

40A:11-52 et al.
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2018 CHAPTER: 90

NJSA: 40A:11-52 et al. (Permits public-private partnership agreements for certain building and highway infrastructure projects; provides for EDA oversight.)

BILL NO: S865 (Substituted for A1299)

SPONSOR(S) Sweeney and others

DATE INTRODUCED: 1/9/2018

COMMITTEE: ASSEMBLY: ---
 SENATE: Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: 6/25/2018

 SENATE: 6/25/2018

DATE OF APPROVAL: 8/14/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S865

SPONSOR'S STATEMENT: (Begins on page 33 of introduced bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: No

 SENATE: Yes 4/5/2018
6/11/2018

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 6/21/2018
6/25/2018

LEGISLATIVE FISCAL ESTIMATE: No

A1299

SPONSOR'S STATEMENT: (Begins on page 33 of introduced bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

 SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

(continued)

FLOOR AMENDMENT STATEMENT:

Yes 5/24/2018
6/21/2018
6/25/2018

LEGISLATIVE FISCAL ESTIMATE:

No

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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REPORTS:

HEARINGS:

NEWSPAPER ARTICLES:

Yes

"Murphy signs measure expanding public-private partnerships," NJBIZ, August 14, 2018

"Murphy signs law reinstating innovation commission," NJBIZ, August 15, 2018

"Murphy signs measure expanding public-private partnerships," Associated Press State Wire: New Jersey, August 14, 2018

"New law expands public-private partnerships in New Jersey," Associated Press State Wire: New Jersey, August 14, 2018

RH/CL

Title 40A.
Chapter 11.
Part S (New)
Public-Private Partnership
Agreements.
§1 - C.40A:11-52
Title 18A.
Subtitle 5.
Part 7.
Chapter 18A.
Article 16 (New)
Public-Private Partnership
Agreements.
§2 - C.18A:18A-60
§3 - C.52:34-26
§4 - C.18A:64E-33
§§7-9 - C.52:18A-259 to
52:18A-261
§10 - Note

P.L. 2018, CHAPTER 90, approved August 14, 2018
Senate, No. 865 (*Third Reprint*)

1 AN ACT concerning public-private partnerships for certain building
2 and highway infrastructure projects, and amending and
3 supplementing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ²**[**1. (New section) a. As used in this section:
9 “Authority” means the New Jersey Economic Development
10 Authority established pursuant to section 4 of P.L.1974,
11 c.80 (C.34:1B-4).
12

13 ¹**[**“Availability payment” means a periodic payment made by a
14 local government unit to a private entity in exchange for making
15 available the use of a public building, road, structure, infrastructure,
16 or facility at a predetermined level of service, operation, or
17 maintenance.**]**¹

18 “Bundling” means the use of a solicitation for multiple projects
19 in one single contract, through a public-private partnership project
20 delivery method, the result of which restricts competition.

21 “Local government unit” means a county, a municipality, or any
22 board, commission, committee, authority or agency thereof that is
subject to the provisions of the “Local Public Contracts Law,”

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 11, 2018.

²Senate floor amendments adopted June 21, 2018.

³Senate floor amendments adopted June 25, 2018.

1 P.L.1971, c.198 (C.40A:11-1 et seq.) ¹, including a housing
2 authority or redevelopment agency created or continued under the
3 “Local Redevelopment and Housing Law,” P.L.1992, c.79
4 (C.40A:12A-1 et seq.). A local government unit shall not include a
5 public entity that has entered into a contract with a private firm or a
6 public authority pursuant to the “New Jersey Wastewater Treatment
7 Public-Private Contracting Act,” P.L.1995, c.216 (C.58:27-19 et
8 al.), for the provision of wastewater treatment services¹.

9 “Project” means the development, construction, reconstruction,
10 repair, alteration, improvement, extension, operation, and
11 maintenance of any building, road, structure, infrastructure, or
12 facility constructed or acquired by a local government unit to house
13 local government functions, including any infrastructure or facility
14 used or to be used by the public or in support of a public purpose or
15 activity; provided that, with respect to a roadway or highway
16 project, a qualifying project shall include an expenditure of at least
17 \$10 million in public funds, or any expenditure in solely private
18 funds.

19 “Public-private partnership agreement” means an agreement
20 entered into by a local government unit and a private entity
21 pursuant to this section for the purpose of permitting a private entity
22 to assume financial and administrative responsibility for the
23 development, construction, reconstruction, repair, alteration,
24 improvement, extension, operation, and maintenance of a project of,
25 or for the benefit of, the local government unit.

26 b. (1) A local government unit may enter into a contract with a
27 private entity, subject to subsection f. of this section, to be referred
28 to as a public-private partnership agreement, that permits the private
29 entity to assume financial and administrative responsibility for a
30 project of, or for the benefit of, the local government unit, provided
31 that the project is financed in whole or in part by the private entity.

32 (2) A public-private partnership agreement may include an
33 agreement under which a local government unit and a private entity
34 enter into a lease of a public building, road, structure, infrastructure,
35 or facility in exchange for up-front or structured financing by the
36 private entity for the project. Under the lease agreement, the
37 private entity may be responsible for the management, operation,
38 and maintenance of the building, road, structure, infrastructure, or
39 facility. The private entity may receive some or all, as per the
40 agreement, of the revenue generated by the building, road, structure,
41 infrastructure, or facility, and may operate the building, road
42 structure, infrastructure, or facility in accordance with local
43 government unit standards. At the end of the lease term, subsequent
44 revenue generated by the building, road, structure, infrastructure, or
45 facility, along with management, operation, and maintenance
46 responsibility, shall revert to the local government unit. ¹A lease
47 agreement entered into pursuant to this section shall be limited in
48 duration to a term of not more than 30 years. A lease agreement
49 shall be subject to all applicable provisions of current law

1 governing leases by a local government unit not inconsistent with
2 the provisions of this section.¹

3 (3) ¹【A public-private partnership agreement may include the
4 use of availability payments if deemed to be in the best interest of
5 the public and the local government unit, provided the private entity
6 shall operate the building, road, structure, infrastructure or facility
7 in accordance with local government unit standards.

8 (4) ¹ Bundling of projects shall be prohibited under this section.

9 c. (1) Unless otherwise set forth herein, a private entity that
10 assumes financial and administrative responsibility for a project
11 pursuant to this section shall not be subject to the procurement and
12 contracting requirements of all statutes applicable to the local
13 government unit at which the project is completed, including, but
14 not limited to, the "Local Public Contracts Law," P.L.1971, c.198
15 (C.40A:11-1 et seq.).

16 (2) For the purposes of facilitating the financing of a project
17 pursuant to this section, a public entity may become the owner or
18 lessee of the project or the lessee of the land, or both, may become
19 the lessee of a revenue-producing building, structure, or facility to
20 which the local government unit holds title, may issue indebtedness
21 in accordance with the public entity's enabling legislation and,
22 notwithstanding any provision of law to the contrary, shall be
23 empowered to enter into contracts with a private entity and its
24 affiliates without being subject to the procurement and contracting
25 requirements of any statute applicable to the public entity provided
26 that the private entity has been selected by the local government
27 unit pursuant to a solicitation of proposals or qualifications from at
28 least two private entities. For the purposes of this subsection, a
29 public entity shall include the New Jersey Economic Development
30 Authority, and any project undertaken pursuant to this section of
31 which the authority becomes the owner or lessee, or which is
32 situated on land of which the authority becomes the lessee, shall be
33 deemed a "project" under the "The New Jersey Economic
34 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

35 (3) As the carrying out of any project described pursuant to this
36 section constitutes the performance of an essential public function,
37 all projects used in furtherance of the purposes of the local
38 government unit undertaken pursuant to this section, provided the
39 project is owned by or leased to a public entity, non-profit business
40 entity, foreign or domestic, or a business entity wholly owned by
41 such non-profit business entity, shall at all times be exempt from
42 property taxation and special assessments of the State, or any
43 municipality, or other political subdivision of the State and,
44 notwithstanding the provisions of section 15 of P.L.1974,
45 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
46 any other section of law to the contrary, shall not be required to
47 make payments in lieu of taxes. The land upon which the project is
48 located shall also at all times be exempt from property taxation.
49 The project and land upon which the project is located shall not be

1 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
2 1.10) regarding the tax liability of private parties conducting for
3 profit activities on tax exempt land, or section 1 of P.L.1949,
4 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
5 exempt property that are held by nonexempt parties.

6 (4) Prior to the commencement of work on a project, the private
7 entity shall establish a construction account and appoint a third-
8 party financial institution, who shall act as a collateral agent, to
9 manage the construction account. The construction account shall
10 include the funding, financial instruments, or both, that shall be
11 used to fully capitalize and fund the project, and the collateral agent
12 shall maintain a full accounting of the funds and instruments in the
13 account. The funds and instruments in the construction account
14 shall be held in trust for the benefit of the contractor, construction
15 manager, and design-build team involved in the project. The funds
16 and instruments in the construction account shall not be the
17 property of the private entity unless all amounts due to the
18 construction account beneficiaries are paid in full. The construction
19 account shall not be designated for more than one project.

20 d. Each worker employed in the construction, rehabilitation, or
21 building maintenance services of facilities by a private entity that
22 has entered into a public-private partnership agreement with a local
23 government unit pursuant to this section shall be paid not less than
24 the prevailing wage rate for the worker's craft or trade as
25 determined by the Commissioner of Labor and Workforce
26 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
27 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

28 e. (1) All building construction projects under a public-private
29 partnership agreement entered into pursuant to this section shall
30 contain a project labor agreement. The project labor agreement
31 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
32 seq.), and shall be in a manner that to the greatest extent possible
33 enhances employment opportunities for individuals residing in the
34 county of the project's location. The general contractor,
35 construction manager, design-build team, or subcontractor for a
36 construction project proposed in accordance with this paragraph
37 shall be registered pursuant to the provisions of P.L.1999, c.238
38 (C.34:11-56.48 et seq.), and shall be classified by the Division of
39 Property Management and Construction, or shall be prequalified by
40 the Department of Transportation, ¹New Jersey Transit, or the New
41 Jersey Turnpike Authority,¹ as appropriate, to perform work on a
42 public-private partnership project.

43 (2) All projects proposed in accordance with this section shall
44 be submitted to the New Jersey Economic Development Authority
45 for its review and approval ¹in accordance with subsection f. of this
46 section¹ prior to commencing procurement of the project ¹in
47 accordance with subsection j. of this section¹ and, when practicable,
48 are encouraged to adhere to the Leadership in Energy and
49 Environmental Design Green Building Rating System as adopted by

1 the United States Green Building Council, the Green Globes
2 Program adopted by the Green Building Initiative, or a comparable
3 nationally recognized, accepted, and appropriate sustainable
4 development rating system.

5 (3) The general contractor, construction manager, or design-
6 build team shall be required to post a performance bond to ensure
7 the completion of the project and a payment bond guaranteeing
8 prompt payment of moneys due in accordance with and conforming
9 to the requirements of N.J.S.2A:44-143 et seq.

10 f. (1) All projects proposed in accordance with this section
11 shall be submitted to the New Jersey Economic Development
12 Authority for the authority's review and approval ¹, which shall be
13 conducted in consultation with the Commissioner of the Department
14 of Community Affairs¹. The projects are encouraged, when
15 practicable, to adhere to the green building manual prepared by the
16 Commissioner of Community Affairs pursuant to section 1 of
17 P.L.2007, c.132 (C.52:27D-130.6).

18 (2) (a) In order for an application to be complete and
19 considered by the authority, the application shall include, but not be
20 limited to: (i) a full description of the proposed public-private
21 partnership agreement between the local government unit and the
22 private developer; (ii) a full description of the project, including a
23 description of any agreement for the lease of a revenue-producing
24 facility related to the project; (iii) the estimated costs and financial
25 documentation for the project; (iv) a timetable for completion of the
26 construction of the project extending no more than five years after
27 consideration and approval; and (v) any other requirements that the
28 authority deems appropriate or necessary. ¹The application shall
29 also include a resolution by the local government unit's governing
30 body of its intent to enter into a public-private partnership
31 agreement pursuant to this section.¹

32 (b) As part of the estimated costs and financial documentation
33 for the project, the application shall contain a long-range
34 maintenance plan and a long-range maintenance bond and shall
35 specify the expenditures that qualify as an appropriate investment in
36 maintenance. The long-range maintenance plan shall be approved
37 by the authority pursuant to regulations promulgated by the
38 authority that reflect national building maintenance standards and
39 other appropriate building maintenance benchmarks.

40 (3) The authority shall review all completed applications, and
41 request additional information as is needed to make a complete
42 assessment of the project. ¹The criteria for assessing the project
43 shall include, but may not be limited to: (i) feasibility and design of
44 the project; (ii) experience and qualifications of the private entity;
45 (iii) soundness of the financial plan; (iv) adequacy of the required
46 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the
47 existence of a clear public benefit; and (vii) a resolution by the local
48 government unit's governing body of its intent to enter into a
49 public-private partnership agreement for the project.¹ No project

1 shall commence the procurement process until ¹**[final]**¹ approval
2 has been granted by the authority ¹. Following the procurement
3 process, but before the local government unit enters into a public-
4 private partnership agreement, the project and the resultant short list
5 of private entities shall be submitted to the authority for final
6 approval¹; provided, however, that the authority shall retain the
7 right to revoke approval if it determines that the project has
8 ¹substantially¹ deviated from the plan submitted pursuant to
9 paragraph (2) of this subsection, and shall retain the right to cancel
10 a procurement after a short list of private entities is developed if
11 deemed in the public interest as specified under subsection j. of this
12 section. Notwithstanding any provision of this section to the
13 contrary, all roadway or highway projects shall be subject to review
14 and approval by the State Treasurer, ¹which shall be conducted in
15 consultation with the Commissioner of the Department of
16 Transportation,¹ and the authority shall not approve any roadway or
17 highway project disapproved by the State Treasurer.

18 (4) The authority may promulgate any rules and regulations
19 necessary to implement this subsection, including provisions for
20 fees to cover administrative costs.

21 g. A project with an expenditure of under \$50 million
22 developed under a public-private partnership agreement shall
23 include a requirement that precludes contractors from engaging in
24 the project if the contractor has contributed to the private entity's
25 financing of the project in an amount of more than 10% of the
26 project's financing costs.

27 h. The power of eminent domain shall not be delegated to any
28 private entity under the provisions of P.L. , c. (C.)
29 (pending before the Legislature as this bill); however, a local
30 government unit may dedicate any property interest, including land,
31 improvements, and tangible personal property of the local
32 government unit for public use in a qualifying project if the local
33 government unit finds that so doing will serve the public purpose of
34 the project by minimizing the cost of the project to the local
35 government unit or reducing the delivery time of a project.

36 i. Any public-private partnership agreement, if appropriate,
37 shall include provisions affirming that the agreement and any work
38 performed under the agreement are subject to the provisions of the
39 "Construction Industry Independent Contractor Act," P.L.2007,
40 c.114 (C.34:20-1 et seq.).

41 j. (1) A private entity seeking to enter into a public-private
42 partnership agreement with the local government unit shall be
43 qualified by the local government unit as part of the procurement
44 process, provided such process ensures that the private entity meets
45 at least the minimum local government unit standards for
46 qualification for professional services, construction contracting, and
47 other qualifications applicable to the project, prior to submitting a
48 proposal under the procurement process. ¹The local governing
49 unit's governing body shall issue a request for proposals, which

1 shall close within 45 days.¹ The qualification process shall be
2 conducted within 45 days after the closing date for the receipt of
3 proposals, and¹ shall result in a list of qualified private entities, that
4 may be ranked in order to generate a short list of private entities
5 requested to submit a final proposal.

6 (2) The local government unit may accept unsolicited proposals
7 from private entities for public-private partnership agreements. If
8 the local government unit receives an unsolicited proposal and
9 determines that it meets the standards of this section, the local
10 government unit shall publish a notice of the receipt of the proposal
11 on the Internet site of the local government unit, or through
12 advertisements in newspapers. If a notice is published exclusively
13 in newspapers, the notice shall appear in two or more newspapers
14 circulated wholly or in part in the county where the proposed
15 project is to be located. The notice shall provide that the local
16 government unit will accept, for ~~45~~ 120¹ days after the initial
17 date of publication, proposals meeting the standards of this section
18 from other private entities for eligible projects that satisfy the same
19 basic purpose and need. A copy of the notice shall be mailed to
20 each municipal and county local government body in the geographic
21 area affected by the proposal.

22 (3) After the proposal or proposals have been received, and any
23 public notification period has expired, the local government unit
24 shall rank the proposals in order of preference. In ranking the
25 proposals, the local government unit may consider factors that
26 include, but may not be limited to, professional qualifications,
27 general business terms, innovative engineering, architectural
28 services, or cost-reduction terms, finance plans, and the need for
29 local government funds to deliver the project and discharge the
30 agreement. If only one proposal is received, the local government
31 unit shall negotiate in good faith and, if not satisfied with the results
32 of the negotiations, the local government unit may, at its sole
33 discretion, terminate negotiations.

