§ 1689. Board of cooperative educational services school facilities. 1. For all the purposes of this section sixteen hundred eighty-nine the term "board of cooperative educational services school facilities" shall mean any interest in real property, any building, library, laboratory, classroom, or other building or structure essential, necessary or useful in a career education or other program of any board of cooperative educational services.

2. a. The authority is hereby authorized and empowered upon application of the board of cooperative educational services concerned to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip or otherwise provide a board of cooperative educational services school facility. The board for whose students any such board of cooperative educational services school facility is intended to be provided shall approve plans and specifications and the location of such board of cooperative educational services facilities. The authority shall have the same power and authority in respect to such board of cooperative educational services school facilities erected pursuant to this section that it has relative to dormitories.

b. The authority shall have power to acquire, in the name of the authority, on terms necessary or convenient by purchase, condemnation, gift or devise, real property, leasehold interest in real property or rights of easement in relation to the board of cooperative educational services school facilities erected pursuant to this section.

c. When authorized by the voters of the board of cooperative educational services, any board of cooperative educational services shall have power to convey to the authority real property, leasehold interest in real property or rights of easement, the title of which is vested in the board, in relation to the board of cooperative educational services school facilities to be erected pursuant to this section, and, when so authorized, any board of cooperative educational services shall have power to enter into any lease or other agreement with the authority in connection with the provision of a board of cooperative educational services school facility.

d. The authority shall have power to accept gifts of real and personal property in the name of the authority for the purposes of this section.

e. The authority may lease any such board of cooperative educational services school facilities to the board for which such board of cooperative educational services school facilities are erected. At such time as the liabilities of the authority incurred for any such board of cooperative educational services school facilities have been discharged and the bonds of the authority issued therefor have been paid or such liabilities and bonds have otherwise been discharged, the authority shall transfer title to all real and personal property of such board of cooperative educational services school facilities vested in the authority to the board to which such board of cooperative educational services school facilities are then leased, provided, however, that if at such time the board of cooperative educational services school facilities are not located in any board or any successor thereto in the state of New York, then such title shall vest in the people of the state of New York.

f. Any lease of a board of cooperative educational services school facility authorized by this section may contain provisions which shall be a part of the contract with the holder of the bonds of the authority issued for such board of cooperative educational services school facility, as to

(1) pledging all or any part of the moneys, income or revenues of the lessee or other personal property of the lessee, to secure payments required under the terms of such lease;

(2) the setting aside of reserves and the creation of special funds and the regulation and disposition thereof;

(3) the procedure, if any, by which the terms of such lease may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(4) vesting in a trustee or trustees such specified properties, rights, powers and duties as shall be deemed necessary or desirable for the security of the holders of the bonds of the authority issued for such board of cooperative educational services school facilities;

(5) the obligations of the lessee with respect to the replacement,

reconstruction, maintenance, operations, repairs and insurance of such board of cooperative educational services school facilities;

(6) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the lessee, and providing for the rights and remedies of the authority and of its bondholders in the event of such default;

(7) any other matters, of like or different character, which may be deemed necessary or desirable for the security or protection of the authority or the holders of its bonds.

3. Whenever the authority under the provisions of this section undertakes to construct or otherwise provide a board of cooperative educational services school facility and to lease the same to a board of cooperative educational services, such lease shall be the general obligation of the board and any successor thereto. Such lessee shall be responsible for the direct costs of operation, maintenance, repair and replacement of such board of cooperative educational services school facility, and in addition shall be responsible for the over-all supervision of each board of cooperative educational services school facility, for the overhead and general administrative costs of the lessee which are incurred because of such board of cooperative educational services school facility and for the integration of the operation of each such board of cooperative educational services school facility into the lessee's educational program.

4. All the provisions of this title four not inconsistent with the provisions of this section sixteen hundred eighty-nine shall be applicable with respect to any bonds of the authority issued to obtain funds for any purpose authorized under this section sixteen hundred eighty-nine and with respect to the powers of the authority hereunder.

