SPONSOR: Sen. McDowell & Rep. Osienski
Sens. McBride, Poore, Brown, Lockman, Sokola, Sturgeon; Reps. Baumbach, Bolden, Brady, Heffernan, Jaques, Ramone

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 50

AN ACT TO AMEND TITLE 14 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT OF A COMMUNITY COLLEGE INFRASTRUCTURE FUND.

WHEREAS, Delaware's Community College System, operated by Delaware Technical and Community College ("the College"), consists of over 40 buildings totaling 1.3 million square feet of space and is situated on approximately 352 acres of land across 4 campuses located in each county of the State and the City of Wilmington; and

WHEREAS, today, 79% of the College's facilities are more than 25 years old and, by 2020, 85% of the College's facilities will be more than 25 years old and more than 50% will be greater than 40 years old; and

WHEREAS, the replacement cost of the College's aging infrastructure is approximately $400 million. According to industry standards, the College should be re-investing $12 million annually to maintain the College's existing infrastructure. However, over the past 14 years, the College has received an average of only $4.9 million for maintenance and minor capital improvements ("MCI"), thereby resulting in $89.8 million in deferred maintenance alone. If not addressed, deferred maintenance is projected to exceed $100 million by 2020; and

WHEREAS, in addition to deferred maintenance, the College has a critical need to build, renovate, or expand its academic and student support facilities in each county and the City of Wilmington at a current cost of $69.8 million so that it can continue to address Delaware's economic and workforce development needs; and

WHEREAS, the College served over 33,500 Delawareans in its academic degree (credit) and workforce development (non-credit) programs in 2018, of which over 87% stayed and worked in Delaware after graduation and were hired by over 620 Delaware businesses in 2018; and

WHEREAS, the College receives students from all 19 Delaware school districts and has 269 transfer agreements with four-year colleges and universities; and

WHEREAS, a recent independent study revealed that the College's students who entered the workforce added over $976.4 million to the state economy in 2014, and that every $1 spent on the College returned $3.20 in economic benefit to Delaware; and

WHEREAS, the College is in dire need of a stable and predictable funding source to finance its capital projects and deferred maintenance to ensure its continued contribution to Delaware's economy.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 7422(a)(2), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows :

§ 7422. Limitations on debt and other obligations.

(a) For the purposes of this section:

(1) "Aggregate maximum annual payments" on all tax supported obligations and all Transportation Trust Fund debt obligations outstanding, ~~(plus~~ plus certain lease obligations as described in subsection (c) of this ~~section)~~ section, means the maximum payments due with respect to all such obligations in any 1 fiscal year. In any case where the terms of any such obligation include limitations on the incurrence of additional debt, the determination of maximum annual payments with respect to such obligation shall be determined consistently with those terms.

(2) a. "Tax supported obligations of the State" means all of the following:

~~(A)~~ 1. All obligations of the State or any agency or authority thereof to which the State's full faith and credit is pledged to pay directly or by guarantee ~~(provided~~, provided that any such guaranteed obligations shall be included only to the extent any such obligations are in ~~default); and~~ default.

~~(B) all~~ 2. All obligations of the State or any agency or authority thereof extending beyond 1 year with respect to the lease, ~~occupancy~~ occupancy, or acquisition of property which are incurred in connection with debt financing transactions ~~(e.g.,~~ , such as certificates of ~~participation)~~ participation, and which are payable from taxes, fees, permits, ~~licenses~~ licenses, and fines imposed or approved by the General Assembly.

b. "Tax supported obligations of the State" do not include any of the following:

~~(A)~~ 1. Obligations incurred to acquire a like principal amount of full faith and credit obligations issued by a local school district to the extent such local school district obligations are not in ~~default;~~ default.

~~(B) any~~ 2. Any obligations of the Delaware Transportation ~~Authority;~~ Authority.

~~(C) any~~ 3. Any tax or other revenue anticipation notes or bonds of the ~~State; or~~ State.

~~(D) any~~ 4. Any obligations to the extent that the debt service with respect thereto is reasonably expected to be offset ~~(as determined~~ , as determined by the Secretary of ~~Finance)~~ Finance, by lease payments, user fees, federal ~~grants~~ grants, or other payments from some source other than the General Fund. Such payments ~~shall~~ must be used expressly for the purpose of paying such debt ~~service;~~ service.

