

CHAPTER 33

P.L. 2000, C.72, SECTION 6 DEMONSTRATION PROJECTS

Authority

P.L. 2000, c.72, §§ 6 and 26b.

Source and Effective Date

R.2002 d.9, effective December 11, 2001.
See: 34 N.J.R. 307(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, expires on June 9, 2003. See: 34 N.J.R. 3495(a).

Chapter Historical Note

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, was adopted as special new rules by R.2002 d.9, effective December 11, 2001 (to expire December 11, 2002). See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:33-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Economic Development Authority ("the Authority") to implement Section 6 of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-6 ("the Act"). Section 6 of the Act establishes the program and process whereby the Authority shall review and recommend up to six school facilities projects with community design features to be selected by the Treasurer to be demonstration projects.

(b) Any school district applying for designation of a school facilities project with community design features as a demonstration project shall at a minimum comply with the requirements of this chapter, as applicable.

19:33-1.2 Definitions

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

"Abbott district" means a school district as defined in section 3 of P.L. 1996, c.138 (N.J.S.A. 18A:7F-3).

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.).

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.).

"Commissioner" means the Commissioner of the New Jersey Department of Education or his or her designee.

"Community design feature" means any area, rooms, equipment, recreational area or playground included in a demonstration project which is to be used in common by students of the district and by residents of the community.

"Consultant" means a consultant, including a design consultant, engaged by the redevelopment entity for a demonstration project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services.

“Contracted party” means a consultant, contractor, and their subconsultants and subcontractors and any other party providing material or services to the redevelopment entity in connection with a demonstration project.

“Demonstration project” means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of the Act (N.J.S.A. 18A:7G-6) and this chapter.

“Department” means the New Jersey Department of Education.

“Division” means the Division of Facilities and Transportation in the New Jersey Department of Education.

“Educational adequacy” means, for purposes of a demonstration project, the suitability of a facility for the provision of instruction that will enable students to achieve the Core Curriculum Content Standards and encompass the standards established in the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26.

“Executive Director” means the Executive Director of the New Jersey Economic Development Authority.

“Facilities efficiency standards” means, for the 2000-2001, 2001-2002 and 2002-2003 school years, the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4(h) and published in the New Jersey Register. For the 2003-2004 school year and thereafter, they shall be as established in the Biennial Report published by the Department.

“Final eligible costs” means, for a school facilities project 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 N.J.S.A. 18A:7G-5; for a demonstration project, 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 any additional spaces approved by the Commissioner pursuant to N.J.S.A. 18A:7G-5, and which were reviewed by the Authority and approved by the State Treasurer pursuant to N.J.S.A. 18A:7G-6; and for districts whose district aid percentage is less than 55 percent and which elect not to have the authority construct a school facilities project final eligible costs as determined pursuant to N.J.S.A. 18A:7G-5(h)(1) and N.J.A.C. 6A:26-3.6.

“Grant” means the funds to be approved to the school district by the Authority to pay for the State share of a demonstration project pursuant to this chapter.

“Grant agreement” means the grant agreement among the Authority, school district, and redevelopment entity setting forth the contractual terms and conditions under which the Authority funds the State share.

“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 N.J.S.A. 18A:7G-5, in the case of a demonstration project, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-5 and 18A:7G-6; and in the case of a school facilities project not to be constructed by the Authority, but which shall be financed pursuant to N.J.S.A. 18A:7G-15, the total costs less the State share as determined pursuant to that section.

“Long-range facilities plan” or “LRFP” means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

“Preliminary eligible costs” means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, 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 (N.J.S.A. 40A:12A-1 et seq.).

“School 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 (N.J.S.A. 18A:7A-34 et seq.).

“School facilities project” means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital 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. To qualify as a school facilities project, the project must be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

“State share” means in the case of a demonstration project, the State’s proportionate share of the final eligible costs of the project as determined pursuant to N.J.S.A. 18A:7G-5, N.J.S.A. 18A:7G-6, and this chapter.

19:33-1.3 Disclosure and publicity

(a) All applications and submissions received by the Authority shall constitute public records of the Authority, and the Authority shall make them available to persons who request their release to the extent required by State law.

(b) Press releases and other public dissemination of information by the school district or the redevelopment entity concerning the demonstration project shall acknowledge Authority financial assistance.