5. To obtain funds for the purposes of this section, the authority shall have power from time to time to issue negotiable bonds or notes of the authority. 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.

6. Any pledge of or other security interest in moneys, earnings, income, revenues, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time when such pledge or other security interest attaches, without any physical delivery of the collateral or further act. The lien of any such pledge or other security interest shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or other security interest is created nor any financing statement need be recorded or filed. This subdivision shall apply notwithstanding the provisions of the uniform commercial code.

7. Whenever the authority undertakes under the provisions of this section to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip or otherwise provide a board of cooperative educational services school facility, each board of cooperative educational services in connection with which such board of cooperative educational services school facility is built is authorized to assign and pledge to the authority a sufficient portion of any and all public funds to be apportioned or otherwise to be made payable by the state of New York to the board of cooperative educational services to cover the payments required under the lease between the authority and the board of cooperative educational services. All state and local officials concerned are hereby authorized to apportion and pay all such funds so assigned and pledged to the authority. Such assignment and pledge by any board of cooperative educational services shall be irrevocable and shall continue until the date on which the liabilities of the authority and any such board of cooperative educational services school facilities have been discharged and the bonds of the authority issued therefor have been paid or such bonds have otherwise been discharged.

8. No board of cooperative educational services school facility shall be constructed or otherwise provided by the authority under the provisions of this section unless approved by the voters of the board of cooperative educational services and unless any and all necessary

approvals of the commissioner of education under section four hundred eight of the education law have been obtained.

9. Any payment required to be made by a board of cooperative educational services to the authority shall be deemed an administrative or capital expense within the meaning of section nineteen hundred fifty of the education law.

10. a. The total amount payable annually to the authority by a board shall be certified by the authority to the commissioner of education and the authority shall annually prepare and certify to the commissioner of education a statement of the total amount necessary to be paid by all boards of cooperative educational services for the ensuing school year.

b. The commissioner of education shall include in the certificate which he files with the state comptroller showing the amount of state funds apportioned to the board of cooperative educational services a statement showing the amount to be owed by the board to the authority for the ensuing school year.

c. The comptroller shall deduct from any state funds to become due to any such board of cooperative educational services an amount equal to the amount required to be paid by such board to the authority as shown by the certificate of the commissioner of education filed with the comptroller as required by paragraph b of this subdivision.

d. The state of New York hereby covenants with the purchasers, holders and owners from time to time of the bonds of the authority that it will not repeal, revoke, rescind, modify or amend the provisions of this subdivision ten so as to limit, impair or impede the rights and remedies granted hereby or otherwise diminish the security pledged to such purchasers, holders and owners or significantly impair the prospect of payment of any such bond, nor shall any lien or charge on or pledge, assignment, diversion, withholding, payment or other use of or deduction from any state funds due or to become due or appropriated to or to be appropriated to or to be apportioned and paid to any board of cooperative educational services be created which is prior in time or

superior in right to the deduction required by paragraph c of this subdivision; provided, however, that nothing herein contained shall be deemed or construed as requiring the state to continue the payment of the state aid or assistance to any board of cooperative educational services or as limiting or prohibiting the state from repealing or amending any law theretofore or hereafter enacted providing for the payment or apportionment of state aid to a board of cooperative educational services or the manner, time or amount thereof.

11. In the event that the amount paid to the authority pursuant to the provisions of subdivision ten of this section is insufficient to meet any payment required by the board of cooperative educational services to the authority any such amount still due and owing shall be paid directly to the authority by the board.