5. Obligations incurred to acquire a like principal amount of promissory notes or bonds issued by Delaware Technical and Community College and secured by the non-appropriated funds held in the Community College Infrastructure Fund, under Subchapter II, Chapter 91 of Title 14, as certified to the Secretary of Finance by the Chair of the Board of Trustees, in a form approved by the Secretary of Finance, to the extent such notes or bonds of the College are not in default.

(3) "Transportation Trust Fund debt obligations" means all debt obligations of the Delaware Transportation Authority, including all obligations extending beyond 1 year with respect to the lease, ~~occupancy~~ occupancy, or acquisition of property which are incurred in connection with debt financing transactions ~~(e.g.,~~ , such as certificates of ~~participation)~~ participation, and which in any case are payable from the Transportation Trust Fund. Transportation Trust Fund debt obligations do not include any obligations to the extent that the debt service with respect thereto is reasonably expected to be offset ~~(as determined~~ , as determined by the Secretary of ~~Finance)~~ Finance, by lease payments, user fees, federal ~~grants~~ grants, or other payments from some non-state source.

Section 2. Amend Chapter 91, Title 14 of the Delaware Code by designating §§ 9101 through 9112 of Title 14 as part of a new Subchapter I by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. General Provisions.

Section 3. Amend § 9101, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows :

§ 9101 Definitions.

As used in this chapter:

(1) "Board" means the Board of Trustees of the Delaware Technical and Community College.

(2) "Fund" means the Community College Infrastructure Fund.

~~(2)~~ (3) "Institution" means such institutions of higher learning as may be from time to time established by the Board.

~~(3)~~ (4) "The College" means the Delaware Technical and Community College.

Section 4. Amend Chapter 91, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Community College Infrastructure Fund.

§ 9130. Establishment of Community College Infrastructure Fund; purposes; limitations.

(a)(1) There is established within the Office of the State Treasurer a special account to be known as the Community College Infrastructure Fund, with the intent that the General Assembly fund said account by an annual appropriation of at least $10 million for the next five years. Further, it is the intent that the General Assembly fully fund the College's annual capital improvement request for Critical Capital Needs/Deferred Maintenance. At the end of five years, the College shall report on its progress in addressing its deferred maintenance needs and submit a reevaluation of the College's deferred maintenance needs to the General Assembly and the Governor. College requests for major capital construction shall continue to be funded through the annual Major Capital Improvement budgetary process.

(2) Additional non-appropriated amounts may be deposited by the College from other available sources including, but not limited to, student tuition and fees, private funds, non-state grants and federal support.

(b) The authorization amounts deposited into the Fund pursuant to § 9130(a)(1) hereof are to be used to pay all or a portion the following:

(1) Costs associated with major and minor capital improvements that the Board deems necessary for the sound expansion and development of the College, including equipping buildings and facilities, together with the incidental acquisition of land.

(2) Costs associated with the maintenance and preservation of major and minor capital improvements.

(3) Costs associated with enhancements to technology including the acquisition of computer hardware and software to support instruction, student services, and administration.

(c) The non-appropriated amounts deposited into the Fund pursuant to § 9130(a)(2) hereof are to be used for the following:

(1) Costs listed in § 9130(b) above.

(2) Principal and interest on promissory notes or bonds issued by the College under this subchapter.

(3) Expenses associated with the issuance of promissory notes or bonds by the College or any expenses associated with the issuance of bonded indebtedness by the State to acquire a like principal amount of promissory notes or bonds issued by the College and for the purpose of refunding or refinancing outstanding issues of such bonds issued by the State.

(d) No portion of the Fund may be used to pay the operating expenses of the College.

(e) The Fund may be divided into two (2) or more sub-accounts: one sub-account for the amounts deposited in the Fund that constitute authorized amounts as set forth in § 9130(a)(1); and one sub-account for the non-appropriated funds in the Fund that constitute amounts as set forth in § 9130(a)(2). Each such sub-accounts may be divided further into additional sub-accounts.