19:33-1.4 Access and record retention

(a) The Authority, the Department, the New Jersey Department of Community Affairs, the Unit of Fiscal Integrity within the Office of the Attorney General, the New Jersey Department of Labor, and their duly authorized agents may, at their discretion and cost, investigate, audit, examine and inspect the activities, documents, records and accounts (pertaining to the demonstration project) of the district, the redevelopment entity, and all other parties involved in the demonstration project.

(b) The school district or the redevelopment entity shall keep those records and accounts and shall require all contracted parties to keep those records and account for the demonstration project as necessary in order to evidence compliance with the Act, the grant agreement, and all applicable regulations and requirements. Such records shall be retained for 10 years following completion of the demonstration project and any additional period required for the resolution of litigation, claims or audit findings.

SUBCHAPTER 2. DEMONSTRATION PROJECT REVIEW

19:33-2.1 Initiation of a demonstration project

(a) Any school district seeking to initiate a demonstration project shall apply, on a form provided by the Commissioner, to the Division for approval of the school facilities project, pursuant to N.J.A.C. 6A:26-3.2. In addition to the information required by N.J.A.C. 6A:26-3.2, the school district shall notify the Division of its intention to seek designation as a demonstration project for the school facilities project, describe the community design feature or features of the project, and indicate whether the school district has identified local funding for the project.

(b) After the Division has reviewed and approved the school facilities project, pursuant to N.J.A.C. 6A:26-3.3, the

school district and municipality seeking to initiate a demonstration project shall apply, on a form provided by the Authority, to the Authority for the designation of a school facilities project, contained in the district’s long-range facilities plan, to be a demonstration project. The application to the Authority shall provide evidence of the Department’s approval and determination of preliminary eligible costs of the school facilities project, pursuant to N.J.A.C. 6A:26-3.3

(c) The application for the designation of a school facilities project to be a demonstration project shall be accompanied by resolutions requesting the designation adopted by the board of education of the school district and the governing body of the municipality or municipalities in which the school district is situated. The application shall, in addition to the specific information requested, 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 and address of the redevelopment entity that the school district proposes undertake the project;
3. The qualifications of the redevelopment entity and its key personnel to provide the required services for the project;
4. The experience of the redevelopment entity and its key personnel on projects of similar scope, size and complexity as the proposed demonstration project;
5. The redevelopment entities’ proposed staffing to undertake the project and its time frame for completing the project;
6. 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 (N.J.S.A. 40A:12A-7);
7. A description of the community design features to be included in the school facilities project and the estimated costs to complete those features;
8. Identification of the source and amount of financial resources that are available to fund the community design elements of the demonstration project and to fund any costs of the demonstration project in excess of State share; and
9. Estimated budget and schedule for completion of the demonstration project.

19:33-2.2 Evaluation of a demonstration project

(a) A demonstration project evaluation committee, made up of three representatives from the Authority, shall evaluate the school district’s application 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.

1. With respect to the committee's evaluation whether the school facilities project is suitable for designation as a demonstration project, such determination shall be based upon the following factors:

i. 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;

ii. Whether the demonstration project provides significant social and economic benefits to students enrolled in the school district, the municipality, its neighborhoods and residents;

iii. Whether the demonstration project is consistent with the local development plan;

iv. The extent to which the school facilities project contains community design features which can be used by the community; and

v. Whether there exist donations from private entities for the purpose of the demonstration project.

2. With respect to the committee's determination whether the proposed redevelopment entity is suitable for designation as the entity to construct the demonstration project, such determination shall be based upon the following factors:

i. The experience of the redevelopment entity and the key personnel on projects similar in scope, size and complexity;

ii. The qualifications of the redevelopment entity and the key personnel to provide the required services for the school facilities project;

iii. The approach to the school facilities project set forth by the redevelopment authority;

iv. The redevelopment entity's current capacity to carry out the construction process, including the ability to secure funds to cover costs in excess of State share; and

v. The proposed staffing.

(b) Each member of the demonstration project evaluation committee shall review the application for designation of a school facilities project as a demonstration project based upon the applicable evaluation criteria. The committee may request clarifying technical and/or organizational information. Interviews may be held. The committee shall make a recommendation to the Executive Director who then shall make a recommendation to the Authority regarding 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.

(c) If the Authority determines that either the school facilities project is not suitable for designation as a demonstration project or that the proposed redevelopment entity is not suitable as the entity to construct the demonstration project, the demonstration project shall be deemed to be denied, and the school district and the Division will be promptly notified in writing of the reasons for the denial.