34 (4) The local government unit may require that the private entity
35 assume responsibility for all costs incurred by the local government
36 unit before execution of the public-private partnership agreement,
37 including costs of retaining independent experts to review, analyze,
38 and advise the local government unit with respect to the proposal.

39 (5) If the authority or State Treasurer deem it in the public's
40 interest to cancel a procurement after a short list of private entities
41 is developed, the authority shall pay for documented third party
42 costs, including, but not limited to, design services, legal advisors,
43 financial advisors, and reasonable expenditures.

44 (6) Stipends may be used on public private partnership projects
45 when there is a substantial opportunity for innovation and the costs
46 for developing a proposal are significant. The local government unit
47 may elect to pay unsuccessful proposers for the work product they
48 submit with their proposal in response to a request for proposals.
49 The use by the local government unit of any design element

1 contained in an unsuccessful proposal shall be at the sole risk and
2 discretion of the local government unit and shall not confer liability
3 on the recipient of the stipulated stipend amount. After payment of
4 the stipulated stipend amount, the local government unit and the
5 unsuccessful proposer shall jointly own the rights to, and may make
6 use of any work product contained in the proposal, including the
7 technologies, techniques, methods, processes, ideas, and
8 information contained in the proposal, project design, and project
9 financial plan. The use by the unsuccessful proposer of any part of
10 the work product contained in the proposal shall be at the sole risk
11 of the unsuccessful proposer and shall not confer liability on the
12 local government unit. **】²**

13

14 ²1. (New section) a. As used in this section:

15 “Authority” means the New Jersey Economic Development
16 Authority established pursuant to section 4 of P.L.1974, c.80
17 (C.34:1B-4).

18 “Bundling” means the use of a solicitation for multiple projects
19 in one single contract, through a public-private partnership project
20 delivery method, the result of which restricts competition.

21 “Local government unit” means a county, a municipality, or any
22 board, commission, committee, authority or agency thereof that is
23 subject to the provisions of the “Local Public Contracts Law,”
24 P.L.1971, c.198 (C.40A:11-1 et seq.), including a housing authority
25 or redevelopment agency created or continued under the “Local
26 Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1
27 et seq.). A local government unit shall not include a public entity
28 that has entered into a contract with a private firm or a public
29 authority pursuant to the “New Jersey Wastewater Treatment
30 Public-Private Contracting Act,” P.L.1995, c.216 (C.58:27-19 et
31 al.), for the provision of wastewater treatment services.

32 “Project” means the development, construction, reconstruction,
33 repair, alteration, improvement, extension, operation, and
34 maintenance of any building, local or county road, vertical
35 structure, or facility constructed or acquired by a local government
36 unit to operate local government functions, including any
37 infrastructure or facility used or to be used by the public or in
38 support of a public purpose or activity; and including any site
39 acquisition, provided that, with respect to a project, a qualifying
40 project shall include an expenditure of at least \$10 million in public
41 funds, or any expenditure in solely private funds.

42 “Public building, road, structure, infrastructure, or facility”
43 means any site building, road, structure, infrastructure, or facility
44 used or to be used by a local government unit to house a local
45 government function or functions, including any infrastructure or
46 facility used or to be used by the public, or in support of a public
47 purpose or activity.

48 “Public-private partnership agreement” means an agreement
49 entered into by a local government unit and a private entity

1 pursuant to this section for the purpose of permitting a private entity
2 to assume full financial and administrative responsibility for the
3 development, construction, reconstruction, repair, alteration,
4 improvement, extension, operation, and maintenance of a project of,
5 or for the benefit of, the local government unit.

6 b. (1) A local government unit may enter into a contract with
7 a private entity, subject to subsection f. of this section, to be
8 referred to as a public-private partnership agreement, that permits
9 the private entity to assume full financial and administrative
10 responsibility for a project of, or for the benefit of, the local
11 government unit, provided that the project is financed in whole by
12 the private entity and the local unit retains full ownership of the
13 land upon which the project is located.

14 (2) A public-private partnership agreement may include an
15 agreement under which a local government unit and a private entity
16 enter into a lease of a revenue-producing public building, road,
17 structure, infrastructure, or facility in exchange for up-front or
18 structured financing by the private entity for the project. Under the
19 lease agreement, the private entity shall be responsible for the
20 management, operation, and maintenance of the building, road,
21 structure, infrastructure, or facility. The private entity shall receive
22 some or all, as per the agreement, of the revenue generated by the
23 building, road, structure, infrastructure, or facility, and shall operate
24 the building, road structure, infrastructure, or facility in accordance
25 with local government unit standards. At the end of the lease term,
26 subsequent revenue generated by the building, road, structure,
27 infrastructure, or facility, along with management, operation, and
28 maintenance responsibility, shall revert to the local government
29 unit. A lease agreement entered into pursuant to this section shall be
30 limited in duration to a term of not more than 30 years. A lease
31 agreement shall be subject to all applicable provisions of current
32 law governing leases by a local government unit not inconsistent
33 with the provisions of this section. For the purposes of this section,
34 “revenue-producing” shall include leaseback arrangements.

35 (3) Bundling of projects shall be prohibited under this section.

36 (4) Nothing in this section shall be construed to exempt a local
37 government unit from provisions of the "Local Bond Law,"
38 N.J.S.40A:2-1 et seq., or the "Local Authorities Fiscal Control
39 Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), or other law, that may
40 apply to local government unit borrowing or financing, including
41 but not limited to provisions requiring review by and approval from
42 the Local Finance Board or the Director of the Division of Local
43 Government Services in the Department of Community Affairs.

44 c. (1) Unless otherwise set forth herein, a private entity that
45 assumes full financial and administrative responsibility for a project
46 pursuant to this section shall not be subject to the procurement and
47 contracting requirements of all statutes applicable to the local
48 government unit at which the project is completed, including, but

1 not limited to, the "Local Public Contracts Law," P.L.1971, c.198
2 (C.40A:11-1 et seq.).

3 (2) Notwithstanding any provision of law to the contrary, a
4 public entity shall be empowered to enter into contracts with a
5 private entity and its affiliates without being subject to the
6 procurement and contracting requirements of any statute applicable
7 to the public entity provided that the private entity has been selected
8 by the local government unit pursuant to a solicitation of proposals
9 or qualifications from at least two private entities, or it has received
10 an unsolicited proposal and followed the procedure set forth in
11 paragraph (4) of subsection j. of this section. A local government
12 unit shall be the owner or lessee of any project being financed by a
13 local government unit.

14 (3) Prior to the commencement of work on a project, the private
15 entity shall establish a construction account and appoint a third-
16 party financial institution, who shall be prequalified by the State
17 Treasurer, to act as a collateral agent, and manage the construction
18 account. The construction account shall include the funding,
19 financial instruments, or both, that shall be used to fully capitalize
20 and fund the project, and the collateral agent shall maintain a full
21 accounting of the funds and instruments in the account. The funds
22 and instruments in the construction account shall be held in trust for
23 the benefit of the contractor, construction manager, and design-
24 build team involved in the project. The funds and instruments in
25 the construction account shall not be the property of the private
26 entity unless all amounts due to the construction account
27 beneficiaries are paid in full. The construction account shall not be
28 designated for more than one project.

29 d. Each worker employed in the construction, rehabilitation, or
30 building maintenance services of facilities by a private entity that
31 has entered into a public-private partnership agreement with a local
32 government unit pursuant to this section shall be paid not less than
33 the prevailing wage rate for the worker's craft or trade as
34 determined by the Commissioner of Labor and Workforce
35 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
36 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

37 e. (1) All building construction projects under a public-
38 private partnership agreement entered into pursuant to this section
39 shall contain a project labor agreement. The project labor
40 agreement shall be subject to the provisions of P.L.2002, c.44
41 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
42 extent possible enhances employment opportunities for individuals
43 residing in the county of the project's location. The general
44 contractor, construction manager, design-build team, or
45 subcontractor for a construction project proposed in accordance
46 with this paragraph shall be registered pursuant to the provisions of
47 P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by
48 the Division of Property Management and Construction, or shall be
49 prequalified by the Department of Transportation, New Jersey

- 1 Transit, or the New Jersey Turnpike Authority, as appropriate, to
2 perform work on a public-private partnership project.
- 3 (2) All projects proposed in accordance with this section shall
4 be submitted to the State Treasurer, in consultation with the New
5 Jersey Economic Development Authority and the Department of
6 Community Affairs for a review and approval in accordance with
7 subsection f. of this section prior to the execution of the public-
8 private partnership agreement and, when practicable, are
9 encouraged to adhere to the Leadership in Energy and
10 Environmental Design Green Building Rating System as adopted by
11 the United States Green Building Council, the Green Globes
12 Program adopted by the Green Building Initiative, or a comparable
13 nationally recognized, accepted, and appropriate sustainable
14 development rating system.
- 15 (3) The general contractor, construction manager, or design-
16 build team shall be required to post a performance bond to ensure
17 the completion of the project and a payment bond guaranteeing
18 prompt payment of moneys due in accordance with and conforming
19 to the requirements of N.J.S.2A:44-143 et seq.
- 20 (4) Prior to being submitted to the State Treasurer for review
21 and approval, all projects proposed in accordance with this section
22 shall be subject to a public hearing, the record of which shall be
23 made available to the public within seven days following the
24 conclusion of the hearing, after the ranking of proposals takes place
25 pursuant to paragraph (5) of subsection j. of this section. The local
26 government unit shall provide notice of the public hearing no less
27 than 14 days prior to the date of the hearing. The notice shall
28 prominently state the purpose and nature of the proposed project,
29 and shall be published on the official Internet website of the local
30 government unit and at least once in one or more newspapers with
31 statewide circulation.
- 32 (5) Prior to entering into a public -private partnership, the local
33 government unit shall determine: (i) the benefits to be realized by
34 the project; (ii) the cost of project if it is developed by the public
35 sector supported by comparisons to comparable projects; (iii) the
36 maximum public contribution that local government unit will allow
37 under the public -private partnership; (iv) a comparison of the
38 financial and non-financial benefits of the public-private
39 partnership compared to other options including the public sector
40 option; (v) a list of risks, liabilities and responsibilities to be
41 transferred to the private entity and those to be retained by the local
42 government unit; and (vi) if the project has a high, medium or low
43 level of project delivery risk and how the public is protected from
44 these risks.
- 45 (6) Prior to entering into a public-private partnership, the local
46 government unit at a public hearing shall find that the project is in
47 the best interest of the public by finding that (i) it will cost less than
48 the public sector option, or if it costs more there are factors that
49 warrant the additional expense; (ii) there is a public need for the

1 project and the project is consistent with existing long-term plans;
2 (iii) there are specific significant benefits to the project; (iv) there
3 are specific significant benefits to using the public-private
4 partnership instead of other options including No-Build; (v) the
5 private development will result in timely and efficient development
6 and operation; and (vi) the risks, liabilities and responsibilities
7 transferred to the private entity provide sufficient benefits to
8 warrant not using other means of procurement.

9 f. (1) All projects proposed in accordance with this section
10 shall be submitted to the State Treasurer for review and approval,
11 which shall be conducted in consultation with the Commissioner of
12 the Department of Community Affairs. The projects are
13 encouraged, when practicable, to adhere to the green building
14 manual prepared by the Commissioner of Community Affairs
15 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

16 (2) All projects proposed in accordance with this section that
17 have a transportation component or impact the transportation
18 infrastructure shall be submitted to the State Treasurer, in
19 consultation with the Commissioner of the Department of
20 Transportation, for review and approval.

21 (3) (a) In order for an application to be complete and
22 considered by the State Treasurer, the application shall include, but
23 not be limited to: (i) a full description of the proposed public-
24 private partnership agreement between the local government unit
25 and the private developer, including all information obtained by and
26 findings of the local government unit pursuant to paragraphs (4) and
27 (5) of subsection e. of this section; (ii) a full description of the
28 project, including a description of any agreement for the lease of a
29 revenue-producing facility related to the project; and (iii) the
30 estimated costs and financial documentation for the project showing
31 the underlying financial models and assumptions that determined
32 the estimated costs. The financial documentation shall include at
33 least three different projected estimated costs showing scenarios in
34 which materially different economic circumstances are assumed and
35 an explanation for how the estimated costs were determined based
36 on the three scenarios; (iv) a timetable for completion of the
37 construction of the project; (v) an analysis of all available funding
38 options for the project, including an analysis of the financial
39 viability and advisability of such project, along with evidence of the
40 public benefit in advancing the project as a public-private
41 partnership; (vi) a record of the public hearing held pursuant to
42 paragraph (4) of subsection e. of this section, which shall have been
43 made available to the public within seven days following the
44 conclusion of the hearing; and (vii) any other requirements that the
45 State Treasurer deems appropriate or necessary. The application
46 shall also include a resolution by the local government unit's
47 governing body of its intent to enter into a public-private
48 partnership agreement pursuant to this section.

1 **(b) As part of the estimated costs and financial documentation**
2 **for the project, the application shall contain a long-range**
3 **maintenance plan and a long-range maintenance bond and shall**
4 **specify the expenditures that qualify as an appropriate investment in**
5 **maintenance. The long-range maintenance plan shall be approved**
6 **by the State Treasurer pursuant to regulations promulgated by the**
7 **State Treasurer that reflect national building maintenance standards**
8 **and other appropriate building maintenance benchmarks.**

9 **(4) The State Treasurer, in consultation with the authority and**
10 **the Commissioner of the Department of Community Affairs, shall**
11 **review all completed applications, and request additional**
12 **information as is needed to make a complete assessment of the**
13 **project. No public-private partnership agreement shall be executed**
14 **until approval has been granted by the State Treasurer. Prior to a**
15 **final decision by the State Treasurer on the application, the**
16 **authority and the Department of Community Affairs shall be**
17 **afforded the opportunity to provide comments on the application**
18 **that they deem appropriate, and the State Treasurer shall consider**
19 **any comments submitted by the authority and the Department of**
20 **Community Affairs with respect to the application. In order to**
21 **approve the application, the State Treasurer shall find that: (i) the**
22 **local government unit's assumptions regarding the project's scope,**
23 **its benefits, its risks and the cost of the public sector option were**
24 **fully and reasonably developed; (ii) the design of the project is**
25 **feasible; (iii) the experience and qualifications of the private entity;**
26 **(iv) the financial plan is sound; (v) the long-range maintenance plan**
27 **is adequate to protect the investment; (vi) the project is in the best**
28 **interest of the public, using the criteria in paragraph (6) of**
29 **subsection e. of this section; (vii) a resolution by the local**
30 **government unit's governing body of its intent to enter into a**
31 **public-private partnership agreement for the project has been**
32 **received; and (viii) the term sheet for any proposed procurement**
33 **contains all necessary elements. The State Treasurer shall retain the**
34 **right to revoke approval if the project has substantially deviated**
35 **from the plan submitted pursuant to this section, and shall retain the**
36 **right to cancel a procurement after a short list of private entities is**
37 **developed if deemed in the public interest .**

38 **(5) The State Treasurer, the authority, and division may**
39 **promulgate any rules and regulations necessary to implement this**
40 **subsection, including, but not limited to, provisions for fees to**
41 **cover administrative costs, and for the determination of minimum**
42 **local government unit standards for the operation of the project, and**
43 **for the qualification for professional services, construction**
44 **contracting, and other relevant qualifications.**

45 **g. A project with an expenditure of under \$50 million**
46 **developed under a public-private partnership agreement shall**
47 **include a requirement that precludes contractors from engaging in**
48 **the project if the contractor has contributed to the private entity's**

1 financing of the project in an amount of more than 10% of the
2 project's financing costs.

3 h. The power of eminent domain shall not be delegated to any
4 private entity under the provisions of P.L. , c. (C.)
5 (pending before the Legislature as this bill); however, a local
6 government unit may dedicate any property interest, including
7 improvements and tangible personal property of the local
8 government unit for public use in a qualifying project if the local
9 government unit finds that so doing will serve the public purpose of
10 the project by minimizing the cost of the project to the local
11 government unit or reducing the delivery time of a project.

12 i. Any public-private partnership agreement, if appropriate,
13 shall include provisions affirming that the agreement and any work
14 performed under the agreement are subject to the provisions of the
15 "Construction Industry Independent Contractor Act," P.L.2007,
16 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement
17 shall also include, at a minimum: (i) the term of the agreement; (ii)
18 the total project cost; (iii) a completion date guarantee; (iv) a
19 provision for damages if the private entity fails to meet the
20 completion date; and (v) a maximum rate of return to the private
21 entity and a provision for the distribution of excess earnings to the
22 local government unit or to the private party for debt reduction.

23 j. (1) A private entity seeking to enter into a public-private
24 partnership agreement with the local government unit shall be
25 qualified by the local government unit as part of the procurement
26 process, provided such process ensures that the private entity and its
27 subcontractors and consultants, when relevant meet at least the
28 minimum qualifications standards promulgated by the State
29 Treasurer, in consultation with the New Jersey Economic
30 Development Authority, Department of Community Affairs, and
31 such other local government unit standards for qualification for
32 professional services, construction contracting, and other
33 qualifications applicable to the project, prior to submitting a
34 proposal under the procurement process.

