*** § 1680-j. New York state higher education capital matching grant board; creation; procedure.** 1. Creation. (a) The New York state higher education capital matching grant board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this section and any other provision of law. The board shall remain in existence during the period of the New York state higher education capital matching grant program from the effective date of this section through March thirty-first, two thousand nine, or the date on which the last of the funds available for grants under this section shall have been disbursed, whichever is earlier; provided, however, that the termination of the existence of the board shall not effect the power and authority of the dormitory authority to perform its obligations with respect to any bonds, notes, or other indebtedness issued or incurred pursuant to authority granted in this section.

(b) The membership of the board shall consist of three persons appointed by the governor, of which one shall be upon the recommendation of the temporary president of the senate and one upon the recommendation of the speaker of the assembly. The term of the members first appointed shall continue until March thirty-first, two thousand five, and thereafter their successors shall serve for a term of one year ending on March thirty-first in each year. Upon recommendation of the nominating party, the governor shall replace any member in accordance with the provision contained in this subdivision for the appointment of members. The members of the board shall vote among themselves to determine who shall serve as chair. The board shall act by unanimous vote of the members of the board. Any determination of the board shall be evidenced by a certification thereof executed by all the members. Each member of the board shall be entitled to designate a representative to attend meetings of the board on the designating member's behalf, and to vote or otherwise act on the designating member's behalf in the designating member's absence. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office. A representative shall not be authorized to delegate any of his or her duties or functions to any other person.

(c) Every officer, employee, or member of a governing board or other board of any college or group or association of colleges, and every New

York state regent, every officer or employee of the board of regents or the department of education and every trustee, officer or employee of the state university of New York or the city university of New York shall be ineligible for appointment as a member, representative, officer, employee or agent of the board.

(d) The members of the board shall serve without salary or per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties pursuant to this section or other provision of law, provided however that such members and representatives are not, at the time such expenses are incurred, public officers or employees otherwise entitled to such reimbursement.

(e) The members, their representatives, officers and staff to the board shall be deemed employees within the meaning of section seventeen of the public officers law.

2. Definitions. For the purposes of this section, the following terms shall have the respective meanings:

(a) "Base grant amount" shall mean a grant equal to $17.5 million distributed equally among independent colleges, provided however that for an eligible independent college with a final fall full-time equivalent enrollment for the two thousand three--two thousand four academic year as published by the state education department of less than one hundred final full-time equivalent students the base grant amount shall be one hundred thousand dollars.

(b) "Board" shall mean the New York state higher education capital matching grant board created by paragraph (a) of subdivision one of this section.

(c) "College" shall mean a public or independent college.

(d) "Endowment" shall mean the total unrestricted assets whose principal is nonexpendable and is held to the benefit of the college and invested to provide earnings for institutional use as reported within a college's independently audited financial statements as submitted to the dormitory authority. Such total shall exclude assets whose principal supports employee annuity or pension costs, or assets whose purpose is restricted to the support of the current operations of the college.

(e) "Full-time equivalent students" shall mean a college's final fall

full-time equivalent enrollment for the two thousand three-two thousand four academic year as published by the state education department.

(f) "Independent college" shall mean each independent not-for-profit institution of higher education, as defined in subdivision two of section sixty-four hundred one of the education law.

(g) "Non-state funds" shall mean any funds received no earlier than one hundred eighty days before the effective date of this section, except state funds, accessible by the college for the project including, but not limited to, federal funds, local funds, private funds, and in-kind contributions provided, however that public colleges may not use funds resulting from the imposition of student tuition or fees as non-state funds.

(h) "Project" shall mean the design, acquisition, reconstruction, rehabilitation, or equipping of a facility on or near a college campus within the state of New York, including critical academic facilities, economic development and/or high technology projects, and urban renewal and/or historical preservation projects that would enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding such college campus.

(i) "Public college" shall mean each component of the state university, as defined in subdivision three of section three hundred fifty-two of the education law and in subdivision two of section sixty-three hundred one of the education law and each senior college and community college of the city university of New York, as defined in subdivisions four and five of section sixty-two hundred two of the education law.