(d) If the Authority determines that the redevelopment entity selected by a school district is not suitable to construct the demonstration project, the Authority shall notify both the school district and the Division, and the school district may select another redevelopment entity. The school district may then reapply to the Authority to be considered for a school facilities project to be designated as a demonstration project.

(e) If the Authority determines that the school facilities project is suitable for designation as a demonstration project, such recommendation shall be forwarded to the State Treasurer for final determination of whether the school facilities project shall be designated as a demonstration project, in accordance with N.J.S.A. 18A:7G-6(d). At the same time as the Authority forwards its recommendation to the State Treasurer, it will forward its recommendation to the Urban Coordinating Council for its review and advice regarding the potential availability of funding for the demonstration project, in accordance with N.J.S.A. 18A:7G-(6)(I).

(f) Upon the Authority's receipt of the decision of the State Treasurer whether the school facilities project shall be designated as a demonstration project, the Authority shall notify the school district, the Urban Coordinating Council, and the Division of the Treasurer's decision.

(g) The Authority shall review applications from the interested school districts and municipalities in the order in which completed applications are received by the Authority.

19:33-2.3 Cost of demonstration project

(a) A school district applying for designation as a demonstration project may request inclusion in the final eligible costs of its school facilities project of all or any portion of the costs of 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.

(b) If the Division approves the inclusion of community design features as part of the school facilities project in accordance with N.J.S.A. 18A:7G-6(e), the Authority shall review the cost of the community design features approved by the Division and shall, in its recommendation to the Division on final eligible costs pursuant to N.J.S.A. 18A:7G-5, include its recommendation with respect to the cost of the community design features.

1. Upon receipt by the school district of the State Treasurer's designation of the school facilities project as demonstration project, the redevelopment entity in consultation with the school district and the Urban Coordinating Council shall prepare detailed plans and specifications and schedules which contain the redevelopment entity's estimated cost and schedule to complete the school facilities project. The redevelopment entity shall transmit the detailed plans and specifications and schedules to the Authority.

2. 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 and the Division shall be deemed to have given final approval to the project.

3. 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 Division, the Authority shall consult with the school district, the redevelopment entity and the Division and determine whether changes can be made in the school facilities project which will result in a reduction in costs while at the same time meeting the requirements of educational adequacy.

i. If these changes can be made in the school facilities project, the Authority shall recommend to the Division that final eligible costs should be calculated to equal preliminary eligible costs.

ii. If these changes cannot be made in the school facilities project, either because the additional costs are outside the control of the school district or because the additional costs are required to meet the requirements of educational adequacy, the Authority shall recommend to the Division that the preliminary eligible costs be increased accordingly.

iii. If the Authority determines that the additional costs are the result of factors that are within the control of the school district or are the result of design factors that are not required to meet the requirements of educational adequacy, the Authority shall recommend to the Division that the preliminary eligible cost be accepted.

(c) In no event may the costs of ineligible spaces be subsidized by State share of final eligible costs.

SUBCHAPTER 3. DEMONSTRATION PROJECT GRANTS

19:33-3.1 Funding in the form of a grant

(a) 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 a grant agreement between the Authority, the redevelopment entity and the school district which shall, in addition to other terms and conditions, set forth the terms for the disbursement of the State share and provide for the monitoring of construction by the Authority.

(b) Upon designation of the project as a demonstration project and determination by the Division of final eligible costs for the demonstration project, the school district as conditions of grant eligibility shall:

1. Obtain approval of the local share, if any, of the school facilities project designated as the demonstration project in accordance with N.J.A.C. 6A:26-3.7; and

2. Evidence the availability of school bonds or other funds to the Authority for expenditure as local share.

(c) Upon evidencing to the Authority satisfaction of the conditions of eligibility stated in (b) above, the school district shall be eligible to receive a grant to fund the demonstration project.

19:33-3.2 No assignment of grant agreement or grant by the school district

Neither the school district nor the redevelopment entity shall assign the grant agreement or its right to receive disbursements of the grant, except that the redevelopment entity may assign the grant agreement to another redevelopment entity upon approval of the Authority and the State Treasurer at their sole discretion. The Authority may, at any time and in its sole option, assign the grant agreement to another instrumentality of the State.

