(e) Final eligible costs for the school facilities project shall be determined as follows:

1. If a district does not appeal the determination of preliminary eligible costs, the preliminary eligible costs become the final eligible costs;

2. If a district successfully appeals the determination of preliminary eligible costs pursuant to (b) above, the final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner, but in no case shall the adjustment to preliminary eligible costs be more than 10 percent; and

3. If a district unsuccessfully appeals the determination of preliminary eligible costs, the preliminary eligible costs shall be the final eligible costs.

(f) Following the determination of final eligible costs, the Division shall notify the district in writing of the following:

1. The final eligible costs;
2. The total costs;
3. The State share or State debt service aid percentage;
4. The local share, if applicable;
5. Excess costs, if any; and
6. Additional costs, if any.

(g) A district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the district of the final eligible costs for the project. A district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. In the event the local share estimate in the annual budget is less than the actual local share, the district shall proceed in accordance with the provisions of N.J.A.C. 6A:26-4. A district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:26-9.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a), updated N.J.A.C. references; in (c), added "after receipt of the Authority's recommendation" in the first sentence; and rewrote (f) and (g).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (f), inserted ", if any, and" at the end of 5 and added 6.

6A:26-3.7 Local support of school facilities projects

(a) No school facilities project shall be constructed unless, if there is local support, such local support plus any other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. Districts shall notify the Commissioner and county superintendent of schools, and for school facilities projects to be constructed by the Authority, or for which a district elects a grant pursuant to N.J.S.A. 18A:7G-15, the Authority, when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. Districts shall also notify the county superintendent of the issuance of school bonds within 30 days of the issuance of the school bonds and, for school facilities projects to be constructed by the Authority, or where a district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15, the district shall notify the Authority.

(b) If the Authority is constructing the school facilities project, the district shall provide funds for the local share of the project to the Authority in accordance with the rules of the Authority.

(c) If the district determines to issue school bonds to fund all or any part of the local support, the district shall proceed in accordance with (e), (f) or (g) below, as applicable. If the district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board of school estimate approval of the expenditure of local support, make withdrawals from capital reserve in accordance with N.J.A.C. 6A:26-9 or a district may fund the local support for additions or improvements to an existing school facility or equipment through a lease purchase agreement of not in excess of five years duration if the district obtains approval of the lease purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.

(d) If a district submits a separate proposal to the voters pursuant to N.J.S.A. 18A:7F-5 and N.J.A.C. 6:19-2.4(a), such amounts shall not be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project.

(e) Whenever the district board of education in a Type I or Type II district having a board of school estimate shall determine that it is necessary to sell school bonds to raise money for the local support for any school facilities project approved pursuant to EFCFA and these regulations, it shall, by board resolution, estimate the amount necessary to be raised for such school facilities project or school facilities projects, itemizing such estimate so as to make it readily understandable, and the secretary of the district 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 school facilities project as approved by the Commissioner, the total costs, the State share or State debt service aid percentage, the local share, if applicable, and, if applicable, the excess costs. If the board determines to use a combination of school bonds and other revenue sources, the resolution shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from that source. Gifts, grants and other private sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

(f) Whenever the undertaking of any school facilities project or projects to be paid for from the proceeds of an issue of school bonds is submitted to the voters of a Type II district an annual or special school election for their approval or disapproval, the board shall frame and adopt the question or questions to be submitted so that each school facilities project is submitted in a separate question, or all or any number of them are submitted in one question, which shall state the school facilities project or projects submitted and the amounts to be raised for each of the school facilities projects so separately submitted or for each or for all of the school facilities 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 board determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from that source. Gifts, grants and private sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

1. If the school facilities project is to be constructed by the Authority or a redevelopment entity or by the district with a grant pursuant to N.J.S.A. 18A:7G-15, the referendum shall, when framed as a single question, request approval for the local share and shall disclose the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner, the State share, the total costs and the excess costs, if any.

2. If the school facilities project is not to be constructed by the Authority or a redevelopment entity or by the district with a grant pursuant to N.J.S.A. 18A:7G-15, the referendum shall, when framed as a single question, request approval for the total costs of the school facilities project, disclose the amount needed to be raised by school bonds, the State debt service aid percentage, the final eligible costs and the excess costs, if any.

i. The State debt service aid percentage shall be stated as a percentage of the annual debt service of the final eligible costs.

3. When a school facilities 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, the State share or the State debt service aid percentage, the final eligible costs of the project, the local share, if applicable, and excess costs, and the revenue source for the local share or total costs of a school facilities project receiving State debt service aid.