(j) "Total academic square footage amount" shall mean an amount equal to the product of (i) 26.25 million dollars for the state university of New York or 17.5 million dollars for the city university of New York, multiplied by (ii) the eligible college's proportion of the total square footage of academic facilities operated by all components of the state university of New York, as defined in subdivision three of section three hundred fifty-two and in subdivision two of section sixty-three hundred one of the education law or all senior colleges and community colleges of the city university of New York, as defined in subdivisions four and five of section sixty-two hundred two of the education law,

respectively.

(k) "Total full-time equivalent amount" shall mean an amount equal to the product of (i) 78.75 million dollars for independent colleges or 52.5 million dollars for colleges of the state university of New York or thirty-five million dollars for colleges of the city university of New York, multiplied by (ii) the eligible college's proportion of the total full-time equivalent students for all eligible independent colleges, all components of the state university of New York, as defined in subdivision three of section three hundred fifty-two and in subdivision two of section sixty-three hundred one of the education law, or all senior colleges and community colleges of the city university of New York, as defined in subdivisions four and five of section sixty-two hundred two of the education law, respectively, and calculated from an eligible college's final fall full-time equivalent enrollment for the two thousand three--two thousand four academic year as published by the state education department.

(l) "Total TAP expenditure amount" shall mean an amount equal to the product of (i) the product of forty-five percent of one hundred seventy-five million dollars for independent colleges or the product of twenty-five percent of one hundred five million dollars for colleges of the state university of New York or the product of twenty-five percent of seventy million dollars for colleges of the city university of New York, multiplied by (ii) an eligible college's proportion of the total funding received under section six hundred sixty-seven of the education law by all eligible independent colleges, all components of the state university of New York, as defined in subdivision three of section three hundred fifty-two and in subdivision two of section sixty-three hundred one of the education law, or all senior colleges and community colleges of the city university of New York, as defined in subdivisions four and five of section sixty-two hundred two of the education law, respectively, as estimated by the higher education services corporation for the two thousand three-two thousand four academic year.

3. Powers, functions and duties of the New York state higher education capital grant board; limitations. (a) The New York state higher education capital grant board shall have the power and it shall be its duty to approve or deny applications received from colleges for higher

education capital matching grants. In making such determination, the board shall verify that the criteria set forth in paragraph (e) of subdivision four of this section have been met. If necessary, the board may request additional information from the college when making such determination.

(b) Within amounts appropriated therefor, the board is hereby authorized and directed to award matching capital grants totaling three hundred fifty million dollars. The public college sector and the independent college sector shall each be eligible to receive grants totaling not more than one hundred seventy-five million dollars. Each public college and independent college shall be eligible for a grant award amount as determined by the calculations pursuant to subdivision five of this section. In addition, such public colleges and independent colleges shall be eligible to compete for additional funds pursuant to paragraph (h) of subdivision four of this section.

(c) The board shall approve or disapprove the methodology and the resulting matching ratios developed by the dormitory authority pursuant to paragraph (c) of subdivision four of this section.

(d) The board shall approve or deny applications for waivers of the standard matching requirement under paragraph (d) of subdivision four of this section.

4. New York state higher education capital matching grant program administration and financing.

(a) The dormitory authority is hereby authorized and directed to administer the New York state higher education capital matching grant program.

(b) The dormitory authority shall serve as staff to the New York state higher education capital matching grant board, including, with the cooperation of any other state agency, the preparation of information which would assist the board in carrying out its duties.

(c) The dormitory authority of the state of New York shall develop a methodology to determine the required non-state funds contribution for colleges. Such methodology shall consider endowment per full-time equivalent student and tuition and fees. Such methodology shall require a greater contribution from those colleges with greater fiscal resources as measured by endowment per full-time equivalent student and tuition

and fees. For public colleges the numerator in the matching ratio of non-state funds to grant award amount shall not be greater than two or less than 0.5 and the denominator shall be equal to one for public community colleges, the numerator in the matching ratio of non-state funds to grant award amount shall not be greater than one or less than 0.5 and the denominator shall be equal to one; and for independent colleges the numerator in the matching ratio of non-state funds to grant award amount shall not be greater than three or less than 0.5 and the denominator shall be equal to one. Such methodology and the resulting matching ratios shall be submitted to the board for approval within thirty days after the effective date of this section and shall be made available to potential applicants once approved.