35 (2) A request for qualifications for a public-private partnership
36 agreement shall be advertised at least 45 days prior to the
37 anticipated date of receipt. The advertisement of the request for
38 qualifications shall be published on the official Internet website of
39 the local government unit and at least one or more newspapers with
40 statewide circulation.

41 (3) After the local government unit determines the qualified
42 respondents utilizing, at minimum, the qualification standards
43 promulgated by the State Treasurer, the local government entity
44 shall issue a request for proposals to each qualified respondent no
45 less than 45 days prior to the date established for submission of the
46 proposals. The request for proposals shall include relevant
47 technical submissions, documents, and the evaluation criteria to be
48 used in the selection of the designated respondent. The evaluation
49 criteria shall be, at minimum, criteria promulgated by the State

1 Treasurer, in consultation with the New Jersey Economic
2 Development Authority and Department of Community Affairs.

3 (4) The local government unit may accept unsolicited proposals
4 from private entities for public-private partnership agreements. If
5 the local government unit receives an unsolicited proposal and
6 determines that it meets the standards of this section, the local
7 government unit shall publish a notice of the receipt of the proposal
8 on the Internet site of the local government unit and through
9 advertisement in at least one or more newspapers with statewide
10 circulation. The local government unit shall also provide notice of
11 the proposal at its next scheduled public meeting and to the State
12 Treasurer. To qualify as an unsolicited proposal, the unsolicited
13 proposal shall at a minimum include a description of the public-
14 private project, the estimated construction and life-cycle costs, a
15 timeline for development, proposed plan of financing, including
16 projected revenues, public or private, debt, equity investment,
17 description of how the project meets needs identified in existing
18 plans, the permits and approvals needed to develop the project from
19 local, state and federal agencies and a projected schedule for
20 obtaining such permits and approvals, a statement of risks,
21 liabilities and responsibilities to be assumed by the private entity.
22 The notice shall provide that the local government unit shall accept,
23 for 120 days after the initial date of publication, proposals meeting
24 the standards of this section from other private entities for eligible
25 projects that satisfy the same basic purpose and need. A copy of the
26 notice shall be mailed to each municipal and county local
27 government body in the geographic area affected by the proposal.

28 (5) After the proposal or proposals have been received, and any
29 public notification period has expired, the local government unit
30 shall rank the proposals in order of preference. In ranking the
31 proposals, the local government unit shall rely upon, at minimum,
32 the evaluation criteria promulgated by the State Treasurer, in
33 consultation with the New Jersey Economic Development Authority
34 and the Department of Community Affairs. In addition, the local
35 government unit may consider factors that include, but may not be
36 limited to, professional qualifications, general business terms,
37 innovative engineering, architectural services, or cost-reduction
38 terms, finance plans, and the need for local government funds to
39 deliver the project and discharge the agreement. The private entity
40 selected shall comply with all laws and regulations required by the
41 State government entity, including but not limited to section 1 of
42 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,
43 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),
44 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-
45 51 et al), Executive Order No. 117 of 2008, Executive Order No.
46 118 of 2008, Executive Order No. 189, prior to executing the public
47 private partnership agreement. If only one proposal is received, the
48 local government unit shall negotiate in good faith and, if not

1 satisfied with the results of the negotiations, the local government
2 unit may, at its sole discretion, terminate negotiations.

3 (6) The local government unit may require, upon receipt of one
4 or more proposals, that the private entity assume responsibility for
5 all costs incurred by the local government unit before execution of
6 the public-private partnership agreement, including costs of
7 retaining independent experts to review, analyze, and advise the
8 local government unit with respect to the proposal.

9 (7) Stipends may be used on public private partnership projects
10 when there is a substantial opportunity for innovation and the costs
11 for developing a proposal are significant. The local government unit
12 may elect to pay unsuccessful proposers for the work product they
13 submit with their proposal in response to a request for proposals.
14 The use by the local government unit of any design element
15 contained in an unsuccessful proposal shall be at the sole risk and
16 discretion of the local government unit and shall not confer liability
17 on the recipient of the stipulated stipend amount. After payment of
18 the stipulated stipend amount, the local government unit and the
19 unsuccessful proposer shall jointly own the rights to, and may make
20 use of any work product contained in the proposal, including the
21 technologies, techniques, methods, processes, ideas, and
22 information contained in the proposal, project design, and project
23 financial plan. The use by the unsuccessful proposer of any part of
24 the work product contained in the proposal shall be at the sole risk
25 of the unsuccessful proposer and shall not confer liability on the
26 local government unit. The State Treasurer, in consultation with the
27 New Jersey Economic Development Authority of New Jersey and
28 Department of Community Affairs shall promulgate guidelines
29 based upon which any stipends paid by a local government unit are
30 to be based.

31 (8) The local government unit shall set aside one percent of each
32 project and remit it the Public Private Partnership Review fund
33 established pursuant to P.L. , c. (C.) (pending before the
34 Legislature as this bill), for purposes of plan review and analysis
35 required under the bill.

36 (9) Nothing in this section shall be construed as or deemed a
37 waiver of the sovereign immunity of the State, the local government
38 unit or an affected locality or public entity or any officer or
39 employee thereof with respect to the participation in or approval of
40 all or any part of the public-private project.²

41

42 ²[2.(New section) a. As used in this section:

43 “Authority” means the New Jersey Economic Development
44 Authority established pursuant to section 4 of P.L.1974,
45 c.80 (C.34:1B-4).

46 ¹["Availability payment" means a periodic payment made by a
47 school district to a private entity in exchange for making available
48 the use of a public building, structure, infrastructure, or facility at a
49 predetermined level of service, operation, or maintenance.]¹

1 “Bundling” means the use of a solicitation for multiple projects
2 in one single contract, through a public-private partnership project
3 delivery method, the result of which restricts competition.

4 “Project” shall have the same meaning as provided in section 3
5 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and
6 shall include any infrastructure or facility used or to be used by the
7 public or in support of a public purpose or activity.

8 “Public-private partnership agreement” means an agreement
9 entered into by a school district and a private entity pursuant to this
10 section for the purpose of permitting a private entity to assume
11 financial and administrative responsibility for the development,
12 construction, reconstruction, repair, alteration, improvement,
13 extension, operation, and maintenance of a school facilities project
14 of, or for the benefit of, the school district.

15 “School district” means and includes a local school district,
16 regional school district, or county special services school district or
17 county vocational school established and operating under the
18 provisions of Title 18A of the New Jersey Statutes. The term
19 “school district” shall ¹~~not~~ include a charter school established
20 under P.L.1995, c.426 (C.18A:36A-1 et seq.) ¹and a renaissance
21 school established under P.L.2011. c.176 (C.18A:36C-1 et seq.)¹.

22 b. (1) A school district may enter into a contract with a private
23 entity, subject to subsection f. of this section, to be referred to as a
24 public-private partnership agreement, that permits the private entity
25 to assume financial and administrative responsibility for a project
26 of, or for the benefit of, the school district, provided that the project
27 is financed in whole or in part by the private entity.

28 (2) A public-private partnership agreement may include an
29 agreement under which a school district and a private entity enter
30 into a lease of a revenue-producing public building, structure, or
31 facility in exchange for up-front or structured financing by the
32 private entity for the project. Under the lease agreement, the
33 private entity may be responsible for the management, operation,
34 and maintenance of the building, structure, or facility. The private
35 entity may receive some or all, as per the agreement, of the revenue
36 generated by the building, structure, or facility, and may operate the
37 building, structure, or facility in accordance with school district
38 standards. At the end of the lease term, subsequent revenue
39 generated by the building, structure, or facility, along with
40 management, operation, and maintenance responsibility, shall revert
41 to the school district. ¹A lease agreement entered into pursuant to
42 this section shall be limited in duration to a term of not more than
43 30 years. A lease agreement shall be subject to all applicable
44 provisions of current law governing leases by a school district not
45 inconsistent with the provisions of this section.¹

46 (3) ¹~~A~~ public-private partnership agreement may include the
47 use of availability payments if deemed to be in the best interest of
48 the public and the school district, provided the private entity shall

1 operate the building, structure, infrastructure or facility in
2 accordance with school district standards.

3 (4) **1** Bundling of projects shall be prohibited under this section.

4 c. (1) A private entity that assumes financial and administrative
5 responsibility for a project pursuant to this section shall not be
6 subject to, unless otherwise set forth herein, the procurement and
7 contracting requirements of all statutes applicable to the school
8 district at which the project is completed, including, but not limited
9 to, the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

10 (2) For the purposes of facilitating the financing of a project
11 pursuant to this section, a public entity may become the owner or
12 lessee of the project or the lessee of the land, or both, may become
13 the lessee of a building, structure, or facility to which the school
14 district holds title, may issue indebtedness in accordance with the
15 public entity's enabling legislation and, notwithstanding any
16 provision of law to the contrary, shall be empowered to enter into
17 contracts with a private entity and its affiliates without being
18 subject to the procurement and contracting requirements of any
19 statute applicable to the public entity provided that the private
20 entity has been selected by the school district pursuant to a
21 solicitation of proposals or qualifications from at least two private
22 entities. For the purposes of this subsection, a public entity shall
23 include the New Jersey Economic Development Authority, and any
24 project undertaken pursuant to this section of which the authority
25 becomes the owner or lessee, or which is situated on land of which
26 the authority becomes the lessee, shall be deemed a "project" under
27 the "The New Jersey Economic Development Authority Act,"
28 P.L.1974, c.80 (C.34:1B-1 et seq.).

29 (3) As the carrying out of any project described pursuant to this
30 section constitutes the performance of an essential public function,
31 all projects predominantly used in furtherance of the purposes of the
32 school district undertaken pursuant to this section, provided the
33 project is owned by or leased to a public entity, non-profit business
34 entity, foreign or domestic, or a business entity wholly owned by
35 such non-profit business entity, shall at all times be exempt from
36 property taxation and special assessments of the State, or any
37 municipality, or other political subdivision of the State and,
38 notwithstanding the provisions of section 15 of P.L.1974,
39 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
40 any other section of law to the contrary, shall not be required to
41 make payments in lieu of taxes. The land upon which the project is
42 located shall also at all times be exempt from property taxation.
43 The project and land upon which the project is located shall not be
44 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
45 1.10) regarding the tax liability of private parties conducting for
46 profit activities on tax exempt land, or section 1 of P.L.1949,
47 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
48 exempt property that are held by nonexempt parties.

1 (4) Prior to the commencement of work on a project, the private
2 entity shall establish a construction account and appoint a third-
3 party financial institution, who shall act as a collateral agent, to
4 manage the construction account. The construction account shall
5 include the funding, financial instruments, or both, that shall be
6 used to fully capitalize and fund the project, and the collateral agent
7 shall maintain a full accounting of the funds and instruments in the
8 account. The funds and instruments in the construction account
9 shall be held in trust for the benefit of the contractor, construction
10 manager, and design-build team involved in the project. The funds
11 and instruments in the construction account shall not be the
12 property of the private entity unless all amounts due to the
13 construction account beneficiaries are paid in full. The construction
14 account shall not be designated for more than one project.

15 d. Each worker employed in the construction, rehabilitation, or
16 building maintenance services of facilities by a private entity that
17 has entered into a public-private partnership agreement with a
18 school district pursuant to this section shall be paid not less than the
19 prevailing wage rate for the worker's craft or trade as determined by
20 the Commissioner of Labor and Workforce Development pursuant
21 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,
22 c.379 (C.34:11-56.58 et seq.).

23 e. (1) All building construction projects under a public-private
24 partnership agreement entered into pursuant to this section shall
25 contain a project labor agreement. The project labor agreement
26 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
27 seq.), and shall be in a manner that to the greatest extent possible
28 enhances employment opportunities for individuals residing in the
29 county of the project's location. The general contractor,
30 construction manager, design-build team, or subcontractor for a
31 construction project proposed in accordance with this paragraph
32 shall be registered pursuant to the provisions of P.L.1999, c.238
33 (C.34:11-56.48 et seq.), and shall be classified by the Division of
34 Property Management and Construction, or shall be prequalified by
35 the Department of Transportation, ¹New Jersey Transit, or the New
36 Jersey Turnpike Authority,¹ as appropriate, to perform work on a
37 public-private partnership project.

38 (2) All projects proposed in accordance with this section shall
39 be submitted to the New Jersey Economic Development Authority
40 for its review and approval ¹in accordance with subsection f. of this
41 section¹ prior to commencing procurement of the project ¹in
42 accordance with subsection j. of this section¹ and, when practicable,
43 are encouraged to adhere to the Leadership in Energy and
44 Environmental Design Green Building Rating System as adopted by
45 the United States Green Building Council, the Green Globes
46 Program adopted by the Green Building Initiative, or a comparable
47 nationally recognized, accepted, and appropriate sustainable
48 development rating system.

1 (3) The general contractor, construction manager, or design-
2 build team shall be required to post a performance bond to ensure
3 the completion of the project and a payment bond guaranteeing
4 prompt payment of moneys due in accordance with and conforming
5 to the requirements of N.J.S.2A:44-143 et seq.

6 f. (1) All projects proposed in accordance with this section
7 shall be submitted to the New Jersey Economic Development
8 Authority for the authority's review and approval ¹, which shall be
9 conducted in consultation with the Commissioner of the Department
10 of Education¹. The projects are encouraged, when practicable, to
11 adhere to the green building manual prepared by the Commissioner
12 of Community Affairs pursuant to section 1 of P.L.2007,
13 c.132 (C.52:27D-130.6).

14 (2) (a) In order for an application to be complete and considered
15 by the authority, the application shall include, but not be limited to:
16 (i) a full description of the proposed public-private partnership
17 agreement between the school district and the private developer; (ii)
18 a full description of the project, including a description of any
19 agreement for the lease of a revenue-producing facility related to
20 the project; (iii) the estimated costs and financial documentation for
21 the project; (iv) a timetable for completion of the construction of
22 the project extending no more than five years after consideration
23 and approval; and (v) any other requirements that the authority
24 deems appropriate or necessary. ¹The application shall also include
25 a resolution by the school district's governing body of its intent to
26 enter into a public-private partnership agreement pursuant to this
27 section.¹

28 (b) As part of the estimated costs and financial documentation
29 for the project, the application shall contain a long-range
30 maintenance plan and a long-range maintenance bond and shall
31 specify the expenditures that qualify as an appropriate investment in
32 maintenance. The long-range maintenance plan shall be approved
33 by the authority pursuant to regulations promulgated by the
34 authority that reflect national building maintenance standards and
35 other appropriate building maintenance benchmarks.

36 (3) The authority shall review all completed applications, and
37 request additional information as is needed to make a complete
38 assessment of the project. ¹The criteria for assessing the project
39 shall include, but may not be limited to: (i) feasibility and design of
40 the project; (ii) experience and qualifications of the private entity;
41 (iii) soundness of the financial plan; (iv) adequacy of the required
42 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the
43 existence of a clear public benefit; and (vii) a resolution by the
44 school district's governing body of its intent to enter into a public-
45 private partnership agreement for the project.¹ No project shall
46 commence the procurement process until ¹**【final】**¹ approval has
47 been granted by the authority ¹. Following the procurement process,
48 but before the school district enters into a public-private partnership
49 agreement, the project and the resultant short list of private entities

1 shall be submitted to the authority for final approval¹; provided,
2 however, that the authority shall retain the right to revoke approval
3 if it determines that the project has ¹substantially¹ deviated from the
4 plan submitted pursuant to paragraph (2) of this subsection, and
5 shall retain the right to cancel a procurement after a short list of
6 private entities is developed if deemed in the public interest as
7 specified under subsection j. of this section.

8 (4) The authority may promulgate any rules and regulations
9 necessary to implement this subsection, including provisions for
10 fees to cover administrative costs.

11 g. A project with an expenditure of under \$50 million
12 developed under a public-private partnership agreement shall
13 include a requirement that precludes contractors from engaging in
14 the project if the contractor has contributed to the private entity's
15 financing of the project in an amount of more than 10% of the
16 project's financing costs.

17 h. The power of eminent domain shall not be delegated to any
18 private entity under the provisions of P.L. , c. (C.)
19 (pending before the Legislature as this bill); however, a school
20 district may dedicate any property interest, including land,
21 improvements, and tangible personal property of the school district
22 for public use in a qualifying project if the school district finds that
23 so doing will serve the public purpose of the project by minimizing
24 the cost of the project to the school district or reducing the delivery
25 time of a project.

26 i. Any public-private partnership agreement, if appropriate,
27 shall include provisions affirming that the agreement and any work
28 performed under the agreement are subject to the provisions of the
29 "Construction Industry Independent Contractor Act," P.L.2007,
30 c.114 (C.34:20-1 et seq.).