19:33-3.3 Administration and performance of grant agreements

The school district and the redevelopment entity are responsible for the administration and success of the demonstration project, and the provision of the grant by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of the demonstration project. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

19:33-3.4 Fraud and debarment

(a) The school district and the redevelopment entity shall administer funds pursuant to this chapter, the grant agreement and any contracts entered into in connection with the demonstration project free from bribery, graft and corrupt practices. The district and the redevelopment authority have the primary responsibility for the prevention and prosecution of such conduct. Upon knowledge of any allegation or evidence of such conduct, the school district or the redevelopment entity shall immediately notify the Authority and

the Unit of Fiscal Integrity within the Office of the Attorney General in writing.

(b) The redevelopment entity and its consultants or contractors shall not enter into a contract for work on a demonstration project with any person or firm which has been debarred, suspended or disqualified from State, Authority or Federal government contracting.

19:33-3.5 Noncompliance and termination

(a) In the event that the Authority determines that either the school district or the redevelopment entity is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of this chapter, it will notify the school district and the redevelopment entity of the noncompliance in writing, and, if the noncompliance is not corrected within the time period specified in the notice, in addition to any other remedies as may be provided by law or by the grant agreement, the Authority may suspend grant funds, withhold grant funds, and/or terminate the grant agreement.

(b) The parties to the grant agreement may also terminate the grant agreement, on a date and under conditions the parties shall agree upon, when all three parties agree that the continuation of the demonstration project would not produce beneficial results commensurate with the further expenditure of funds.

SUBCHAPTER 4. DISBURSEMENT OF THE GRANT

19:33-4.1 Amount of the grant

The grant shall be in the amount of the State share and may be reduced if the amount certified by the school district as the total eligible costs of the demonstration project prior to final completion and final disbursement is less than the final eligible costs.

19:33-4.2 Cost overruns

Cost overruns of the demonstration project shall be the responsibility of the school district or the redevelopment entity, as appropriate, and shall not be the responsibility of the Authority or the State. The grant shall in no case exceed the amount of the State share, and the award of the grant shall not commit the Authority or the State to award any continuation or supplemental funds to cover cost overruns of the demonstration project. There shall be no grant modification increasing the grant amount. Increased costs resulting from changes in the scope of the demonstration project shall be the sole responsibility of the school district.

19:33-4.3 Requests for disbursements

The school district shall submit written requests for disbursements to the Authority requesting that grant monies be paid by the Authority to the school district at various stages of the demonstration project. Funds may be disbursed only after the Authority has received from the school district a certification showing that there will be sufficient funds to complete the demonstration project.

19:33-4.4 Schedule of disbursements

Disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the school district and approved by the Authority for payment. Total disbursements shall not exceed the grant amount and in any case shall not exceed the State share. No disbursement of the grant shall be made until the Authority receives all documentation required for that disbursement, including all forms and information required by the Authority and completed in a manner satisfactory to the Authority.

SUBCHAPTER 5. UNDERTAKING THE DEMONSTRATION PROJECT; MAINTENANCE

19:33-5.1 Undertaking the demonstration project

The redevelopment entity shall design and construct the demonstration project pursuant to the final plans and specifications and as approved by the Department pursuant to N.J.S.A. 18A:7G-5. Any changes in the demonstration project which may impact educational adequacy (the number, size, configuration, location or use of educational spaces) shall be reviewed and approved by the Department as required under N.J.A.C. 6A:26-5 prior to such changes being made. If, during construction of the demonstration project, the school district and the redevelopment entity determine that a change in the construction contract is required, the school district shall comply with the requirements for approval of a request for a change order pursuant to N.J.A.C. 6A:26-4.9. The school district shall promptly notify the Authority in writing of events or proposed changes in the scope of the demonstration project, the schedule for completion and/or any other significant changed conditions concerning the demonstration project.

19:33-5.2 Maintenance of school facilities project

Upon completion of a demonstration project by a redevelopment entity, the school district shall submit to the Commissioner a plan to provide for the maintenance of the project and shall enter into a contract with the Authority which provides for that maintenance by the school district. The school district shall provide for the maintenance of the demonstration project at the funding levels prescribed by N.J.A.C. 6:24 as part of the district's five-year comprehensive maintenance plan, filed with the New Jersey Department of Education, Division of Facilities and Transportation, in accordance with N.J.A.C. 6:24.