(d) The standard matching requirement for the purposes of determining a college's required non-state funds contribution shall be as provided in this paragraph. For public colleges the numerator in the standard matching requirement of non-state funds to grant award amount shall be equal to two and the denominator shall be equal to one for public community colleges the numerator in the standard matching requirement of non-state funds to grant award amount shall be equal to one and the denominator shall be equal to one; and for independent colleges the numerator in the standard matching requirement of non-state funds to grant award amount shall be equal to three and the denominator shall be equal to one. Colleges may apply for a waiver of such standard matching requirement. If such waiver is approved by the board, the required non-state funds contribution shall be determined by the methodology set forth in paragraph (c) of subdivision four of this section.

(e) The dormitory authority shall develop a standard application for such grants. Such application shall require colleges to provide, at a minimum, the following:

(i) The amount of grant request, such request not to exceed the eligible grant award amount, as provided for in subdivision five of this section. No more than three and one-half of one percent of any capital matching grant issued under this program may be allocated to any college or to any subsidiary or organization associated therewith for purposes which may include, but not be limited to, any direct or indirect costs of administering the program not contained in the application requesting such capital matching grant, provided however, that no monies granted

under the program shall be used to supplant any direct or indirect costs of the grant recipient;

(ii) A statement that the proposed project would enhance the programmatic offerings or the student life at the college or provide economic development benefits to the surrounding area;

(iii) Whether the project is eligible for funding under the state university or city university capital plan;

(iv) Whether the project has the participation and financial support of a consortium of colleges and/or public or private partnerships;

(v) A detailed description of the project, including projected costs including the sources and uses of funds, completion timeline, and funds necessary at each stage of project completion;

(vi) A description of the type or types of non-state funds to be utilized and the source of such funds;

(vii) Information to demonstrate the ability to access sufficient non-state funds to meet the matching ratio requirement, as provided for in paragraph (c) of this subdivision or the standard matching requirement as provided for in paragraph (d) of this subdivision;

(viii) A statement that as of the effective date of this section, construction had not begun and equipment had not been purchased for such project;

(ix) A statement whether a recurring source of revenue shall be available to support facility operations and maintenance for the project that the capital matching grant is funding; and

(x) A statement whether, the project has received all necessary regulatory approvals or can demonstrate a reasonable expectation that such approvals will be secured.

(f) Upon receipt of a matching grant application, the dormitory authority shall review such grant application for technical sufficiency and compliance with the application criteria as provided for in paragraph (e) of this subdivision. If necessary, the dormitory authority may request additional information from the applicant. When the application is complete, the dormitory authority shall submit such application with an analysis to the capital grant board for its approval or denial.

(g) In order to be eligible for such grants, colleges must provide notification to the dormitory authority of an intent to apply for a

grant no later than March thirty-first, two thousand seven and must apply for such grant no later than March thirty-first, two thousand eight.

(h) If a college does not apply for a grant by March thirty-first, two thousand eight, funds associated with such potential grant shall be awarded, on a competitive basis, to other colleges. Public colleges shall be eligible to apply for unutilized public college grants within their respective systems and independent colleges shall be eligible to apply for unutilized independent college grants. The dormitory authority shall develop a request for proposals and application process, in consultation with the board, for such grants and shall develop criteria, subject to review by the board, for the awarding of such grants. Such criteria shall incorporate the matching criteria contained in paragraph (c) of this subdivision, and the application criteria set forth in paragraph (e) of this subdivision. The dormitory authority shall require all applications in response to the request for proposals to be submitted by September first, two thousand eight, and the board shall act on each application for such matching grants by November first, two thousand eight.

(i) The dormitory authority shall develop a model contract provision to be used in any contract which involves a project for which a college has received a matching grant. Such provision shall indemnify and hold the state of New York harmless from any and all claims for loss or liability alleged to have been caused or resulting from any work involving such project.