31 j. (1) A private entity seeking to enter into a public-private
32 partnership agreement with the school district shall be qualified by
33 the school district as part of the procurement process, provided such
34 process ensures that the private entity meets at least the minimum
35 school district standards for qualification for professional services,
36 construction contracting, and other qualifications applicable to the
37 project, prior to submitting a proposal under the procurement
38 process. ¹The school district's governing body shall issue a request
39 for proposals, which shall close within 45 days.¹ The qualification
40 process ¹shall be conducted within 45 days after the closing date for
41 the receipt of proposals, and¹ shall result in a list of qualified
42 private entities, that may be ranked in order to generate a short list
43 of private entities requested to submit a final proposal.

44 (2) The school district may accept unsolicited proposals from
45 private entities for public-private partnership agreements. If the
46 school district receives an unsolicited proposal and determines that
47 it meets the standards of this section, the school district shall
48 publish a notice of the receipt of the proposal on the Internet site of
49 the school district, or through advertisements in newspapers. If a

1 notice is published exclusively in newspapers, the notice shall
2 appear in two or more newspapers circulated wholly or in part in
3 the county where the proposed project is to be located. The notice
4 shall provide that the school district will accept, for ¹[45] 120¹
5 days after the initial date of publication, proposals meeting the
6 standards of this section from other private entities for eligible
7 projects that satisfy the same basic purpose and need. A copy of the
8 notice shall be mailed to each municipal and county local
9 government body in the geographic area affected by the proposal.

10 (3) After the proposal or proposals have been received, and any
11 public notification period has expired, the school district shall rank
12 the proposals in order of preference. In ranking the proposals, the
13 school district may consider factors that include, but may not be
14 limited to, professional qualifications, general business terms,
15 innovative engineering, architectural services, or cost-reduction
16 terms, finance plans, and the need for school district funds to
17 deliver the project and discharge the agreement. If only one
18 proposal is received, the school district shall negotiate in good faith
19 and, if not satisfied with the results of the negotiations, the school
20 district may, at its sole discretion, terminate negotiations.

21 (4) The school district may require that the private entity assume
22 responsibility for all costs incurred by the school district before
23 execution of the public-private partnership agreement, including
24 costs of retaining independent experts to review, analyze, and
25 advise the school district with respect to the proposal.

26 (5) If the authority or State Treasurer deem it in the public's
27 interest to cancel a procurement after a short list of private entities
28 is developed, the authority shall pay for documented third party
29 costs, including, but not limited to, design services, legal advisors,
30 financial advisors, and reasonable expenditures.

31 (6) Stipends may be used on public private partnership projects
32 when there is a substantial opportunity for innovation and the costs
33 for developing a proposal are significant. The school district may
34 elect to pay unsuccessful proposers for the work product they
35 submit with their proposal in response to a request for proposals.
36 The use by the school district of any design element contained in an
37 unsuccessful proposal shall be at the sole risk and discretion of the
38 school district and shall not confer liability on the recipient of the
39 stipulated stipend amount. After payment of the stipulated stipend
40 amount, the school district and the unsuccessful proposer shall
41 jointly own the rights to, and may make use of any work product
42 contained in the proposal, including the technologies, techniques,
43 methods, processes, ideas, and information contained in the
44 proposal, project design, and project financial plan. The use by the
45 unsuccessful proposer of any part of the work product contained in
46 the proposal shall be at the sole risk of the unsuccessful proposer
47 and shall not confer liability on the school district.]²
48

49 ²2. (New section) a. As used in this section:

1 “Authority” means the New Jersey Economic Development
2 Authority established pursuant to section 4 of P.L.1974,
3 c.80 (C.34:1B-4).

4 “Bundling” means the use of a solicitation for multiple projects
5 in one single contract, through a public-private partnership project
6 delivery method, the result of which restricts competition.

7 “Project” shall have the same meaning as provided in section 3
8 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and
9 shall include any infrastructure or facility used or to be used by the
10 public or in support of a public purpose or activity.

11 “Public-private partnership agreement” means an agreement
12 entered into by a school district and a private entity pursuant to this
13 section for the purpose of permitting a private entity to assume full
14 financial and administrative responsibility for the development,
15 construction, reconstruction, repair, alteration, improvement,
16 extension, operation, and maintenance of a school facilities project
17 of, or for the benefit of, the school district.

18 “School district” shall have the same meaning as provided in
19 section 3 of P.L.2000, c.72 (C.18A:7G-3) and includes a local
20 school district, regional school district, or county special services
21 school district or county vocational school established and
22 operating under the provisions of Title 18A of the New Jersey
23 Statutes that can demonstrate to the satisfaction of the
24 Commissioner of Education and the Chief Executive Officer of the
25 Schools Development Authority that a school facility is necessary
26 due to overcrowding or is in need of replacement. The term “school
27 district” shall include a charter school established under P.L.1995,
28 c.426 (C.18A:36A-1 et seq.)

29 b. (1) A school district may enter into a contract with a private
30 entity, subject to subsection f. of this section, to be referred to as a
31 public-private partnership agreement, that permits the private entity
32 to assume full financial and administrative responsibility for a
33 project of, or for the benefit of, the school district, provided that the
34 project is financed in whole by the private entity.

35 (2) A public-private partnership agreement may include an
36 agreement under which a school district and a private entity enter
37 into a lease of a revenue-producing public building, structure, or
38 facility in exchange for up-front or structured financing by the
39 private entity for the project. Under the lease agreement, the
40 private entity shall be responsible for the management, operation,
41 and maintenance of the building, structure, or facility. The private
42 entity shall receive some or all, as per the agreement, of the revenue
43 generated by the building, structure, or facility, and shall operate
44 the building, structure, or facility in accordance with school district
45 standards. At the end of the lease term, subsequent revenue
46 generated by the building, structure, or facility, along with
47 management, operation, and maintenance responsibility, shall revert
48 to the school district. A lease agreement entered into pursuant to
49 this section shall be limited in duration to a term of not more than

1 30 years. A lease agreement shall be subject to all applicable
2 provisions of current law governing leases by a school district not
3 inconsistent with the provisions of this section.

4 (3) Bundling of projects shall be prohibited under this section.

5 c. (1) A private entity that assumes financial and
6 administrative responsibility for a project pursuant to this section
7 shall not be subject to, unless otherwise set forth herein, the
8 procurement and contracting requirements of all statutes applicable
9 to the school district at which the project is completed, including,
10 but not limited to, the "Public School Contracts Law,"
11 N.J.S.18A:18A-1 et seq.

12 (2) For the purposes of facilitating the financing of a project
13 pursuant to this section, a public entity may become the owner or
14 lessee of the project or the lessee of the land, or both, may become
15 the lessee of a building, structure, or facility to which the school
16 district holds title, may issue indebtedness in accordance with the
17 public entity's enabling legislation and, notwithstanding any
18 provision of law to the contrary, shall be empowered to enter into
19 contracts with a private entity and its affiliates without being
20 subject to the procurement and contracting requirements of any
21 statute applicable to the public entity provided that the private
22 entity has been selected by the school district pursuant to a
23 solicitation of proposals or qualifications from at least two private
24 entities. For the purposes of this subsection, a public entity shall
25 include the New Jersey Economic Development Authority, and any
26 project undertaken pursuant to this section of which the authority
27 becomes the owner or lessee, or which is situated on land of which
28 the authority becomes the lessee, shall be deemed a "project" under
29 the "The New Jersey Economic Development Authority Act,"
30 P.L.1974, c.80 (C.34:1B-1 et seq.).

31 (3) Prior to the commencement of work on a project, the private
32 entity shall establish a construction account and appoint a third-
33 party financial institution, who shall be prequalified by the State
34 Treasurer to act as a collateral agent and manage the construction
35 account. The construction account shall include the funding,
36 financial instruments, or both, that shall be used to fully capitalize
37 and fund the project, and the collateral agent shall maintain a full
38 accounting of the funds and instruments in the account. The funds
39 and instruments in the construction account shall be held in trust for
40 the benefit of the contractor, construction manager, and design-
41 build team involved in the project. The funds and instruments in
42 the construction account shall not be the property of the private
43 entity unless all amounts due to the construction account
44 beneficiaries are paid in full. The construction account shall not be
45 designated for more than one project.

46 d. Each worker employed in the construction, rehabilitation, or
47 building maintenance services of facilities by a private entity that
48 has entered into a public-private partnership agreement with a
49 school district pursuant to this section shall be paid not less than the

1 prevailing wage rate for the worker's craft or trade as determined by
2 the Commissioner of Labor and Workforce Development pursuant
3 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,
4 c.379 (C.34:11-56.58 et seq.).

5 e. (1) All building construction projects under a public-private
6 partnership agreement entered into pursuant to this section shall
7 contain a project labor agreement. The project labor agreement
8 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
9 seq.), and shall be in a manner that to the greatest extent possible
10 enhances employment opportunities for individuals residing in the
11 county of the project's location. The general contractor,
12 construction manager, design-build team, or subcontractor for a
13 construction project proposed in accordance with this paragraph
14 shall be registered pursuant to the provisions of P.L.1999, c.238
15 (C.34:11-56.48 et seq.), and shall be classified by the Division of
16 Property Management and Construction, or shall be prequalified by
17 the Department of Transportation, as appropriate, to perform work
18 on a public-private partnership project.

19 (2) All projects proposed in accordance with this section shall
20 be submitted to the State Treasurer, in consultation with the
21 Department of Education, Schools Development Authority, and the
22 New Jersey Economic Development Authority for a review and
23 approval in accordance with subsection f. of this section prior to the
24 execution of the public-private partnership agreement and, when
25 practicable, are encouraged to adhere to the Leadership in Energy
26 and Environmental Design Green Building Rating System as
27 adopted by the United States Green Building Council, the Green
28 Globes Program adopted by the Green Building Initiative, or a
29 comparable nationally recognized, accepted, and appropriate
30 sustainable development rating system.

31 (3) The general contractor, construction manager, or design-
32 build team shall be required to post a performance bond to ensure
33 the completion of the project and a payment bond guaranteeing
34 prompt payment of moneys due in accordance with and conforming
35 to the requirements of N.J.S.2A:44-143 et seq.

36 (4) Prior to being submitted to the State Treasurer for review
37 and approval, all projects proposed in accordance with this section
38 shall be subject to a public hearing, the record of which shall have
39 been kept open for a period of seven days following the conclusion
40 of the hearing, after the ranking of proposals takes place pursuant to
41 paragraph (5) of subsection j. of this section. The school district
42 shall provide notice of the public hearing no less than 14 days prior
43 to the date of the hearing. The notice shall prominently state the
44 purpose and nature of the proposed project, and shall be published
45 on the official Internet website of the school district and at least one
46 in one or more newspapers with statewide circulation.

47 (5) Prior to entering into a public -private partnership, the
48 school district must determine: (i) the benefits to be realized by the
49 project, (ii) the cost of project if it is developed by the public sector

1 supported by comparisons to comparable projects, (iii) the
2 maximum public contribution that the school district will allow
3 under the public -private partnership, (iv) a comparison of the
4 financial and non-financial benefits of the public-private
5 partnership compared to other options including the public sector
6 option, (v) a list of risks, liabilities and responsibilities to be
7 transferred to the private entity and those to be retained by the
8 school district, and (vi) if the project has a high, medium or low
9 level of project delivery risk and how the public is protected from
10 these risks.

11 (6) Prior to entering into a public- private partnership, the
12 school district at a public hearing shall find that the project is in the
13 best interest of the public by finding that (i) it will cost less than the
14 public sector option, or if it costs more there are factors that warrant
15 the additional expense (ii) there is a public need for the project and
16 the project is consistent with existing long-term plans, (iii) there are
17 specific significant benefits to the project, (iv) there are specific
18 significant benefits to using the public-private partnership instead
19 of other options including No-Build (v) the private development
20 will result in timely and efficient development and operation and
21 (vi) the risks, liabilities and responsibilities transferred to the
22 private entity provide sufficient benefits to warrant not using other
23 means of procurement.

24 f. (1) All projects proposed in accordance with this section
25 shall be submitted to the State Treasurer for review and approval,
26 which shall be conducted in consultation with the Commissioner of
27 the Department of Education and the Chief Executive Officer of the
28 Schools Development Authority. The Commissioner of the
29 Department of Education shall determine if a project is subject to
30 voter approval pursuant to N.J.S.A. 18A:24-10. If a project is
31 subject to voter approval, such approval is required prior to
32 progressing thru the procurement process. The projects are
33 encouraged, when practicable, to adhere to the green building
34 manual prepared by the Commissioner of Community Affairs
35 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

36 (2) All projects proposed in accordance with this section that
37 have a transportation component or impact the transportation
38 infrastructure shall be submitted to the Department of
39 Transportation. The State Treasurer shall consult with the
40 Department of Transportation in making its final determination.

41 (3) (a) In order for an application to be complete and considered
42 by the State Treasurer, the application shall include, but not be
43 limited to: (i) a full description of the proposed public-private
44 partnership agreement between the school district and the private
45 developer, including all information obtained by and findings of the
46 school district pursuant to paragraphs (4) and (5) of subsection (e)
47 of this section; (ii) a full description of the project, including a
48 description of any agreement for the lease of a revenue-producing
49 facility related to the project; (iii) the estimated costs and financial

1 documentation for the project showing the underlying financial
2 models and assumptions that determined the estimated costs. The
3 financial documentation must include at least three different
4 projected estimated costs showing scenarios in which materially
5 different economic circumstances are assumed and an explanation
6 for how the estimated costs were determined based on the three
7 scenarios; (iv) a timetable for completion of the construction of the
8 project; (v) an analysis of all available funding options for the
9 project, including an analysis of the financial viability and
10 advisability of such project, along with evidence of the public
11 benefit in advancing the project as a public-private partnership; (vi)
12 a record of the public hearing held pursuant to paragraph (4) of
13 subsection e. of this section, which shall have been kept open for a
14 period of seven days following the conclusion of the hearing; (vii)
15 any other requirements that the State Treasurer deems appropriate
16 or necessary. The application shall also include a resolution by the
17 school district's governing body of its intent to enter into a public-
18 private partnership agreement pursuant to this section.

19 (b) As part of the estimated costs and financial documentation
20 for the project, the application shall contain a long-range
21 maintenance plan and a long-range maintenance bond and shall
22 specify the expenditures that qualify as an appropriate investment in
23 maintenance. The long-range maintenance plan shall be approved
24 by the State Treasurer pursuant to regulations promulgated by the
25 State Treasurer that reflect national building maintenance standards
26 and other appropriate building maintenance benchmarks.

27 (4) The State Treasurer, in consultation with the authority, the
28 Commissioner of the Department of Education, and the Chief
29 Executive Officer of the Schools Development Authority, shall
30 review all completed applications, and request additional
31 information as is needed to make a complete assessment of the
32 project. No public-private partnership agreement shall be executed
33 until approval has been granted by the State Treasurer. Prior to a
34 final decision by the State Treasurer on the application, the
35 authority, the Department of Education, and the Schools
36 Development Authority shall be afforded the opportunity to provide
37 comments on the application that they deem appropriate, and the
38 State Treasurer shall consider any comments submitted by the
39 authority, the Department of Education, and the Schools
40 Development Authority with respect to the application. The State
41 Treasurer will find that: (i) the school district's assumptions
42 regarding the project's scope, its benefits, its risks and the cost of
43 the public sector option were fully and reasonably developed (ii)
44 the design of the project is feasible; (iii) the experience and
45 qualifications of the private entity; (iv) the financial plan is sound;
46 (v) the long-range maintenance plan is adequate to protect the
47 investment; (vi) the project is in the best interest of the public,
48 using the criteria in paragraph (6) of subsection e. of this section;
49 (vii) a resolution by the school district's governing body of its

1 intent to enter into a public-private partnership agreement for the
2 project has been received; and (viii) the term sheet for any proposed
3 procurement contains all necessary elements.

4 (5) The State Treasurer, in consultation with the Commissioner
5 of the Department of Education and Chief Executive Officer of the
6 Schools Development Authority, may promulgate any rules and
7 regulations necessary to implement this subsection, including, but
8 not limited to, provisions for fees to cover administrative costs, and
9 for the determination of minimum school district standards for the
10 operation of the project, and for the qualification for professional
11 services, construction contracting, and other relevant qualifications.

12 g. A project with an expenditure of under \$50 million
13 developed under a public-private partnership agreement shall
14 include a requirement that precludes contractors from engaging in
15 the project if the contractor has contributed to the private entity's
16 financing of the project in an amount of more than 10% of the
17 project's financing costs.

18 h. The power of eminent domain shall not be delegated to any
19 private entity under the provisions of P.L. , c. (C.)
20 (pending before the Legislature as this bill); however, a school
21 district may dedicate any property interest, including improvements,
22 and tangible personal property of the school district for public use
23 in a qualifying project if the school district finds that so doing will
24 serve the public purpose of the project by minimizing the cost of the
25 project to the school district or reducing the delivery time of a
26 project.

27 i. Any public-private partnership agreement, if appropriate,
28 shall include provisions affirming that the agreement and any work
29 performed under the agreement are subject to the provisions of the
30 "Construction Industry Independent Contractor Act," P.L.2007,
31 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement
32 will also include, at a minimum: (i) the term of the agreement, (ii)
33 the total project cost, (iii) a completion date guarantee, (iv) a
34 provision for damages if the private entity fails to meet the
35 completion date and (v) a maximum rate of return to the private
36 entity and a provision for the distribution of excess earnings to the
37 local government unit or to the private party for debt reduction.