(f) The State Treasurer is authorized and directed to draw warrants or drafts on such Fund in the amount of the principal of and interest on the State bonds or other obligations incurred to acquire a like principal amount of the College's promissory notes or bonds as the same shall become due and payable, and to deposit such money, so drawn, to the credit of the General Fund of the State.

(g) Warrants or drafts on the Fund drawn by the College must be applied only for the purposes authorized by this chapter.

(h) The principal and interest on promissory notes or bonds issued by the College under this chapter shall be payable solely from amounts on deposit in the Fund that constitute non-appropriated funds pursuant to § 9130(a)(2) above and which are specifically pledged in each case by a certification from the Board, such certification to cover the sufficiency of such available non-appropriated funds to pay debt service on any such promissory notes or bonds issued hereunder.

(i) Any promissory notes or bonds issued by the College under this chapter shall bear interest at a rate equal to the rate payable on bonds of the State issued to provide the monies deposited into the Fund pursuant to § 9130(a) plus an amount to cover administrative expenses of the State in connection with such financing in an amount not exceeding one quarter of one percent per annum.

§ 9131. Power of Board to issue promissory notes or bonds.

(a) The Board may issue promissory notes or bonds payable to the State for the purpose of carrying out any plan or program for the acquisition of lands, acquisition or construction of buildings, improvements to lands or buildings, or acquisition of equipment as may be authorized by this chapter.

(b) Notwithstanding subsection (a) of this section, the Board may not issue promissory notes or bonds until the promissory notes or bonds and the corresponding plan or program under subsection (a) of this section have been authorized by the General Assembly in a bond and capital improvement act.

§ 9132. Faith and credit of the College; exemption of bonds from taxation.

The faith and credit of the College is expressly pledged for the full and complete payment of the principal of and interest on any promissory notes or bonds authorized to be issued under this chapter. Bonds or notes issued under this chapter shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof, other than the College, or a pledge of the faith and credit of the State or any such political subdivision, other than the College, but shall be

paid solely from the funds provided therefor. Bonds to be issued under this chapter are exempt from taxation, with respect to both principal and interest, by the State or any political subdivision of the State for any purpose.

§ 9133. Validity of bonds; incontestability.

When any bonds are sold and delivered under this chapter, the certification by the Board that the bonds have been issued in due compliance with this chapter is conclusive upon the College and every person of the right, power, and authority for the issuance of the bonds, the legality and validity of the bonds, and the principal debt and interest represented by the bonds. After the certification is issued, the legality and validity of the bonds may not be subject to question in any court by the College or by any person for or on its behalf. This section must be made part of the contract and obligation represented by each bond sold and delivered under this chapter.

§ 9134. Procedure governing sale of bonds to State.

The State shall purchase any bonds and/or promissory notes to be issued by the College under the authority contained in this chapter or under any other provision of law of this State at private sale. The State may require that the validity of the bonds be approved by the Attorney General or the Attorney General's designee. The Board shall cause a complete record of the proceedings taken in relation to the issuance of the bonds to be made and kept with the Board's other records.

§ 9135. Terms and form of bonds.

Bonds issued under this chapter must meet all of the following conditions:

(1) Be in such denomination, in such form, and bear such rate of interest as determined by the State under § 7506 of Title 29; provided, however, that the Board must be consulted regarding the term of such bonds.

(2) Bear interest from and after their date, payable semiannually on the days designated in the bonds.

(3) Consist of a single bond registered as to both principal and interest with the principal of the bonds payable in installments and interest on the bonds payable semiannually. The amounts of principal payable, the dates on which such payments are due, and the dates on which the interest is due must be noted on the bond form.

(4) The bonds must be payable in serial installments beginning not more than 1 year after the date of the bonds and ending not more than 20 years after such date. The amount of any installment payable in any 1 year, except the last year, must be not less than 1/20 of the aggregate principal amount of the bonds of such issue.

§ 9136. Designation, numbering, and date of bonds.

Any bonds issued under this chapter must be designated by the name of the College and the year in which the bonds are issued. The bonds must be numbered consecutively and bear the date approved by the Board. Each of the bonds must be numbered consecutively and the coupons attached to the bonds must bear the same number as the bond itself.

§ 9137. Place of payment of principal and interest.