(j) (i) The dormitory authority is hereby authorized and directed to assist in financing higher education projects by providing to eligible colleges higher education capital matching grants that have been approved by the New York state higher education capital matching grant board.

(ii)(A) Notwithstanding the provision of any general or special law to the contrary, and subject to the provisions of chapter fifty-nine of the laws of two thousand and to the making of annual appropriations therefor by the legislature, in order to assist the dormitory authority in providing such higher education capital matching grants, the director of the budget is authorized in any state fiscal year commencing April first, two thousand four or any state fiscal year thereafter for a

period ending on March thirty-first, two thousand nine, to enter into one or more service contracts, none of which shall exceed thirty years in duration, with the dormitory authority, upon such terms as the director of the budget and the dormitory authority agree.

(B) Any service contract entered into pursuant to clause (A) of this subparagraph or any payments made or to be made thereunder may be assigned and pledged by the dormitory authority as security for its bonds, notes, or other obligations.

(C) Any such service contracts shall provide that the obligation of the director of the budget or of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision in the event the dormitory authority assigns or pledges the service contract payments as security for its bonds, notes, or other obligations and shall be deemed executory only to the extent monies are available and that no liability shall be incurred by the state beyond the monies available for the purpose, and that such obligation is subject to annual appropriations by the legislature.

(D) Any service contract or contracts entered into pursuant to this subdivision shall provide for state commitments to provide annually to the dormitory authority a sum or sums, upon such terms and conditions as shall be deemed appropriate by the director of the budget, to fund the principal, interest, or other related payments required for any bonds, notes, or other obligations of the dormitory authority issued pursuant to this section.

(iii)(A) To obtain funds for the purposes of this section, the authority shall have power from time to time to issue negotiable bonds or notes. Unless the context shall clearly indicate otherwise, whenever the words "bond" or "bonds" are used in this section, such words shall include a note or notes of the authority.

(B) The dormitory authority shall not issue any bonds or notes in an amount in excess of three hundred fifty million dollars for the purposes of this section; excluding bonds or notes issued to fund one or more debt service reserve funds, to pay costs of issuance of such bonds, and bonds or notes issued to refund or otherwise repay such bonds or notes previously issued. Except for purposes of complying with the internal revenue code, any interest on bond proceeds shall only be used to pay

debt service on such bonds.

(C) In computing for the purposes of clause (B) of this subparagraph, the aggregate amount of indebtedness evidenced by bonds and notes of the dormitory authority issued pursuant to this title, there shall be excluded the amount of such indebtedness represented by such bonds or notes issued to refund or otherwise repay bonds or notes; provided that the amount so excluded under this clause may exceed the principal amount of such bonds or notes that were issued to refund or otherwise repay only if the present value of the aggregate debt service on the refunding or repayment bonds or notes shall not have at the time of their issuance exceeded the present value of the aggregate debt service of the bonds or notes they were issued to refund or repay, such present value in each case being calculated by using the effective interest rate of the refunding or repayment bonds or notes, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds or notes from the payment date thereof to the date of issue of the refunding or repayment bonds or notes and to the price bid therefor, or to the proceeds received by the dormitory authority from the sale thereof, in each case including estimated accrued interest.

(D) The state of New York hereby covenants with the purchasers, holders, and owners from time to time of the bonds of the authority issued pursuant to this section that it will not, subject to the provisions of clause (C) of subparagraph (ii) of this paragraph, repeal, revoke, rescind, modify, or amend the provisions of this section which relate to the making of annual service contract payments to the authority with respect to such bonds as to limit, impair, or impede the rights and remedies granted to bondholders under this title or otherwise diminish the security pledged to such purchasers, holders, and owners or significantly impair the prospect of payment of any such bond.

(iv) In addition to the authority with respect to financing higher education projects provided to the dormitory authority in subparagraph (iii) of this paragraph, the dormitory authority is hereby authorized to finance that portion of any higher education project approved to receive a higher education capital matching grant that is in excess of the amount of such grant and which shall be the non-state funds portion of the cost of such project to the same extent and under the same powers

and procedures as if such project were named in paragraph (b) of subdivision two of section sixteen hundred seventy-six of this title and in subdivision one of section sixteen hundred eighty of this title.