38 j. (1) A private entity seeking to enter into a public-private
39 partnership agreement with the school district shall be qualified by
40 the school district as part of the procurement process, provided such
41 process ensures that the private entity and its subcontractors and
42 consultants, where relevant, meet at least the minimum
43 qualifications standards promulgated by the State Treasurer, in
44 consultation with the New Jersey Economic Development
45 Authority, Department of Education, Schools Development
46 Authority, and such other school district standards for qualification
47 for professional services, construction contracting, and other
48 qualifications applicable to the project, prior to submitting a
49 proposal under the procurement process.

1 (2) A request for qualifications for a public-private partnership
2 agreement shall be advertised at least 45 days prior to the
3 anticipated date of receipt. The advertisement of the request for
4 qualifications shall be published on the official Internet website of
5 the school district and at least one or more newspapers with
6 statewide circulation.

7 (3) After the school district determines the qualified respondents
8 utilizing, at minimum, the qualification standards promulgated by
9 the State Treasurer, the school district shall issue a request for
10 proposals to each qualified respondent no less than 45 days prior to
11 the date established for submission of the proposals. The request
12 for proposals shall include relevant technical submissions,
13 documents, and the evaluation criteria to be used in the selection of
14 the designated respondent. The evaluation criteria shall be, at
15 minimum, criteria promulgated by the State Treasurer, in
16 consultation with the New Jersey Economic Development
17 Authority, Department of Education, and Schools Development
18 Authority.

19 (4) The school district may accept unsolicited proposals from
20 private entities for public-private partnership agreements. If the
21 school district receives an unsolicited proposal and determines that
22 it meets the standards of this section, the school district shall
23 publish a notice of the receipt of the proposal on the Internet site of
24 the school district and through advertisement in at least one or more
25 newspapers with statewide circulation. The school district shall also
26 provide notice of the proposal at its next scheduled public meeting
27 and to the State Treasurer. To qualify as an unsolicited proposal, the
28 unsolicited proposal must at a minimum include a description of
29 the public-private project, the estimated construction and life-cycle
30 costs, a timeline for development, proposed plan of financing,
31 including projected revenues, public or private, debt, equity
32 investment, description of how the project meets needs identified in
33 existing plans, the permits and approvals needed to develop the
34 project from local, state and federal agencies and a projected
35 schedule for obtaining such permits and approvals, a statement of
36 risks, liabilities and responsibilities to be assumed by the private
37 entity. The notice shall provide that the school district will accept,
38 for 120 days after the initial date of publication, proposals meeting
39 the standards of this section from other private entities for eligible
40 projects that satisfy the same basic purpose and need. A copy of the
41 notice shall be mailed to each municipal and county local
42 government body in the geographic area affected by the proposal.

43 (5) After the proposal or proposals have been received, and any
44 public notification period has expired, the school district shall rank
45 the proposals in order of preference. In ranking the proposals, the
46 school district shall rely upon, at minimum, the evaluation criteria
47 promulgated by the State Treasurer, in consultation with the New
48 Jersey Economic Development Authority, Department of Education,
49 and Schools Development Authority. In addition, the local school

1 district may consider factors that include, but may not be limited to,
2 professional qualifications, general business terms, innovative
3 engineering, architectural services, or cost-reduction terms, finance
4 plans, and the need for school district funds to deliver the project
5 and discharge the agreement. The private entity selected shall
6 comply with all laws and regulations required by the State
7 government entity, including but not limited to section 1 of
8 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,
9 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),
10 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-
11 51 et al), Executive Order No. 117 of 2008, Executive Order No.
12 118 of 2008, Executive Order No. 189, prior to executing the public
13 private partnership agreement. If only one proposal is received, the
14 school district shall negotiate in good faith and, if not satisfied with
15 the results of the negotiations, the school district may, at its sole
16 discretion, terminate negotiations.

17 (6) The school district may require, upon receipt of one or more
18 proposals, that the private entity assume responsibility for all costs
19 incurred by the school district before execution of the public-private
20 partnership agreement, including costs of retaining independent
21 experts to review, analyze, and advise the school district with
22 respect to the proposal.

23 (7) The school district shall set aside one percent of each project
24 and remit it the Public-Private Partnership Review fund established
25 pursuant to section of the P.L. c. (C.) (pending before the
26 Legislature as this bill), for purposes of plan review and analysis
27 required under the bill.

28 (8) Nothing in this section shall be construed as or deemed a
29 waiver of the sovereign immunity of the State, the local government
30 unit or an affected locality or public entity or any officer or
31 employee thereof with respect to the participation in or approval of
32 all or any part of the public-private project.²

33
34 ²[3. (New section) a. As used in this section:

35 “Authority” means the New Jersey Economic Development
36 Authority established pursuant to section 4 of P.L.1974,
37 c.80 (C.34:1B-4).

38 ¹["Availability payment" means a periodic payment made by a
39 State government entity to a private entity in exchange for making
40 available the use of a public building, road, structure, infrastructure,
41 or facility at a predetermined level of service, operation, or
42 maintenance.]¹

43 “Building project” means the construction, reconstruction, repair,
44 alteration, improvement, or extension of any public building,
45 structure, or facility constructed or acquired by a State government
46 entity to house State government functions, including any
47 infrastructure or facility used or to be used by the public or in
48 support of a public purpose or activity.

1 “Bundling” means the use of a solicitation for multiple projects
2 in one single contract, through a public-private partnership project
3 delivery method, the result of which restricts competition.

4 “Highway project” means the construction, reconstruction,
5 repair, alteration, improvement, or extension of public expressways,
6 freeways, and parkways, including bridges, tunnels, overpasses,
7 underpasses, interchanges, rest areas, express bus roadways, bus
8 pullouts and turnarounds, and park and ride facilities, including any
9 infrastructure or facility used or to be used by the public or in
10 support of a public purpose or activity; provided that the project
11 shall include an expenditure of at least \$10 million in public funds,
12 or any expenditure in solely private funds.

13 “Public-private partnership agreement” means an agreement
14 entered into by a State government entity and a private entity
15 pursuant to this section for the purpose of permitting a private entity
16 to assume financial and administrative responsibility for the
17 construction, reconstruction, repair, alteration, improvement,
18 extension, operation, and maintenance of a building project or a
19 highway project of, or for the benefit of, the State government
20 entity.

21 “State government entity” means the State or any department,
22 agency, board, commission, committee, or authority thereof subject
23 to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et
24 seq.), ¹**[but]** including the South Jersey Port Corporation created
25 pursuant to “The South Jersey Port Corporation Act,” P.L.1968,
26 c.60 (C.12:11A-1 et seq.). State government entity¹ shall not
27 include any State institution of higher education.

28 b. (1) A State government entity may enter into a contract with
29 a private entity, subject to subsection f. of this section, to be
30 referred to as a public-private partnership agreement, that permits
31 the private entity to assume financial and administrative
32 responsibility for the construction, reconstruction, repair, alteration,
33 improvement, extension, operation, and maintenance of a building
34 or highway of, or for the benefit of, the State government entity,
35 provided that the building or highway project is financed in whole
36 or in part by the private entity.

37 (2) A public-private partnership agreement may include an
38 agreement under which a State government entity and a private
39 entity enter into a lease of a revenue-producing public building or
40 highway in exchange for up-front or structured financing by the
41 private entity for the project. Under the lease agreement, the
42 private entity may be responsible for the management, operation,
43 and maintenance of the building or highway. The private entity
44 may receive some or all, as per the agreement, of the revenue
45 generated by the building or highway, and may operate the building
46 or highway in accordance with State government entity standards.
47 At the end of the lease term, subsequent revenue generated by the
48 building or highway, along with management, operation, and
49 maintenance responsibility, shall revert to the State government

1 entity. ¹A lease agreement entered into pursuant to this section shall
2 be limited in duration to a term of not more than 30 years. A lease
3 agreement shall be subject to all applicable provisions of current
4 law governing leases by a State government entity not inconsistent
5 with the provisions of this section.¹

6 (3) ¹~~]~~A public-private partnership agreement may include the
7 use of availability payments if deemed to be in the best interest of
8 the public and the State government entity, provided the private
9 entity shall operate the building, road, structure, infrastructure or
10 facility in accordance with State government entity standards.

11 (4)¹ Bundling of projects shall be prohibited under this section.

12 c. (1) A private entity that assumes financial and
13 administrative responsibility for a building or highway project
14 pursuant to this section, unless otherwise set forth herein, shall not
15 be subject to the procurement and contracting requirements of all
16 statutes applicable to the State government entity at which the
17 project is completed, including, but not limited to, the public
18 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.).

19 (2) For the purposes of facilitating the financing of a project
20 pursuant to this section, a public entity may become the owner or
21 lessee of the project or the lessee of the land, or both, may become
22 the lessee of a building or highway to which the State government
23 entity holds title and, notwithstanding any provision of law to the
24 contrary, shall be empowered to enter into contracts with a private
25 entity and its affiliates without being subject to the procurement and
26 contracting requirements, unless otherwise set forth herein, of any
27 statute applicable to the public entity provided that the private
28 entity has been selected by the public entity pursuant to a
29 solicitation of proposals or qualifications from at least two private
30 entities. For the purposes of this subsection, a public entity shall
31 include the New Jersey Department of Transportation, New Jersey
32 Turnpike Authority, South Jersey Transportation Authority, New
33 Jersey Transit, and the New Jersey Economic Development
34 Authority, and any project undertaken pursuant to this section of
35 which the public entity becomes the owner or lessee, or which is
36 situated on land of which the public entity becomes the lessee, shall
37 be deemed a "project" under the "New Jersey Economic
38 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

39 (3) As the carrying out of any project described pursuant to this
40 section constitutes the performance of an essential public function,
41 all projects predominantly used in furtherance of the purposes of the
42 State government entity undertaken pursuant to this section,
43 provided the project is owned by or leased to a public entity, non-
44 profit business entity, foreign or domestic, or a business entity
45 wholly owned by such non-profit business entity, shall at all times
46 be exempt from property taxation and special assessments of the
47 State, or any municipality, or other political subdivision of the State
48 and, notwithstanding the provisions of section 15 of P.L.1974, c.80
49 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or any

1 other section of law to the contrary, shall not be required to make
2 payments in lieu of taxes. The land upon which the project is
3 located shall also at all times be exempt from property taxation.
4 The project and land upon which the project is located shall not be
5 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
6 1.10) regarding the tax liability of private parties conducting for
7 profit activities on tax exempt land, or section 1 of P.L.1949, c.177
8 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt
9 property that are held by nonexempt parties.

10 (4) Prior to the commencement of work on a project, the private
11 entity shall establish a construction account and appoint a third-
12 party financial institution, who shall act as a collateral agent, to
13 manage the construction account. The construction account shall
14 include the funding, financial instruments, or both, that shall be
15 used to fully capitalize and fund the project, and the collateral agent
16 shall maintain a full accounting of the funds and instruments in the
17 account. The funds and instruments in the construction account
18 shall be held in trust for the benefit of the contractor, construction
19 manager, and design-build team involved in the project. The funds
20 and instruments in the construction account shall not be the
21 property of the private entity unless all amounts due to the
22 construction account beneficiaries are paid in full. The construction
23 account shall not be designated for more than one project.

24 d. Each worker employed in the construction, rehabilitation, or
25 maintenance services of buildings or highways by a private entity
26 that has entered into a public-private partnership agreement with a
27 State government entity pursuant to this section shall be paid not
28 less than the prevailing wage rate for the worker's craft or trade as
29 determined by the Commissioner of Labor and Workforce
30 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
31 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

32 e. (1) All building construction projects under a public-private
33 partnership agreement entered into pursuant to this section shall
34 contain a project labor agreement. The project labor agreement
35 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
36 seq.), and shall be in a manner that to the greatest extent possible
37 enhances employment opportunities for individuals residing in the
38 county of the project's location. The general contractor,
39 construction manager, design-build team, or subcontractor for a
40 construction project proposed in accordance with this paragraph
41 shall be registered pursuant to the provisions of P.L.1999, c.238
42 (C.34:11-56.48 et seq.), and shall be classified by the Division of
43 Property Management and Construction, or shall be prequalified by
44 the Department of Transportation, ¹New Jersey Transit, or the New
45 Jersey Turnpike Authority,¹ as appropriate, to perform work on a
46 public-private partnership project.

47 (2) All projects proposed in accordance with this section shall
48 be submitted to the New Jersey Economic Development Authority
49 for its review and approval ¹in accordance with subsection f. of this

1 section¹ prior to commencing procurement of the project ¹in
2 accordance with subsection j. of this section¹ and, when practicable,
3 are encouraged to adhere to the Leadership in Energy and
4 Environmental Design Green Building Rating System as adopted by
5 the United States Green Building Council, the Green Globes
6 Program adopted by the Green Building Initiative, or a comparable
7 nationally recognized, accepted, and appropriate sustainable
8 development rating system.

9 (3) The general contractor, construction manager, or design-
10 build team shall be required to post a performance bond to ensure
11 the completion of the project and a payment bond guaranteeing
12 prompt payment of moneys due in accordance with and conforming
13 to the requirements of N.J.S.2A:44-143 et seq.

14 f. (1) All projects proposed in accordance with this section
15 shall be submitted to the New Jersey Economic Development
16 Authority for the authority's review and approval. The projects are
17 encouraged, when practicable, to adhere to the green building
18 manual prepared by the Commissioner of Community Affairs
19 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

20 (2) (a) In order for an application to be complete and
21 considered by the authority, the application shall include, but not be
22 limited to: (i) a full description of the proposed public-private
23 partnership agreement between the State government entity and the
24 private developer; (ii) a full description of the project, including a
25 description of any agreement for the lease of a revenue-producing
26 building or highway related to the project; (iii) the estimated costs
27 and financial documentation for the project; (iv) a timetable for
28 completion of the construction of the project extending no more
29 than five years after consideration and approval; and (v) any other
30 requirements that the authority deems appropriate or necessary.

31 (b) As part of the estimated costs and financial documentation
32 for the project, the application shall contain a long-range
33 maintenance plan and a long-range maintenance bond and shall
34 specify the expenditures that qualify as an appropriate investment in
35 maintenance. The long-range maintenance plan shall be approved
36 by the authority pursuant to regulations promulgated by the
37 authority that reflect national building or highway maintenance
38 standards, as appropriate, and other appropriate maintenance
39 benchmarks.

40 (3) The authority shall review all completed applications, and
41 request additional information as is needed to make a complete
42 assessment of the project. ¹The criteria for assessing the project
43 shall include, but may not be limited to: (i) feasibility and design of
44 the project; (ii) experience and qualifications of the private entity;
45 (iii) soundness of the financial plan; (iv) adequacy of the required
46 exhibits; (v) adequacy of the long-range maintenance plan; and (vi)
47 the existence of a clear public benefit.¹ No project shall commence
48 the procurement process until ¹**[final]**¹ approval has been granted
49 by the authority ¹. Following the procurement process, but before

1 the State government entity enters into a public-private partnership
2 agreement, the project and the resultant short list of private entities
3 shall be submitted to the authority for final approval¹; provided,
4 however, that the authority shall retain the right to revoke approval
5 if it determines that the project has ¹substantially¹ deviated from the
6 plan submitted pursuant to paragraph (2) of this subsection, and
7 shall retain the right to cancel a procurement after a short list of
8 private entities is developed if deemed in the public interest as
9 specified under subsection j. of this section. Notwithstanding any
10 provision of this section to the contrary, all roadway or highway
11 projects shall be subject to review and approval by the State
12 Treasurer, ¹which shall be conducted in consultation with the
13 Commissioner of the Department of Transportation,¹ and the
14 authority shall not approve any roadway or highway project
15 disapproved by the State Treasurer.

16 (4) The authority may promulgate any rules and regulations
17 necessary to implement this subsection, including provisions for
18 fees to cover administrative costs.

19 g. A project with an expenditure of under \$50 million
20 developed under a public-private partnership agreement shall
21 include a requirement that precludes contractors from engaging in
22 the project if the contractor has contributed to the private entity's
23 financing of the project in an amount of more than 10% of the
24 project's financing costs.

25 h. The power of eminent domain shall not be delegated to any
26 private entity under the provisions of P.L. , c. (C.)
27 (pending before the Legislature as this bill); however, a State
28 government entity may dedicate any property interest, including
29 land, improvements, and tangible personal property of the State
30 government entity for public use in a qualifying project if the State
31 government entity finds that so doing will serve the public purpose
32 of the project by minimizing the cost of the project to the State
33 government entity or reducing the delivery time of a project.

34 i. Any public-private partnership agreement, if appropriate,
35 shall include provisions affirming that the agreement and any work
36 performed under the agreement are subject to the provisions of the
37 "Construction Industry Independent Contractor Act," P.L.2007,
38 c.114 (C.34:20-1 et seq.).