The principal of and interest on the bonds must be payable at a state or national bank within or without the State designated by the issuing officers, as "issuing officers" is defined in § 7401 of Title 29.

§ 9138. Signing and sealing bonds.

The bonds must be signed by the president of the College, or the chair, and 1 other member of the Board. The Board may adopt a seal to be used in the execution of the bonds. The Board may, in lieu of the signatures required by this section, authorize by special resolution that the signatures of the individuals required to sign the bonds may be engraved or facsimiles of the signatures printed or otherwise transcribed upon the bonds. If such engraved or facsimile signatures are authorized and engraved, printed, or otherwise impressed upon the bonds, the signatures have the same effect as written signatures.

§ 9139. Temporary bonds.

Until bonds in definite form are prepared, the Board may cause temporary bonds with appropriate coupons to be prepared. Temporary bonds must be executed and signed as provided in §§ 9135 through 9138 of this title. Temporary bonds may be exchanged for definitive bonds at the request of the holder.

§ 9140. Cancellation and destruction of paid bonds.

After any bonds issued under the authority of this chapter or the coupons annexed to the bonds have been paid, the bonds or coupons must be immediately cancelled, a record of payment must be made, and the bonds or coupons must destroyed.

§ 9141. Replacement of lost, destroyed, or defaced bonds.

(a) Upon written request of the owner of the unmatured bond, or the owner's legal representative, successor, or assign, the Board may issue a new bond to replace an unmatured bond which has been lost, destroyed, or defaced if all of the following are provided:

(1) Proof of ownership of the unmatured bond.

(2) Proof of loss or destruction, or, in the case of a defaced bond, the bond and coupons, if any.

(3) Adequate security to indemnify the College and any bank at which the bond and coupons are payable against any loss that may be suffered on account of such replaced bond and coupons.

(4) Payment of the cost of preparation of the new bond and coupons, if any.

(b) Any new bond and coupons must be executed by the officials, including a member of the Board, in office at the time the new bond is issued and must bear the seal of the College. The coupons, if any, must be signed by the facsimile of

the signatures of the appropriate officers. The new bond must include a statement in substantially the following form: "This bond has been reissued to replace a lost, destroyed, or defaced bond."

(c) The new bond must be authorized by a resolution of the Board that must include a copy of the written request of the owner or the owner's legal representative, successor, or assign and the designation, date, maturity, interest rate, denomination, and number of the new bond.

§ 9142. Rules and regulations governing fiscal records pertaining to bonds.

The Budget Commission, established by Chapter 63 of Title 29, shall promulgate and enforce rules and regulations governing the fiscal records to be maintained by the State Treasurer and the College pertaining to bonds of such College.

Section 5. Delaware Technical and Community College shall be eligible for state matching funds to be administered by the Office of Management and Budget for minor capital improvements consistent with state matching provisions for public education as contained in §7528(b) of Title 29 of the Delaware Code. The source of local share shall include, but not be limited to, student tuition and fees, private funds and federal support. All matching funds shall be subject to appropriation by the General Assembly.

Section 6. This Act takes effect on January 1, 2020.

SYNOPSIS

Delaware's statewide community college system, operated by Delaware Technical and Community College ("the College"), plays a critical role in the State's economy by providing workforce development, vocational training, and transfer education that connects Delawareans with good paying jobs within the State and region.

This Act gives the College's Board of Trustees the authority to issue bonds to finance the cost of major and minor capital improvements, deferred maintenance, and the acquisition of related equipment and educational technology and establishes the Community College Infrastructure Fund ("the Fund") to pay the principal and interest on such bonds. Any promissory notes or bonds must be approved separately prior to issuance by the General Assembly in a bond and capital improvement act.

This Act is a substitute for and differs from Senate Bill No. 50 by deleting the property tax component and instead provides that it is the intent of the General Assembly to appropriate at least $10 million for deferred maintenance for the next 5 years to be deposited to the Fund together with such other funds as may be deposited by the College from sources including, but not limited to, tuition and fees, private funds, non-state grants and federal support.

This Act also provides a mechanism, but not an obligation, for the state to provide matching funds for minor capital improvement projects consistent with existing matching provisions for public education.

This Act also makes technical corrections.

Author: Senator McDowell