4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as follows: "This school facilities project includes \$(insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education, or that are not otherwise eligible for State support pursuant to N.J.S.A. 18A:7G-5(g)".

(g) Whenever a State-operated district shall determine that it is necessary to sell school bonds to raise money for any school facilities project approved pursuant to EFCFA and this subchapter, it shall estimate the amount necessary to be raised for such school facilities project or school facilities projects, itemizing such estimate so as to make it readily understandable, and the State district superintendent shall certify a copy of such resolution to each member of the Capital Project Review Board of the district. The resolution shall include the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner, the total costs, the State share or the State debt service aid percentage, the local share, if applicable, and the excess costs, if any. The Capital Project Review Board shall review the project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the district determines to use a combination of school bonds and other revenue sources, the question shall also include the portion

of the local share or total costs of the school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from that source. Gifts, grants, and other private sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

(h) 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 in accordance with N.J.A.C. 6A:26-4.6(d).

(i) A district, other than a State-operated district, that sought approval pursuant to N.J.S.A. 18A:7G-11 of a school facilities project that did not have excess costs, and failed to receive such approval, and within the three years prior to that, sought and failed to receive approval of the same school facilities project, with or without excess costs, provided the first such failure to receive approval occurred after July 18, 2000, may file a petition with the Bureau of Controversies and Disputes in conformance with N.J.A.C. 6A:3-1.4 and the procedures in this subsection and request that the Commissioner approve the school facilities project and authorize the issuance of school bonds for the local share of the school facilities project. Pursuant to N.J.S.A. 18A:7G-12, a State-operated school district may not use the process set forth in this paragraph, but shall instead use the process established by N.J.S.A. 18A:7A-46.2 to undertake a school facilities project.

1. A petition filed pursuant to this subsection shall be captioned In the Matter of the Application of the Board of Education of the (Township, Borough, etc.) of (District), (Name) County, for an Order Directing Issuance of Bonds Pursuant to N.J.S.A. 18A:7G-12 and shall:

i. Briefly set forth the basis for the district's appeal, including an explanation of how each school facilities project proposed in the district's petition meets the requirements of the statute that the district has failed to obtain approval of the local share of the school facilities project(s) within the three years prior to the latter of such failures, the latter such failure was for a school facilities project(s) without excess costs as defined in N.J.A.C. 6A:26-1.2, and including a written justification explaining why the requested school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the district;

ii. Be accompanied by a district board of education resolution approving the district's appeal, documentation of the failed referenda underlying the appeal, a verification as set forth in N.J.A.C. 6A:3-1.4; and

iii. Be filed in triplicate (original and two copies).

2. The review, public comment, and hearing process regarding the petition shall be as follows:

i. A conforming petition and supporting materials filed pursuant to (i)1 above shall be forwarded to the Division, which shall review the record for completeness and solicit such documentation from the district as may be necessary to ensure the petition's consistency with the threshold statutory criteria as set forth in (i)1 above, and once the record is determined to be complete, will return the record to the Bureau of Controversies and Disputes with a written report of its review a copy of which the Division will provide to the district;

ii. Upon return of a completed record from the Division of Finance to the Bureau of Controversies and Disputes, the Bureau shall notify the district board that it has met the prerequisites for seeking an order of the Commissioner directing issuance of school bonds for the local share of the school facilities project(s) and shall direct the district to:

(1) Announce at a board meeting to occur by a specified date that interested persons may submit written comments to the Commissioner through the Bureau, in duplicate and no more than 10 pages in length, and a copy to the board;

(2) Publish, by the date specified, and in a minimum of two newspapers, one local and one State-wide, notice of the opportunity for the public to file such comments. Both the announcement and published notice shall identify clearly the school facilities projects, the amount of school bonds the district seeks to issue, and fact that the voters have previously rejected referenda seeking such issuance and the number of such rejections, and the purpose of the district's appeal to the Commissioner; and

(3) File with the Bureau a sworn certification that the required announcement was made and the required notice published.

iii. Upon receipt of the required certification from the district and expiration of the public comment period pursuant to (i)2ii above, the Commissioner shall arrange for an evidentiary hearing in accordance with the following procedures:

(1) The Commissioner may either request that the Director of the Office of Administrative Law assign an administrative law judge to conduct the matter as an uncontested case pursuant to N.J.S.A. 52:14F-5(o) or arrange for assignment of a hearing officer to conduct the matter on behalf of the Department;

(2) Written notice of the hearing date(s) shall be sent to the district board and its legal representative;