12. (a) After: (i) a proposition has been approved by the voters of a board of cooperative educational services for the construction or providing by the authority of a board of cooperative educational services school facility or facilities and any and all necessary approvals of the commissioner of education have been obtained, all as provided by subdivision eight of this section; (ii) an agreement and a lease have been executed by and between such board of cooperative educational services and the dormitory authority relating to the construction or otherwise providing of such board of cooperative educational services school facility or facilities, the leasing thereof by the dormitory authority to such board of cooperative educational services and the financing thereof by the dormitory authority by the issuance of its obligations; and (iii) the dormitory authority has adopted its resolution authorizing obligations of the dormitory authority for such purpose, the dormitory authority may determine to provide that the validity of such agreement, lease, resolution of the authority authorizing the issuance of obligations and the obligations authorized and issued pursuant thereto may be contested only if:

1. Such agreement, lease, resolution and the obligations to be issued pursuant to such resolution are authorized for a board of cooperative educational services school facility or facilities for which the board

of cooperative educational services and the dormitory authority are not authorized to execute an agreement and a lease or for which the dormitory authority is not authorized to issue obligations, or

2. The provisions of law which should be complied with at the date of the publication of the notice hereinafter provided for, are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

3. Such obligations are authorized in violation of the provisions of the constitution.

(b) If the dormitory authority shall determine to utilize the provisions of this subdivision, the dormitory authority shall publish or shall cause a notice to be published in the manner hereinafter provided, which notice shall be in substantially the following form:

The (here insert the name of the board of cooperative educational services) and the dormitory authority of the state of New York have entered into an agreement dated as of the ----- day of -----, 19---, and a lease dated as of the ----- day of -----, 19---, and the dormitory authority has adopted a resolution on the ----- day of -----, 19---, and the validity of such agreement, lease, resolution and the obligations issued pursuant thereto may be hereafter contested only if such agreement, lease, resolution and the obligations issued pursuant thereto were authorized for a board of cooperative educational services school facility or facilities for which such board of cooperative educational services and the dormitory authority are not authorized to enter into an agreement, lease and for which the dormitory authority is not authorized to issue such obligations or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the constitution.

By such agreement and lease such board of cooperative educational

services and the dormitory authority have agreed that the dormitory authority shall provide the board of cooperative educational services school facility or facilities described therein, that the dormitory authority shall lease the same to such board of cooperative educational services, which board of cooperative educational services shall pay annual rentals as agreed upon in such lease sufficient to pay the principal of and interest on the obligations of the authority issued to finance such facility or facilities, the amounts required by such resolution to establish and maintain the reserve funds, if any, required by such resolution, any expenditures of the authority for insurance, fees and expenses of auditing and fees and expenses of the trustee, all as required by the resolution, all other expenditures reasonably and necessarily incurred by the authority by reason of its ownership, financing and leasing of the project and the annual administrative fee payable to the authority. Such resolution authorizes an issue of $----- obligations of the authority, which amount is equal to the sum of: (i) the estimated cost of construction and equipment of such board of cooperative educational services school facility or facilities after first deducting federal grants-in-aid to be received; (ii) the amount required by the authority, if any, to be paid to reserve funds created by the resolution of the authority authorizing the bonds; and (iii) the amounts required to make payments for legal, financing, administrative and other costs and expenses of the authority in connection with such board of cooperative educational services school facilities and the financing thereof.

Executed counterparts of such agreement and lease and a certified copy of the resolution of the dormitory authority authorizing such obligations are on file in the office of the clerk of such board of cooperative educational services at (here insert the address of the office of such clerk) and at the office of the dormitory authority (here insert the address of such office) and such documents may be inspected at either of said offices during regular business hours.

DORMITORY AUTHORITY OF THE STATE OF
NEW YORK and (here insert the name of the
board of cooperative educational services)

(c) The notice described in subparagraph (b) of this subdivision shall

be published once in each of two newspapers, if there shall be two, or in one newspaper, if there shall be but one, having general circulation within the board of cooperative educational services, but if no newspaper shall then have general circulation therein, such notice shall be posted in at least twenty of the most public places in said board of cooperative educational services.