5. Limitation on awards. Colleges eligible for participation in the higher education capital matching grants program pursuant to this section shall be eligible to receive a higher education capital matching grant pursuant to the following calculations:

(a) Each independent college shall be eligible to receive a grant equal to the sum of its total full-time equivalent amount, its total TAP expenditure amount and its base grant amount; and

(b) Each public college shall be eligible to receive a grant equal to the sum of its total full-time equivalent amount, its total TAP expenditure amount and its total academic square footage amount.

Provided, however, that an Independent non-profit comprehensive, non-traditional, non-instructional assessment institution whose external degree programs only validated a candidate's education experience and granted over four thousand degrees in the two thousand one--two thousand two academic year shall be eligible to receive a base grant equal to the product of (i) $17.5 million dollars; and (ii) its proportion of the total number of non-associate degrees conferred by all colleges and universities statewide for the two thousand one--two thousand two academic year as reported by the state education department.

The dormitory authority shall calculate the amount of the grants that each independent college and each public college shall be eligible to receive in accordance with the limitations set forth in this subdivision as soon as practicable but no more than forty-five days after the effective date of this section and shall make such information conveniently available to the colleges including by the use of electronic dissemination methods.

6. Contracts. (a) Each contract entered into by a college, which involves a project for which the college has received a capital grant award, shall be subject to the approval of the comptroller and, as to form and manner of execution, by the attorney general of the state of

New York.

(b) Each contract entered into by a college shall include the provision as provided for in paragraph (i) of subdivision four of this section, which shall indemnify and hold the state of New York harmless from any and all claims for loss or liability alleged to have been caused or resulting from any work involving such project.

(c) Each contract entered into by a public college or made in connection with a capital matching grant made to a consortium of colleges that includes a public college regardless of which member of the consortium shall be the contracting party shall be awarded by a competitive process and shall be deemed a state contract for the purposes of article nine of the state finance law, provided, however, that any contract which would not be a state contract except for the application of this paragraph shall not be subject to section one hundred thirty-five of the state finance law.

(d) Each contract entered into by a public college or made in connection with a capital matching grant made to a consortium of colleges that includes a public college regardless of which member of the consortium shall be the contracting party shall require that the work covered by such contract shall be deemed "public work" and subject to and performed in accordance with articles eight, nine and ten of the labor law and, for the purposes of article fifteen-A of the executive law, the contracting party under such contracts shall be deemed a state agency as that term is defined in such article and such contracts shall be deemed state contracts within the meaning of that term as set forth in such article.

(e) Independent colleges whose contracts are not state contracts for the purposes of article nine of the state finance law and article fifteen-A of the executive law and whose projects under such contracts do not involve public work so as to be subject to articles eight, nine, and ten of the labor law, shall execute an undertaking, as a condition of receiving any capital matching grant, to voluntarily comply with article nine of the state finance law, except section one hundred thirty-five of such law, article fifteen-A of the executive law, and articles eight, nine, and ten of the labor law so far as the same would be applicable to the contracts of a public college, and to be subject to the enforcement provisions of said articles to the same extent.

7. Reporting. (a) The New York state higher education capital matching grant board shall, annually on or before December first, prepare and submit an annual report to the governor and the chair of the assembly ways and means committee and the chair of the senate finance committee. Such report shall contain at a minimum the following information: (i) a list of all applications filed by any college for a grant under the higher education capital grant program including the name of the applying college, a brief description of the project, and the amount of the grant requested; (ii) a list of the applications granted by the board specifying the amount of the grant approved if such amount is different from the amount applied for; and (iii) a statement showing the dollar amount of all grants approved by the board and the dollar amount of the remaining capacity for future grants.

(b) Any eligible institution receiving a grant pursuant to this article shall report to the dormitory authority no later than June first, two thousand seven, on the use of funding received and its programmatic and economic impact. The dormitory authority shall submit a report no later than November first, two thousand seven to the board, the governor, the director of the budget, the temporary president of the senate, and the speaker of the assembly on the aggregate impact of the higher education capital matching grant program. Such report shall provide information on the progress and economic impact of each project.

* NB There are 2 § 1680-j's