39 j. (1) A private entity seeking to enter into a public-private
40 partnership agreement with the State government entity shall be
41 qualified by the State government entity as part of the procurement
42 process, provided such process ensures that the private entity meets
43 at least the minimum State government entity standards for
44 qualification for professional services, construction contracting, and
45 other qualifications applicable to the project, prior to submitting a
46 proposal under the procurement process. ¹The State government
47 entity shall issue a request for proposals, which shall close within
48 45 days.¹ The qualification process ¹shall be conducted within 45
49 days after the closing date for the receipt of proposals, and¹ shall

1 result in a list of qualified private entities, that may be ranked in
2 order to generate a short list of private entities requested to submit a
3 final proposal.

4 (2) The State government entity may accept unsolicited
5 proposals from private entities for public-private partnership
6 agreements. If the State government entity receives an unsolicited
7 proposal and determines that it meets the standards of this section,
8 the State government entity shall publish a notice of the receipt of
9 the proposal on the Internet site of the State government entity, or
10 through advertisements in newspapers. If a notice is published
11 exclusively in newspapers, the notice shall appear in two or more
12 newspapers circulated wholly or in part in the county where the
13 proposed project is to be located. The notice shall provide that the
14 State government entity will accept, for ¹~~45~~ 120¹ days after the
15 initial date of publication, proposals meeting the standards of this
16 section from other private entities for eligible projects that satisfy
17 the same basic purpose and need. A copy of the notice shall be
18 mailed to each municipal and county local government body in the
19 geographic area affected by the proposal.

20 (3) After the proposal or proposals have been received, and any
21 public notification period has expired, the State government entity
22 shall rank the proposals in order of preference. In ranking the
23 proposals, the State government entity may consider factors that
24 include, but may not be limited to, professional qualifications,
25 general business terms, innovative engineering, architectural
26 services, or cost-reduction terms, finance plans, and the need for
27 State government entity funds to deliver the project and discharge
28 the agreement. If only one proposal is received, the State
29 government entity shall negotiate in good faith and, if not satisfied
30 with the results of the negotiations, the State government entity
31 may, at its sole discretion, terminate negotiations.

32 (4) The State government entity may require that the private
33 entity assume responsibility for all costs incurred by the State
34 government entity before execution of the public-private
35 partnership agreement, including costs of retaining independent
36 experts to review, analyze, and advise the State government entity
37 with respect to the proposal.

38 (5) If the authority or State Treasurer deem it in the public's
39 interest to cancel a procurement after a short list of private entities
40 is developed, the authority shall pay for documented third party
41 costs, including, but not limited to, design services, legal advisors,
42 financial advisors, and reasonable expenditures.

43 (6) Stipends may be used on public private partnership projects
44 when there is a substantial opportunity for innovation and the costs
45 for developing a proposal are significant. The State government
46 entity may elect to pay unsuccessful proposers for the work product
47 they submit with their proposal in response to a request for
48 proposals. The use by the State government entity of any design
49 element contained in an unsuccessful proposal shall be at the sole

1 risk and discretion of the State government entity and shall not
2 confer liability on the recipient of the stipulated stipend amount.
3 After payment of the stipulated stipend amount, the State
4 government entity and the unsuccessful proposer shall jointly own
5 the rights to, and may make use of any work product contained in
6 the proposal, including the technologies, techniques, methods,
7 processes, ideas, and information contained in the proposal, project
8 design, and project financial plan. The use by the unsuccessful
9 proposer of any part of the work product contained in the proposal
10 shall be at the sole risk of the unsuccessful proposer and shall not
11 confer liability on the State government entity.]²

12

13 ²3. (New section) a. As used in this section:

14 “Authority” means the New Jersey Economic Development
15 Authority established pursuant to section 4 of P.L.1974, c.80
16 (C.34:1B-4) ³ ³.

17 “Building project” means the construction, reconstruction, repair,
18 alteration, improvement, or extension of any public building,
19 structure, or facility constructed or acquired by a State government
20 entity to house State government functions, including any
21 infrastructure or facility used or to be used by the public or in
22 support of a public purpose or activity.

23 “Bundling” means the use of a solicitation for multiple projects
24 in one single contract, through a public-private partnership project
25 delivery method, the result of which restricts competition.

26 “Department” means the Department of Transportation.

27 “Division” means the Division of Property Management and
28 Construction within the Department of the Treasury.

29 “Highway project” means the construction, reconstruction,
30 repair, alteration, improvement, or extension of public expressways,
31 freeways, and parkways, including bridges, tunnels, overpasses,
32 underpasses, interchanges, rest areas, express bus roadways, bus
33 pullouts and turnarounds, and park and ride facilities, including any
34 infrastructure or facility used or to be used by the public or in
35 support of a public purpose or activity; provided that the project
36 shall include an expenditure of at least \$100 million in public funds,
37 or any expenditure in solely private funds.

38 “Public-private partnership agreement” means an agreement
39 entered into by a State government entity and a private entity
40 pursuant to this section for the purpose of permitting a private entity
41 to assume full financial and administrative responsibility for the
42 construction, reconstruction, repair, alteration, improvement,
43 extension, operation, and maintenance of a revenue-producing
44 building project or a highway project of, or for the benefit of, the
45 State government entity.

46 “State government entity” means the State or any department,
47 agency, commission, or authority thereof subject to the public
48 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
49 including the South Jersey Port Corporation created pursuant to

1 “The South Jersey Port Corporation Act,” P.L.1968, c.60
2 (C.12:11A-1 et seq.), and New Jersey Transit. State government
3 entity shall not include any State institution of higher education.

4 b. (1) A State government entity may enter into a contract with
5 a private entity, subject to subsection f. of this section, to be
6 referred to as a public-private partnership agreement, that permits
7 the private entity to assume full financial and administrative
8 responsibility for the construction, reconstruction, repair, alteration,
9 improvement, extension, operation, and maintenance of a building
10 or highway of, or for the benefit of, the State government entity,
11 provided that the building or highway project is financed in whole
12 or in part by the private entity and the State government entity
13 retains full ownership of the land upon which the project is located.

14 (2) A public-private partnership agreement may include an
15 agreement under which a State government entity and a private
16 entity enter into a lease of a revenue-producing public building or
17 highway in exchange for up-front or structured financing by the
18 private entity for the project. Under the lease agreement, the
19 private entity shall be responsible for the management, operation,
20 and maintenance of the building or highway. The private entity
21 shall receive some or all, as per the agreement, of the revenue
22 generated by the building or highway, and shall operate the building
23 or highway in accordance with State government entity standards.
24 At the end of the lease term, subsequent revenue generated by the
25 building or highway, along with management, operation, and
26 maintenance responsibility, shall revert to the State government
27 entity. A lease agreement entered into pursuant to this section shall
28 be limited in duration to a term of not more than 30 years, unless it
29 includes a highway project component in which case the lease
30 agreement shall be limited in duration to a term not more than 50
31 years. A lease agreement shall be subject to all applicable
32 provisions of current law governing leases by a State government
33 entity not inconsistent with the provisions of this section. For the
34 purposes of this section, “revenue-producing” shall include
35 leaseback arrangements.

36 (3) Bundling of projects shall be prohibited under this section.

37 (4) The total number of approved State highway projects
38 developed through a public-private partnership shall not exceed
39 eight projects at any given time.

40 c. (1) A private entity that assumes full financial and
41 administrative responsibility for a building or highway project
42 pursuant to this section, unless otherwise set forth herein, shall not
43 be subject to the procurement and contracting requirements of all
44 statutes applicable to the State government entity at which the
45 project is completed, including, but not limited to, the public
46 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.).

47 (2) ³Any conveyance of real property, capital improvements
48 and personal property owned by the State shall not be subject to the
49 approval of the State House Commission pursuant to R.S.52:20-1 et

1 seq or the State Legislature, provided the State Treasurer approves
2 of such transfer as being necessary to meet the goals of this act,
3 P.L. c. , (C.) (pending before the Legislature as this bill).】³
4 Notwithstanding any provision of law to the contrary, a State
5 government entity shall be empowered to enter into contracts with a
6 private entity and its affiliates without being subject to the
7 procurement and contracting requirements, unless otherwise set
8 forth herein, of any statute applicable to the public entity provided
9 that the private entity has been selected by the public entity
10 pursuant to a solicitation of proposals or qualifications from at least
11 two private entities, or it has received an unsolicited proposal and
12 followed the procedure set forth in paragraph (2) of subsection j. of
13 this section. A State government entity shall be the owner or lessee
14 of any project financed by a State entity.

15 (3) Prior to the commencement of work on a project, the private
16 entity shall establish a construction account and appoint a third-
17 party financial institution, who shall be prequalified by the State
18 Treasurer, to act as a collateral agent, and manage the construction
19 account. The construction account shall include the funding,
20 financial instruments, or both, that shall be used to fully capitalize
21 and fund the project, and the collateral agent shall maintain a full
22 accounting of the funds and instruments in the account. The funds
23 and instruments in the construction account shall be held in trust for
24 the benefit of the contractor, construction manager, and design-
25 build team involved in the project. The funds and instruments in
26 the construction account shall not be the property of the private
27 entity unless all amounts due to the construction account
28 beneficiaries are paid in full. The construction account shall not be
29 designated for more than one project.

30 d. Each worker employed in the construction, rehabilitation, or
31 maintenance services of buildings or highways by a private entity
32 that has entered into a public-private partnership agreement with a
33 State government entity pursuant to this section shall be paid not
34 less than the prevailing wage rate for the worker's craft or trade as
35 determined by the Commissioner of Labor and Workforce
36 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
37 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

38 e. (1) All building construction projects under a public-private
39 partnership agreement entered into pursuant to this section shall
40 contain a project labor agreement. The project labor agreement
41 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
42 seq.), and shall be in a manner that to the greatest extent possible
43 enhances employment opportunities for individuals residing in the
44 county of the project's location. The general contractor,
45 construction manager, design-build team, architectural and
46 engineering professionals and any subcontractor for a construction
47 project proposed in accordance with this paragraph shall be
48 registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-
49 56.48 et seq.), and shall be classified by the Division of Property

1 Management and Construction, or shall be prequalified by the
2 Department of Transportation, New Jersey Transit, or the New
3 Jersey Turnpike Authority, as appropriate, to perform work on a
4 public-private partnership project.

5 (2) All building projects proposed in accordance with this
6 section shall be submitted to the State Treasurer for its review and
7 approval in accordance with subsection f. of this section prior to the
8 execution of the public-private partnership agreement in accordance
9 with subsection j. of this section. When practicable, State
10 government entities are encouraged to adhere to the Leadership in
11 Energy and Environmental Design Green Building Rating System
12 as adopted by the United States Green Building Council, the Green
13 Globes Program adopted by the Green Building Initiative, or a
14 comparable nationally recognized, accepted, and appropriate
15 sustainable development rating system.

16 (3) The general contractor, construction manager, or design-
17 build team shall be required to post a performance bond to ensure
18 the completion of the project and a payment bond guaranteeing
19 prompt payment of moneys due in accordance with and conforming
20 to the requirements of N.J.S.2A:44-143 et seq.

21 f. (1) Prior to entering into a public -private partnership, the
22 State government entity shall determine: (i) the benefits to be
23 realized by the project; (ii) the cost of project if it is developed by
24 the public sector supported by comparisons to comparable projects;
25 (iii) the maximum public contribution that the State government
26 entity will allow under the public -private partnership; (iv) a
27 comparison of the financial and non-financial benefits of the
28 public-private partnership compared to other options including the
29 public sector option; (v) a list of risks, liabilities and responsibilities
30 to be transferred to the private entity and those to be retained by the
31 State government entity; and (vi) if the project has a high, medium
32 or low level of project delivery risk and how the public is protected
33 from these risks.

34 (2) Prior to entering into a public- private partnership, the State
35 government entity at a public hearing or via notice to the public,
36 shall find that the project is in the best interest of the public by
37 finding that (i) it will cost less than the public sector option, or if it
38 costs more there are factors that warrant the additional expense; (ii)
39 there is a public need for the project and the project is consistent
40 with existing long-term plans; (iii) there are specific significant
41 benefits to the project; (iv) there are specific significant benefits to
42 using the public-private partnership instead of other options
43 including No-Build; (v) the private development will result in
44 timely and efficient development and operation; and (vi) the risks,
45 liabilities and responsibilities transferred to the private entity
46 provide sufficient benefits to warrant not using other means of
47 procurement.

48 (3) All projects proposed in accordance with this section shall
49 be submitted to the State Treasurer for review and approval. The

1 projects are encouraged, when practicable, to adhere to the green
2 building manual prepared by the Commissioner of Community
3 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

4 (4) All projects proposed in accordance with this section that
5 have a transportation component or impact the transportation
6 infrastructure shall be submitted to the State Treasurer, in
7 consultation with the Commissioner of the Department of
8 Transportation, for review and approval.

9 (5) (a) In order for an application to be complete and
10 considered by the State Treasurer, the application shall include, but
11 not be limited to: (i) a full description of the proposed public-
12 private partnership agreement between the State government entity
13 and the private developer, including all information obtained by and
14 findings of the State government entity pursuant to paragraphs (1)
15 and (2) of this subsection; (ii) a full description of the project,
16 including a description of any agreement for the lease of a revenue-
17 producing building or highway related to the project; (iii) the
18 estimated costs and financial documentation for the project showing
19 the underlying financial models and assumptions that determined
20 the estimated costs. The financial documentation shall include at
21 least three different projected estimated costs showing scenarios in
22 which materially different economic circumstances are assumed and
23 an explanation for how the estimated costs were determined based
24 on the three scenarios; (iv) a timetable for completion of the
25 construction of the project; (v) an analysis of all available funding
26 options for the project, including an analysis of the financial
27 viability and advisability of such project, along with evidence of the
28 public benefit in advancing the project as a public-private
29 partnership; and (vi) any other requirements that the State Treasurer
30 deems appropriate or necessary.

31 (b) As part of the estimated costs and financial documentation
32 for the project, the application shall contain a long-range
33 maintenance plan and a long-range maintenance bond and shall
34 specify the expenditures that qualify as an appropriate investment in
35 maintenance. The long-range maintenance plan shall be approved
36 by the State Treasurer pursuant to regulations promulgated by the
37 State Treasurer and the authority that reflect national building or
38 highway maintenance standards, as appropriate, and other
39 appropriate maintenance benchmarks.

40 (6) The State Treasurer, in consultation with the authority, shall
41 review all completed applications, and request additional
42 information as is needed to make a complete assessment of the
43 project. No public-private partnership agreement shall be executed
44 until approval has been granted by the State Treasurer. Prior to a
45 final decision by the State Treasurer on the application, the
46 authority shall be afforded the opportunity to provide comments on
47 the application that it deems appropriate, and the State Treasurer
48 shall consider any comments submitted by the authority or relevant
49 State government entity with respect to the application. The State

1 Treasurer shall find that: (i) the State government entity's
2 assumptions regarding the project's scope, its benefits, its risks and
3 the cost of the public sector option were fully and reasonably
4 developed; (ii) the design of the project is feasible; (iii) the
5 experience and qualifications of the private entity are adequate; (iv)
6 the financial plan is sound; (v) the long-range maintenance plan is
7 adequate to protect the investment; (vi) the project is in the best
8 interest of the public, using the criteria in paragraph (2) of this
9 subsection; and (vii) the term sheet for any proposed procurement
10 contains all necessary elements. The criteria for assessing the
11 project shall include, but may not be limited to: (i) feasibility and
12 design of the project; (ii) experience and qualifications of the
13 private entity; (iii) soundness of the financial plan; (iv) adequacy of
14 the required exhibits; (v) adequacy of the long-range maintenance
15 plan; and (vi) the existence of a clear public benefit. The State
16 Treasurer shall retain the right to revoke approval if the project has
17 substantially deviated from the plan submitted pursuant to
18 paragraph (2) of this subsection.

19 (7) The State Treasurer may promulgate any rules and
20 regulations necessary to implement this subsection, including, but
21 not limited to, provisions for fees to cover administrative costs and
22 for the determination of minimum State government entity
23 standards for the operation of the project, and for the qualification
24 for professional services, construction contracting, and other
25 relevant qualifications.

26 g. A project with an expenditure of under \$50 million
27 developed under a public-private partnership agreement shall
28 include a requirement that precludes contractors from engaging in
29 the project if the contractor has contributed to the private entity's
30 financing of the project in an amount of more than 10% of the
31 project's financing costs.

32 h. The power of eminent domain shall not be delegated to any
33 private entity under the provisions of P.L. _____, c. _____ (C. _____)
34 (pending before the Legislature as this bill); however, the State
35 Treasurer may dedicate any property interest, including
36 improvements, and tangible personal property of the State for
37 public use in a qualifying project if the State finds that so doing will
38 serve the public purpose of the project by minimizing the cost of the
39 project to the State government entity or reducing the delivery time
40 of a project.