(3) The district board shall effectuate notice to interested persons by announcing the hearing date at a board meeting prior to the hearing date, and shall publish same in a minimum of two newspapers, one Statewide and one local, with a minimum of 20 days notice provided through both means, and with proof of both the announcement and the publication to be submitted to the assigned judge or hearing officer;

(4) The hearing shall be conducted on an expedited basis and, to the extent possible, at a location close to the district;

(5) Interested persons shall be provided with a reasonable amount of time, as determined by the assigned judge or hearing officer, to present comments without unduly prolonging proceedings; and

(6) The district board shall present proofs, in a manner to be determined by the assigned judge or hearing officer, as to why the school facilities project(s) for which it seeks to issue school bonds are necessary for provision of a thorough and efficient system of education in the district.

3. Following review of the report and recommendation issued by the Office of Administrative Law pursuant to N.J.A.C. 1:1-21.5 or prepared by the assigned hearing officer in a manner consistent with N.J.A.C. 1:1-21.5, the Commissioner shall make a final determination in a written decision taking into consideration the report's recommended findings of fact and conclusions of law.

i. Within 13 days of the date the report was mailed to the district board, or such longer period as may be requested by the district and granted by the Commissioner, the district may file comments on the report and recommendation.

4. If the Commissioner finds that the school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the district, the written decision so ordering shall authorize the district board to prepare to issue school bonds once the Division has approved the final eligible costs of the school facilities project(s) pursuant to N.J.A.C. 6A:26-3.5 and to submit detailed plans and specifications, or if unavailable, the most complete documentation on the project, to the Division.

i. The Division shall then issue a preliminary project report and transmit the documentation to the Authority for purposes of an Authority recommendation of the final eligible costs of the school facilities project(s), pursuant to N.J.A.C. 6A:26-3.5.

ii. If the Authority has the detailed plans and specifications and/or documentation sufficient to make a recommendation of the final eligible costs of the project(s), that recommendation shall be forwarded to the Division. If the plans for the school facilities project(s) do not meet the criteria for detailed plans and specifications, the additional design work shall be funded so that a final eligible cost recommendation can be made to the Division. The local share shall be adjusted to reflect the funding by the Authority of such additional design work.

iii. Once the Commissioner approves the final eligible costs of the school facilities project(s) and issues a final project report to the Authority, it will approve the school facilities project(s) without excess costs and authorize the issuance of school bonds to fund the local share.

5. In addition to the amount of taxes determined by the legal voters of the district at the annual school election, the secretary of the district board of education shall certify the amount required for the repayment of the interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt redemption charges pursuant to N.J.S.A. 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 district for those purposes.

6. Any school facilities project authorized pursuant to this subsection shall be constructed by the Authority pursuant to the provisions of N.J.A.C. 6A:26-3.9.

(j) Any non-Abbott district included in district factor group A or B as of July 18, 2000 may apply to the Commissioner for 100 percent State share of final eligible costs of a school facilities project in the event the district is having difficulty financing the local share or the total costs of a school facilities project receiving State debt service aid. In order to receive a recommendation for 100 percent State share of final eligible costs from the Commissioner, a district shall submit documentation demonstrating that:

1. It sought approval of a school facilities project that did not have excess costs, and failed to receive such approval, and, prior to that failed appeal, sought and failed to receive approval of the same school facilities project, with or without excess costs and:

- i. The T & E budget equalized tax rate of the district is at least 130 percent of the State average; and
- ii. The equalized municipal tax rate is above the State average; and

2. The school facilities project is necessary for the provision of a thorough and efficient system of education in the district;

(k) Upon review of the application, the Commissioner shall determine whether to recommend to the Legislature that the district receive 100 percent State share of the final eligible costs of the project. A district will receive 100 percent State share only if the Legislature so determines upon receipt of the Commissioner's recommendation.

(l) All school facilities projects approved pursuant to (j) and (k) above shall be constructed by the Authority pursuant to the provisions of N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with

the provisions of N.J.A.C. 6A:26-3.5 prior to the Authority undertaking construction of the school facilities project.

(m) An Abbott district that is seeking additional Abbott v. Burke State aid, pursuant to N.J.A.C. 6A:24-7.1 and/or 6A:10-3.1, shall specifically identify the source of funding for the excess costs of a school facilities project and that source of funding shall not be State aid or the required local tax levy.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

Rewrote the section.

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

Rewrote the section.