(d) After the publication of such notice, the validity of the obligations authorized thereby may be contested only if:

1. Such agreement, lease, resolution of the dormitory authority authorizing the obligations, and the obligations of the dormitory authority were authorized for a board of cooperative educational services school facility or facilities for which such board of cooperative educational services and the dormitory authority were not authorized to execute an agreement and a lease or for which the dormitory authority is not authorized to issue obligations, or

2. The provisions of law which should be complied with at the date of publication of the notice hereinabove provided for, are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

3. Such obligations are authorized in violation of the provisions of the constitution.

(e) If an action, suit or proceeding contesting the validity of such agreement, lease, resolution authorizing the obligations or the obligations authorized thereby is commenced within twenty days from the date of publication of such notice, the court in which such action, suit or proceeding is commenced shall determine whether or not such agreement, lease, resolution and obligations were authorized for a board of cooperative educational services school facility or facilities for which the board of cooperative educational services and the dormitory authority were authorized to enter into an agreement and a lease and for which the authority was authorized to issue obligations or the provisions of law which should have been complied with were substantially complied with. The court may determine that the provisions

of law which should have been complied with were substantially complied with if:

1. The aggregate amount of obligations authorized does not exceed an amount equal to the sum of; (i) the estimated cost of construction and equipment of such a board of cooperative educational services school facility or facilities after first deducting federal grants-in-aid to be received; (ii) the amount, if any, required by the authority by the resolution to be paid to reserve funds created by the resolution of the authority authorizing the obligations; and (iii) the amounts estimated by the authority to be required to make payments for legal, financing, administrative and other costs and expenses of the authority in connection with the providing of the facilities and the financing thereof.

2. Such agreement and lease were executed after a proposition authorizing the same had been submitted to and approved by a majority of the duly qualified voters of such board of cooperative educational services.

(f) Such determination of the court as described in subparagraph (e) hereof may be arrived at notwithstanding any irregularity or failure to observe a technicality in:

1. The form of such proposition approved by the duly qualified voters of such board of cooperative educational services.

2. The notice of the meeting at which such proposition was submitted.

3. The time or manner of the publication of such notice.

4. The conduct of the meeting at which such proposition was adopted.

5. Like matters in such proceedings.

(g) If the dormitory authority shall have utilized the provisions of this subdivision, the obligations of the authority issued pursuant to the resolution authorizing the same shall contain a recital substantially to the effect that the procedure for the validation of

such bonds set forth in this section have been complied with and such recital shall bind the board of cooperative educational services and the dormitory authority, and twenty days after such notice shall have been published and after such obligations have been purchased in good faith and for fair value by any person, the validity of such agreement, lease, resolution and of the obligations issued pursuant to such resolution shall not be questioned by such board of cooperative educational services or by any taxpayer thereof in any court.

(h) If the dormitory authority and such board of cooperative educational services shall deem it necessary to increase the amount of obligations of the authority to be issued in connection with the construction or providing of a board of cooperative educational services school facility or facilities and shall have authorized the issuance of such additional obligations by the execution of a supplemental agreement and a supplemental lease between the dormitory authority and such board of cooperative educational services and the authority has adopted a supplemental resolution authorizing such additional obligations, the provisions of this subdivision also shall be applicable to such supplemental agreement, supplemental lease, supplemental resolution and additional obligations authorized and issued pursuant thereto.

13. No authorization given by the voters of a board of cooperative educational services prior to April first, nineteen hundred seventy-six of a lease or other agreement with the authority in connection with the provision of a board of cooperative educational services school facility shall be held invalid by reason of any irregularity or failure to observe a technicality in:

a. The form of such proposition approved by the duly qualified voters of such board of cooperative educational services,

b. The notice of the meeting at which such proposition was submitted,

c. The time or manner of the publication of such notice,

d. The conduct of the meeting at which such proposition was adopted,

e. Like matters in such proceedings, in any action or proceeding commenced more than two years after the date of approval by such voters of the proposition authorizing such lease or other agreement. The foregoing limitation shall not be construed as extending any limitation period otherwise provided by law or authorizing any action or proceeding.