41 i. Any public-private partnership agreement, if appropriate,
42 shall include provisions affirming that the agreement and any work
43 performed under the agreement are subject to the provisions of the
44 "Construction Industry Independent Contractor Act," P.L.2007,
45 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement
46 shall also include, at a minimum: (i) the term of the agreement, (ii)
47 the total project cost, (iii) a completion date guarantee, (iv) a
48 provision for damages if the private entity fails to meet the
49 completion date, and (v) a maximum rate of return to the private

1 entity and a provision for the distribution of excess earnings to the
2 local government unit or to the private party for debt reduction.

3 j. (1) A private entity seeking to enter into a public-private
4 partnership agreement with the Department of Treasury on behalf of
5 a State government entity shall be qualified by the State
6 government entity as part of the procurement process, provided
7 such process ensures that the private entity, and its subcontractors
8 and consultants, when relevant, are identified and meet at least the
9 minimum State government entity standards for qualification for
10 professional services, construction contracting, and other
11 qualifications applicable to the project, prior to submitting a
12 proposal under the procurement process.

13 (2) A request for qualifications for a public-private partnership
14 agreement shall be advertised at least 45 days prior to the
15 anticipated date of receipt. The advertisement of the request for
16 qualifications shall be published on the official Internet website of
17 the State government entity and at least one or more newspapers
18 with statewide circulation.

19 (3) After the State government entity determines the qualified
20 respondents utilizing, at minimum, the qualification standards
21 promulgated by the State Treasurer, the State government entity
22 shall issue a request for proposals to each qualified respondent no
23 less than 90 days prior to the date established for submission of the
24 proposals. The request for proposals shall include relevant
25 technical submissions, documents, and the evaluation criteria to be
26 used in the selection of the designated respondent. The evaluation
27 criteria shall be, at minimum, criteria promulgated by the State
28 Treasurer, in consultation with the New Jersey Economic
29 Development Authority.

30 (4) The State government entity may accept unsolicited
31 proposals from private entities for public-private partnership
32 agreements. If the State government entity receives an unsolicited
33 proposal, determines that it meets the standards of this section, and
34 the project meets the State government entity's needs, the State
35 government entity shall publish a notice of the receipt of the
36 proposal on the Internet site of the State government entity, or
37 through at least one or more newspapers with statewide circulation,
38 and provide notice of the proposal at its next scheduled public
39 meeting, if applicable, and to the State Treasurer. To qualify as an
40 unsolicited proposal, the unsolicited proposal shall at a minimum
41 include a description of the public-private project, the estimated
42 construction and life-cycle costs, a timeline for development,
43 proposed plan of financing, including projected revenues, public or
44 private, debt, equity investment or availability payments,
45 description of how the project meets needs identified in existing
46 plans, the permits and approvals needed to develop the project from
47 local, state and federal agencies and a projected schedule for
48 obtaining such permits and approvals, and a statement of risks,
49 liabilities and responsibilities to be assumed by the private entity. If

1 a notice is published exclusively in newspapers, the notice shall
2 appear in at least one or more newspapers with statewide
3 circulation. The notice shall provide that the State government
4 entity may accept, for 120 days after the initial date of publication,
5 proposals meeting the standards of this section from other private
6 entities for eligible projects that satisfy the same basic purpose and
7 need. A copy of the notice shall be mailed to each municipal and
8 county local government body in the geographic area affected by
9 the proposal.

10 (5) After the proposal or proposals have been received, and any
11 public notification period has expired, the State government entity
12 shall rank the proposals in order of preference. In ranking the
13 proposals, the State government entity may consider factors that
14 include, but may not be limited to, professional qualifications,
15 general business terms, innovative engineering, architectural
16 services, or cost-reduction terms, finance plans, and the need for
17 State government entity funds to deliver the project and discharge
18 the agreement and shall rely upon, at a minimum, the evaluation
19 criteria promulgated by the State Treasurer, in consultation with
20 the New Jersey Economic Development Authority. The Department
21 of the Treasury may negotiate the final terms with the private
22 entities submitting proposals, including price, term, and any other
23 term or condition so as to make the project well-suited to the needs
24 of the State government entity and commercially viable for the
25 private entity. The State Treasurer shall select proposals that meet
26 the standards of this section and that best meet the needs, price and
27 other factors considered by the State Treasurer. The private entity
28 selected shall comply with all laws and regulations required by the
29 State government entity, including but not limited to section 1 of
30 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,
31 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),
32 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-
33 51 et al), Executive Order No. 117 of 2008, Executive Order No.
34 118 of 2008, Executive Order No. 189, prior to executing the public
35 private partnership agreement. If only one proposal is received, the
36 State government entity shall negotiate in good faith and, if not
37 satisfied with the results of the negotiations, the State government
38 entity may, at its sole discretion, terminate negotiations.

39 (6) The State government entity may, upon receipt of one or
40 more proposals, require that the private entity assume responsibility
41 for all costs incurred by the State government entity before
42 execution of the public-private partnership agreement, including
43 costs of retaining independent experts to review, analyze, and
44 advise the State government entity with respect to the proposal.

45 (7) Stipends may be used on public private partnership projects
46 when there is a substantial opportunity for innovation and the costs
47 for developing a proposal are significant. The Department of the
48 Treasury may elect to pay unsuccessful proposers for the work
49 product they submit with their proposal in response to a request for

1 proposals. The use by the State government entity of any design
2 element contained in an unsuccessful proposal shall be at the sole
3 risk and discretion of the Department of the Treasury and shall not
4 confer liability on the recipient of the stipulated stipend amount.
5 After payment of the stipulated stipend amount, the Department of
6 the Treasury and the unsuccessful proposer shall jointly own the
7 rights to, and may make use of any work product contained in the
8 proposal, including the technologies, techniques, methods,
9 processes, ideas, and information contained in the proposal, project
10 design, and project financial plan. The use by the unsuccessful
11 proposer of any part of the work product contained in the proposal
12 shall be at the sole risk of the unsuccessful proposer and shall not
13 confer liability on the State government entity. The State Treasurer,
14 in consultation with the New Jersey Economic Development
15 Authority, shall promulgate guidelines based upon which any
16 stipends paid by a State government entity may be based.

17 (8) The State government entity shall set aside one percent of
18 the total cost of each project and remit it to the Public Private
19 Partnership Review fund established pursuant to P.L. c. (C.)
20 (pending before the Legislature as this bill), for purposes of plan
21 review and analysis required under the bill.

22 (9) Nothing in this section shall be construed as or deemed a
23 waiver of the sovereign immunity of the State, an affected locality
24 or public entity or any officer or employee thereof with respect to
25 the participation in or approval of all or any part of the public-
26 private project.²

27

28 4. (New section) Notwithstanding the provisions of section 43
29 of P.L.2009, c.90 (C.18A:64-85) to the contrary, the New Jersey
30 Institute of Technology may enter into a public-private partnership
31 agreement in accordance with the provisions of that section.

32

33 ²[5. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to
34 read as follows:

35 43. a. (1) A State college or county college may enter into a
36 contract with a private entity, subject to subsection f. of this section,
37 to be referred to as a public-private partnership agreement, that
38 permits the private entity to assume **[full]** financial and
39 administrative responsibility for the on-campus or off-campus
40 construction, reconstruction, repair, alteration, improvement,
41 extension, management, or operation of a building, structure, or
42 facility of, or for the benefit of, the institution, provided that the
43 project is financed in whole or in part by the private entity and that
44 the State or institution of higher education, as applicable, retains
45 full ownership of the land upon which the project is completed.

46 (2) A public-private partnership agreement may include an
47 agreement under which a State or county college **[leases to a**
48 **private entity the operation]** and the private entity enter into a lease
49 of a dormitory or other **[revenue-producing]** facility to which the

1 college holds title, in exchange for up-front or structured financing
2 by the private entity for the construction of classrooms,
3 laboratories, or other academic or research buildings. Under the
4 lease agreement, the college shall continue to hold title to the
5 facility, and the private entity shall be responsible for the
6 management, operation, and maintenance of the facility. The
7 private entity shall receive some or all, as per the agreement, of the
8 revenue generated by the facility and shall operate the facility in
9 accordance with college standards. **【A lease agreement shall not**
10 **affect the status or employment rights of college employees who are**
11 **assigned to, or provide services to, the leased facility.】** A lease
12 agreement shall not affect the status or employment rights of
13 college employees who are assigned to, or provide services to, the
14 leased facility. At the end of the lease term, subsequent revenue
15 generated by the facility, along with management, operation, and
16 maintenance responsibility, shall revert to the college. ¹A lease
17 agreement entered into pursuant to this section shall be limited in
18 duration to a term of not more than 30 years. A lease agreement
19 shall be subject to all applicable provisions of current law
20 governing leases by a State or county college not inconsistent with
21 the provisions of this section.¹

22 (3) ¹【A public-private partnership agreement may include the
23 use of availability payments if deemed to be in the best interest of
24 the public and the State or county college, provided the private
25 entity shall operate the building, structure, infrastructure or facility
26 in accordance with State or county college standards.】¹ Bundling
27 of projects shall be prohibited. As used in this paragraph,
28 ¹【“availability payment” means a periodic payment made by a State
29 or county college to a private entity in exchange for making
30 available the use of a public building, structure, infrastructure, or
31 facility at a predetermined level of service, operation, or
32 maintenance. “Bundling”】 “bundling”¹ means the use of a
33 solicitation for multiple projects in one single contract, through a
34 public-private partnership project delivery method, the result of
35 which restricts competition.

36 b. (1) A private entity that assumes financial and
37 administrative responsibility for a project pursuant to subsection a.
38 of this section shall not be subject, unless otherwise set forth herein,
39 to the procurement and contracting requirements of all statutes
40 applicable to the institution of higher education at which the project
41 is completed, including, but not limited to, the "State College
42 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the
43 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1
44 et seq.). For the purposes of facilitating the financing of a project
45 pursuant to subsection a. of this section, a public entity, including
46 any State or county college or public research university, may
47 become the owner or lessee of the project or the lessee of the land,
48 or both, may become the lessee of a dormitory or other revenue-
49 producing facility to which the college holds title, may issue

1 indebtedness in accordance with the public entity's or institution's
2 enabling legislation and, notwithstanding any provision of law to
3 the contrary, shall be empowered to enter into contracts with a
4 private entity and its affiliates, unless otherwise set forth herein,
5 without being subject to the procurement and contracting
6 requirements of any statute applicable to the public entity or
7 institution provided that the private entity has been selected by the
8 institution of higher education pursuant to a solicitation of
9 proposals or qualifications from at least two private entities. For
10 the purposes of this section, a public entity shall include the New
11 Jersey Economic Development Authority ¹or the New Jersey
12 Educational Facilities Authority¹, and any project undertaken
13 pursuant to subsection a. of this section of which the authority
14 becomes the owner or lessee, or which is situated on land of which
15 the authority becomes the lessee, shall be deemed a "project" under
16 the "The New Jersey Economic Development Authority Act,"
17 P.L.1974, c.80 (C.34:1B-1 et seq.) ¹or the "New Jersey educational
18 facilities authority law," N.J.S.18A:72A-1 et seq., as appropriate¹.

19 (2) As the carrying out of any project described pursuant to this
20 section constitutes the performance of an essential public function,
21 all projects **【predominantly used in furtherance of the】** having the
22 primary stated purpose of furthering the educational purposes of the
23 institution undertaken pursuant to this section, provided it is owned
24 by or leased to a public entity, any State or county college or public
25 research university, non-profit business entity, foreign or domestic,
26 or a business entity wholly owned by such non-profit business
27 entity, shall at all times be exempt from property taxation and
28 special assessments of the State, or any municipality, or other
29 political subdivision of the State and, notwithstanding the
30 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2
31 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the
32 contrary, shall not be required to make payments in lieu of taxes.
33 The land upon which the project is located shall also at all times be
34 exempt from property taxation. Further, the project and land upon
35 which the project is located shall not be subject to the provisions of
36 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax
37 liability of private parties conducting for profit activities on tax
38 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding
39 the taxation of leasehold interests in exempt property that are held
40 by nonexempt parties.

41 (3) Prior to the commencement of work on a project, the private
42 entity shall establish a construction account and appoint a third-
43 party financial institution, who shall act as a collateral agent, to
44 manage the construction account. The construction account shall
45 include the funding, financial instruments, or both, that shall be
46 used to fully capitalize and fund the project, and the collateral agent
47 shall maintain a full accounting of the funds and instruments in the
48 account. The funds and instruments in the construction account
49 shall be held in trust for the benefit of the contractor, construction

1 manager, and design-build team involved in the project. The funds
2 and instruments in the construction account shall not be the
3 property of the private entity unless all amounts due to the
4 construction account beneficiaries are paid in full. The construction
5 account shall not be designated for more than one project.

6 c. Each worker employed in the construction, rehabilitation, or
7 building maintenance services of facilities by a private entity that
8 has entered into a public-private partnership agreement with a State
9 or county college pursuant to subsection a. of this section shall be
10 paid not less than the prevailing wage rate for the worker's craft or
11 trade as determined by the Commissioner of Labor and Workforce
12 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
13 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

14 d. (1) All building construction projects under a public-
15 private partnership agreement entered into pursuant to this section
16 shall contain a project labor agreement. The project labor
17 agreement shall be subject to the provisions of P.L.2002, c.44
18 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
19 extent possible enhances employment opportunities for individuals
20 residing in the county of the project's location. Further, the general
21 contractor, construction manager, design-build team, or
22 subcontractor for a construction project proposed in accordance
23 with this paragraph shall be registered pursuant to the provisions of
24 P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by
25 the Division of Property Management and Construction, or shall be
26 prequalified by the Department of Transportation, ¹New Jersey
27 Transit, or the New Jersey Turnpike Authority, ¹ as appropriate, to
28 perform work on a public-private partnership higher education
29 project.

30 (2) All **【construction】** projects proposed in accordance with this
31 **【paragraph】** section shall be submitted to the New Jersey Economic
32 Development Authority for its review and approval ¹in accordance
33 with subsection f. of this section¹ prior to commencing
34 procurement of the project ¹in accordance with subsection k. of this
35 section¹ and, when practicable, are encouraged to adhere to the
36 Leadership in Energy and Environmental Design Green Building
37 Rating System as adopted by the United States Green Building
38 Council, the Green Globes Program adopted by the Green Building
39 Initiative, or a comparable nationally recognized, accepted, and
40 appropriate sustainable development rating system.

41 **【(2) Where no public fund has been established for the financing**
42 **of a public improvement, the chief financial officer of the public**
43 **owner shall require the private entity for whom the public**
44 **improvement is being made】** (3) The general contractor,
45 construction manager, or design-build team shall be required to post
46 **【, or cause to be posted,】** a performance bond to ensure completion
47 of the project and a payment bond guaranteeing prompt payment of
48 moneys due **【to the contractor, his or her subcontractors and to all**

1 persons furnishing labor or materials to the contractor or his or her
2 subcontractors in the prosecution of the work on the public
3 improvement] in accordance with and conforming to the
4 requirements of N.J.S.2A:44-143 et seq.

5 e. [A general contractor, construction manager, design-build
6 team, or subcontractor shall be registered pursuant to the provisions
7 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified
8 by the Division of Property Management and Construction to
9 perform work on a public-private partnership higher education
10 project.] (Deleted by amendment, P.L. , c.) (pending before the
11 Legislature as this bill)

12 f. (1) [On or before August 1, 2015, all] All projects
13 proposed in accordance with this section shall be submitted to the
14 New Jersey Economic Development Authority for the authority's
15 review and approval [; except that in the case of projects proposed
16 in accordance with paragraph (2) of subsection a. of this section, all
17 projects shall be submitted on or before August 1, 2016]. The
18 projects are encouraged, when practicable, to adhere to the green
19 building manual prepared by the Commissioner of Community
20 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).
21 [Any application that is deemed to be incomplete on August 2,
22 2015, or on August 2, 2016 in the case of an application submitted
23 pursuant to paragraph (2) of subsection a. of this section, shall not
24 be eligible for consideration.]

25 (2) (a) In order for an application to be complete and
26 considered by the authority, the application shall include, but not be
27 limited to: (i) a full description of the proposed public-private
28 partnership agreement between the State or county college and the
29 private developer; (ii) a full description of the project, including a
30 description of any agreement for the lease of a revenue-producing
31 facility related to the project; (iii) the estimated costs and financial
32 documentation for the project; (iv) a timetable for completion of the
33 construction of the project extending no more than five years after
34 consideration and approval; and (v) any other requirements that the
35 authority deems appropriate or necessary. ¹The application shall
36 also include a resolution by the governing body of the State or
37 county college of its intent to enter into a public-private partnership
38 agreement pursuant to this section.¹

39 (b) As part of the estimated costs and financial documentation
40 for the project, the application shall contain a long-range
41 maintenance plan and a long-range maintenance bond and shall
42 specify the expenditures that qualify as an appropriate investment in
43 maintenance. The long-range maintenance plan shall be approved
44 by the authority pursuant to regulations promulgated by the
45 authority that reflect national building maintenance standards and
46 other appropriate building maintenance benchmarks. All contracts
47 to implement a long-range maintenance plan pursuant to this
48 paragraph shall contain a project labor agreement. The project

1 labor agreement shall be subject to the provisions of P.L.2002,
2 c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
3 extent possible enhances employment opportunities for individuals
4 residing in the county of the project's location.