6A:26-3.8 Determination of State support for school facilities projects

(a) State support for school facilities projects shall be determined as follows:

1. State debt service aid for projects approved on or after July 18, 2000 shall be calculated as follows:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the Commissioner on or after July 18, 2000 where:

$A = B \times AC/P \times (DAP \times 1.15) \times M$, 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 State fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of EFCFA;

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district aid percentage as defined pursuant to N.J.S.A. 18A:7G-3, except that $DAP \times 1.15$ shall not be less than 40 percent and for county special services districts, DAP is that of the county vocational district in the same county; and

M is a factor representing the degree to which a district has fulfilled maintenance requirements for a school facilities project, and shall be 1.0 except when a different maintenance factor is required by N.J.S.A. 18A:7G-9.

2. State debt service aid for school facilities projects approved prior to July 18, 2000 shall be calculated as follows:

Aid is the sum of A where

$A = B \times CCSAID/TEBUD$ and where

B is the district's total debt service or lease purchase payment for the individual issuance for the State fiscal year;

CCSAID is the district's core curriculum standards aid amount determined pursuant to N.J.S.A. 18A:7F-15; and

TEBUD is the district's T & E budget determined pursuant to N.J.S.A. 18A:7F-13.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational district in the same county.

3. The amount of a grant shall be determined as follows:

i. The State share payable to the district shall equal the product of the school facilities project's final eligible costs and 115 percent of the district aid percentage or 40 percent, whichever is greater. The Authority shall provide grant funding for the State share 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.

(1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund in accordance with N.J.A.C. 6A:26-4;

(2) Local share budgeted in capital outlay shall be transferred to the capital projects fund upon execution of the grant agreement with the Authority. Any unexpended transferred capital outlay funds remaining after completion of the school facilities project shall be transferred to the general fund in the current year or reserved and designated in the subsequent year's general fund budget.

Amended by R.2001 d.367, effective October 1, 2001.

See: 33 N.J.R. 1809(a), 33 N.J.R. 3482(a).

In (a), deleted "school" preceding "district" throughout 1 and 2, and inserted N.J.A.C. reference in 3i(1).

Amended by R.2004 d.214, effective June 7, 2004.

See: 36 N.J.R. 243(a), 36 N.J.R. 2733(b).

In (a)3i(2), rewrote the second sentence.

6A:26-3.9 Design and construction of Authority school facilities projects

(a) The Authority will design and construct school facilities projects in accordance with EFCFA and the Authority's rules.

(b) After approval of the LRFP for a district that is required to use the Authority, the district, Department and Authority shall meet and agree upon a schedule for undertaking the school facilities projects in the approved LRFP and identify the need for temporary facilities, if any.

(c) In order to advance a school facilities project, a district that is required to use the Authority and has an approved LRFP may request the initiation of pre-development activities in connection with a school facilities project, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Authority.

1. Districts shall submit to the Division a pre-development application setting forth all pre-development activities, including feasibility studies, remediation, site development, demolition, design work, acquisition of and design work for temporary facilities, review for preliminary approval of demonstration project, and acquisition of land, which need to be undertaken prior to submission of a school facilities project application. The Division will review each application for consistency with the approved LRFP, and, if approved, forward the application to the Authority which shall undertake such activities pursuant to procedures developed by the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share.

2. For districts in which the State share of final eligible costs of a school facilities project is 100 percent, the Authority shall provide the funding for these pre-development costs. For all other districts required to use the Authority, the pre-development costs shall be funded locally and the district shall comply with N.J.A.C. 6A:26-3.3 and any additional procedures established by the Authority; once these costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6A:26-3.3, the district shall receive credit toward the local share of that project.

3. Non-Abbott districts required to use the Authority shall submit to the Division a pre-development application requesting to have the Authority engage an architect in order to develop school facilities project applications for the district, including the design work required for temporary facilities that are a part of the school facilities project, and, if the Division approves the request, the cost of developing the applications shall be allocated to the applicable approved project and deemed eligible for a State share.

(d) A district that is required to use the Authority shall seek approval to acquire land from the Commissioner pursuant to N.J.A.C. 6A:26-7. The Commissioner may approve the purchase of land if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the district and the Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share. For districts in which the State share of eligible costs for the school facilities projects is 100 percent, the Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Authority. For all other districts required to use the Authority, the costs shall be funded locally and the district shall comply with N.J.A.C. 6A:26-3.13 and any additional procedures established by the Authority; once the costs have been allocated to the applicable school facilities project and that project has been approved pursuant to N.J.A.C. 6A:26-3.3, the district shall receive credit toward the local share of that project.