5 (3) The authority shall review all completed applications, and
6 request additional information as is needed to make a complete
7 assessment of the project. ¹The criteria for assessing the project
8 shall include, but may not be limited to: (i) feasibility and design of
9 the project; (ii) experience and qualifications of the private entity;
10 (iii) soundness of the financial plan; (iv) adequacy of the required
11 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the
12 existence of a clear public benefit; and (vii) a resolution by the
13 governing body of the State or county college of its intent to enter
14 into a public-private partnership agreement for the project.¹ No
15 project shall [be undertaken] commence the procurement process
16 until ¹[final]¹ approval has been granted by the authority ¹.
17 Following the procurement process, but before the State or county
18 college enters into a public-private partnership agreement, the
19 project and the resultant short list of private entities shall be
20 submitted to the authority for final approval¹; provided, however,
21 that the authority shall retain the right to revoke approval if it
22 determines that the project has ¹substantially¹ deviated from the
23 plan submitted pursuant to paragraph (2) of this subsection, and
24 shall retain the right to cancel a procurement after a short list of
25 private entities is developed if deemed in the public interest as
26 specified under subsection k. of this section.

27 (4) The authority may promulgate any rules and regulations
28 necessary to implement this subsection, including provisions for
29 fees to cover administrative costs.

30 **【Where no public fund has been established for the financing of**
31 **a public improvement, the chief financial officer of the public**
32 **owner shall require the private entity for whom the public**
33 **improvement is being made to post, or cause to be posted, a bond**
34 **guaranteeing prompt payment of moneys due to the contractor, his**
35 **or her subcontractors and to all persons furnishing labor or**
36 **materials to the contractor or his or her subcontractors in the**
37 **prosecution of the work on the public improvement.】**

38 g. **【The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall**
39 **not apply to any project carried out pursuant to this section.】**
40 (Deleted by amendment, P.L. , c.) (pending before the
41 Legislature as this bill)

42 h. A project with an expenditure of under \$50 million
43 developed under a public-private partnership agreement shall
44 include a requirement that precludes contractors from engaging in
45 the project if the contractor has contributed to the private entity's
46 financing of the project in an amount of more than 10% of the
47 project's financing costs.

1 i. The power of eminent domain shall not be delegated to any
2 private entity under the provisions of P.L. , c. (C.)
3 (pending before the Legislature as this bill); however, a State or
4 county college may dedicate any property interest, including land,
5 improvements, and tangible personal property of the State or county
6 college for public use in a qualifying project if the State or county
7 college finds that so doing will serve the public purpose of the
8 project by minimizing the cost of the project to the State or county
9 college or reducing the delivery time of a project.

10 j. Any public-private partnership agreement, if appropriate,
11 shall include provisions affirming that the agreement and any work
12 performed under the agreement are subject to the provisions of the
13 “Construction Industry Independent Contractor Act,” P.L.2007,
14 c.114 (C.34:20-1 et seq.).

15 k. (1) A private entity seeking to enter into a public-private
16 partnership agreement with the State or county college shall be
17 qualified by the State or county college as part of the procurement
18 process, provided such process ensures that the private entity meets
19 at least the minimum State or county college standards for
20 qualification for professional services, construction contracting, and
21 other qualifications applicable to the project, prior to submitting a
22 proposal under the procurement process. ¹The State or county
23 college shall issue a request for proposals, which shall close within
24 45 days.¹ The qualification process ¹shall be conducted within 45
25 days after the closing date for the receipt of proposals, and¹ shall
26 result in a list of qualified private entities, that may be ranked in
27 order to generate a short list of private entities requested to submit a
28 final proposal.

29 (2) The State or county college may accept unsolicited proposals
30 from private entities for public-private partnership agreements. If
31 the State or county college receives an unsolicited proposal and
32 determines that it meets the standards of this section, the State or
33 county college shall publish a notice of the receipt of the proposal
34 on the Internet site of the State or county college, or through
35 advertisements in newspapers. If a notice is published exclusively
36 in newspapers, the notice shall appear in two or more newspapers
37 circulated wholly or in part in the county where the proposed
38 project is to be located. The notice shall provide that the State or
39 county college will accept, for ¹[45] 120¹ days after the initial date
40 of publication, proposals meeting the standards of this section from
41 other private entities for eligible projects that satisfy the same basic
42 purpose and need. A copy of the notice shall be mailed to each
43 municipal and county local government body in the geographic area
44 affected by the proposal.

45 (3) After the proposal or proposals have been received, and any
46 public notification period has expired, the State or county college
47 shall rank the proposals in order of preference. In ranking the
48 proposals, the State or county college may consider factors that
49 include, but may not be limited to, professional qualifications,

1 general business terms, innovative engineering, architectural
2 services, or cost-reduction terms, finance plans, and the need for
3 State or county college funds to deliver the project and discharge
4 the agreement. If only one proposal is received, the State or county
5 college shall negotiate in good faith and, if not satisfied with the
6 results of the negotiations, the State or county college may, at its
7 sole discretion, terminate negotiations.

8 (4) The State or county college may require that the private
9 entity assume responsibility for all costs incurred by the State or
10 county college before execution of the public-private partnership
11 agreement, including costs of retaining independent experts to
12 review, analyze, and advise the State or county college with respect
13 to the proposal.

14 (5) If the authority or State Treasurer deem it in the public's
15 interest to cancel a procurement after a short list of private entities
16 is developed, the authority shall pay for documented third party
17 costs, including, but not limited to, design services, legal advisors,
18 financial advisors, and reasonable expenditures.

19 (6) Stipends may be used on public private partnership projects
20 when there is a substantial opportunity for innovation and the costs
21 for developing a proposal are significant. The State or county
22 college may elect to pay unsuccessful proposers for the work
23 product they submit with their proposal in response to a request for
24 proposals. The use by the State or county college of any design
25 element contained in an unsuccessful proposal shall be at the sole
26 risk and discretion of the State or county college and shall not
27 confer liability on the recipient of the stipulated stipend amount.
28 After payment of the stipulated stipend amount, the State or county
29 college and the unsuccessful proposer shall jointly own the rights
30 to, and may make use of any work product contained in the
31 proposal, including the technologies, techniques, methods,
32 processes, ideas, and information contained in the proposal, project
33 design, and project financial plan. The use by the unsuccessful
34 proposer of any part of the work product contained in the proposal
35 shall be at the sole risk of the unsuccessful proposer and shall not
36 confer liability on the State or county college.

37 (cf: P.L.2013, c.161, s.26)]²

38
39 ^{25.} Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to
40 read as follows:

41 43. a. (1) A State college or county college may enter into a
42 contract with a private entity, subject to subsection f. of this section,
43 to be referred to as a public-private partnership agreement, that
44 permits the private entity to assume full financial and administrative
45 responsibility for the on-campus or off-campus construction,
46 reconstruction, repair, alteration, improvement, extension,
47 management, or operation of a building, structure, or facility of, or
48 for the benefit of, the institution, provided that the project is
49 financed in whole or in part by the private entity and that the State

1 or institution of higher education, as applicable, retains full
2 ownership of the land upon which the project is completed.

3 (2) A public-private partnership agreement may include an
4 agreement under which a State or county college [leases to a
5 private entity the operation] and the private entity enter into a lease
6 of a dormitory or other revenue-producing facility to which the
7 college holds title, in exchange for up-front or structured financing
8 by the private entity for the construction of classrooms,
9 laboratories, or other academic or research buildings. Under the
10 lease agreement, the college shall continue to hold title to the
11 facility, and the private entity shall be responsible for the
12 management, operation, and maintenance of the facility. The
13 private entity shall receive some or all, as per the agreement, of the
14 revenue generated by the facility and shall operate the facility in
15 accordance with college standards. [A lease agreement shall not
16 affect the status or employment rights of college employees who are
17 assigned to, or provide services to, the leased facility.] A lease
18 agreement shall not affect the status or employment rights of
19 college employees who are assigned to, or provide services to, the
20 leased facility. At the end of the lease term, subsequent revenue
21 generated by the facility, along with management, operation, and
22 maintenance responsibility, shall revert to the college. A lease
23 agreement entered into pursuant to this section shall be limited in
24 duration to a term of not more than 30 years. A lease agreement
25 shall be subject to all applicable provisions of current law
26 governing leases by a State or county college not inconsistent with
27 the provisions of this section. For the purposes of this section,
28 “revenue-producing” shall include leaseback arrangements.

29 (3) Bundling of projects shall be prohibited. As used in this
30 paragraph, “bundling” means the use of a solicitation for multiple
31 projects in one single contract, through a public-private partnership
32 project delivery method, the result of which restricts competition.

33 b. (1) A private entity that assumes full financial and
34 administrative responsibility for a project pursuant to subsection a.
35 of this section shall not be subject, unless otherwise set forth herein,
36 to the procurement and contracting requirements of all statutes
37 applicable to the institution of higher education at which the project
38 is completed, including, but not limited to, the "State College
39 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the
40 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1
41 et seq.). [For the purposes of facilitating the financing of a project
42 pursuant to subsection a. of this section, a public entity may become
43 the owner or lessee of the project or the lessee of the land, or both,
44 may become the lessee of a dormitory or other revenue-producing
45 facility to which the college holds title, may issue indebtedness in
46 accordance with the public entity's or institution's enabling
47 legislation and, notwithstanding] Any capital improvements and
48 conveyance of personal property owned by the State shall not be
49 subject to the approval of the State House Commission pursuant to

1 R.S.52:20-1 et seq., or the State Legislature, provided the State
2 Treasurer approves of such transfer as being necessary to meet the
3 goals of this act, P.L. c. (pending before the Legislature as this
4 bill). Notwithstanding any provision of law to the contrary, any
5 State or county college or public research university shall be
6 empowered to enter into contracts with a private entity and its
7 affiliates, unless otherwise set forth herein, without being subject to
8 the procurement and contracting requirements of any statute
9 applicable to the public entity or institution provided that the
10 private entity has been selected by the institution of higher
11 education pursuant to a solicitation of proposals or qualifications
12 from at least two private entities, or it has received an unsolicited
13 proposal and followed the procedure set forth in paragraph (2) of
14 subsection k. of this section. For the purposes of this section, a
15 public entity shall include the New Jersey Economic Development
16 Authority or the New Jersey Educational Facilities Authority, and
17 any project undertaken pursuant to subsection a. of this section of
18 which the authority becomes the owner or lessee, or which is
19 situated on land of which **【the authority】** either of those authorities
20 becomes the lessee, shall be deemed a "project" under the "The
21 New Jersey Economic Development Authority Act," P.L.1974, c.80
22 (C.34:1B-1 et seq.) or the "New Jersey educational facilities
23 authority law," N.J.S.18A:72A-1 et seq., as appropriate.

24 (2) As the carrying out of any project described pursuant to this
25 section constitutes the performance of an essential public function,
26 all projects **【predominantly used in furtherance of the】** having the
27 primary stated purpose of furthering the educational purposes of the
28 institution undertaken pursuant to this section, provided it is owned
29 by or leased to a public entity, any State or county college or public
30 research university, non-profit business entity, foreign or domestic,
31 or a business entity wholly owned by such non-profit business
32 entity, shall at all times be exempt from property taxation and
33 special assessments of the State, or any municipality, or other
34 political subdivision of the State and, notwithstanding the
35 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2
36 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the
37 contrary, shall not be required to make payments in lieu of taxes.
38 The land upon which the project is located shall also at all times be
39 exempt from property taxation. Further, the project and land upon
40 which the project is located shall not be subject to the provisions of
41 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax
42 liability of private parties conducting for profit activities on tax
43 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding
44 the taxation of leasehold interests in exempt property that are held
45 by nonexempt parties.

46 (3) Prior to the commencement of work on a project, the private
47 entity shall establish a construction account and appoint a third-
48 party financial institution, who shall be prequalified by the State
49 Treasurer, to act as a collateral agent, and to manage the

1 construction account. The construction account shall include the
2 funding, financial instruments, or both, that shall be used to fully
3 capitalize and fund the project, and the collateral agent shall
4 maintain a full accounting of the funds and instruments in the
5 account. The funds and instruments in the construction account
6 shall be held in trust for the benefit of the contractor, construction
7 manager, and design-build team involved in the project. The funds
8 and instruments in the construction account shall not be the
9 property of the private entity unless all amounts due to the
10 construction account beneficiaries are paid in full. The construction
11 account shall not be designated for more than one project.

12 c. Each worker employed in the construction, rehabilitation, or
13 building maintenance services of facilities by a private entity that
14 has entered into a public-private partnership agreement with a State
15 or county college pursuant to subsection a. of this section shall be
16 paid not less than the prevailing wage rate for the worker's craft or
17 trade as determined by the Commissioner of Labor and Workforce
18 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
19 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

20 d. (1) All building construction projects under a public-private
21 partnership agreement entered into pursuant to this section shall
22 contain a project labor agreement. The project labor agreement
23 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
24 seq.), and shall be in a manner that to the greatest extent possible
25 enhances employment opportunities for individuals residing in the
26 county of the project's location. Further, the general contractor,
27 construction manager, design-build team, or subcontractor for a
28 construction project proposed in accordance with this paragraph
29 shall be registered pursuant to the provisions of P.L.1999, c.238
30 (C.34:11-56.48 et seq.), and shall be classified by the Division of
31 Property Management and Construction, or shall be prequalified by
32 the Department of Transportation, New Jersey Transit, or the New
33 Jersey Turnpike Authority, as appropriate, to perform work on a
34 public-private partnership higher education project.

35 (2) All **【construction】** building projects proposed in accordance
36 with this **【paragraph】** section shall be submitted to the **【New Jersey**
37 **Economic Development Authority】** State Treasurer, in consultation
38 with the Secretary of Higher Education, and to the New Jersey
39 Educational Facilities Authority, as to projects to be financed
40 through the New Jersey Educational Facilities Authority, for **【its】**
41 review and approval in accordance with subsection f. of this section
42 prior to the execution of the public-private partnership agreement in
43 accordance with subsection k. of this section and, when practicable,
44 are encouraged to adhere to the Leadership in Energy and
45 Environmental Design Green Building Rating System as adopted by
46 the United States Green Building Council, the Green Globes
47 Program adopted by the Green Building Initiative, or a comparable
48 nationally recognized, accepted, and appropriate sustainable
49 development rating system.

1 ~~[(2) Where no public fund has been established for the financing~~
2 ~~of a public improvement, the chief financial officer of the public~~
3 ~~owner shall require the private entity for whom the public~~
4 ~~improvement is being made]~~ (3) The general contractor,
5 construction manager, or design-build team shall be required to post
6 [, or cause to be posted,] a performance bond to ensure completion
7 of the project and a payment bond guaranteeing prompt payment of
8 moneys due ~~[to the contractor, his or her subcontractors and to all~~
9 persons furnishing labor or materials to the contractor or his or her
10 subcontractors in the prosecution of the work on the public
11 improvement] in accordance with and conforming to the
12 requirements of N.J.S.2A:44-143 et seq.

13 e. ~~[A general contractor, construction manager, design-build~~
14 ~~team, or subcontractor shall be registered pursuant to the provisions~~
15 ~~of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified~~
16 ~~by the Division of Property Management and Construction to~~
17 ~~perform work on a public-private partnership higher education~~
18 ~~project.] (Deleted by amendment, P.L. , c.) (pending before the~~
19 Legislature as this bill)

20 f. ~~[(1) On or before August 1, 2015, all projects proposed in~~
21 ~~accordance with this section shall be submitted to the New Jersey~~
22 ~~Economic Development Authority for the authority's review and~~
23 ~~approval ; except that in the case of projects proposed in accordance~~
24 ~~with paragraph (2) of subsection a. of this section, all projects shall~~
25 ~~be submitted on or before August 1, 2016. The projects are~~
26 ~~encouraged, when practicable, to adhere to the green building~~
27 ~~manual prepared by the Commissioner of Community Affairs~~
28 ~~pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any~~
29 ~~application that is deemed to be incomplete on August 2, 2015, or~~
30 ~~on August 2, 2016 in the case of an application submitted pursuant~~
31 ~~to paragraph (2) of subsection a. of this section, shall not be eligible~~
32 ~~for consideration.~~

33 (2) (a) In order for an application to be complete and
34 considered by the authority, the application shall include, but not be
35 limited to: (i) a public-private partnership agreement between the
36 State or county college and the private developer; (ii) a full
37 description of the project, including a description of any agreement
38 for the lease of a revenue-producing facility related to the project;
39 (iii) the estimated costs and financial documentation for the project;
40 (iv) a timetable for completion of the project extending no more
41 than five years after consideration and approval; and (v) any other
42 requirements that the authority deems appropriate or necessary.

43 (b) As part of the estimated costs and financial documentation
44 for the project, the application shall contain a long-range
45 maintenance plan and shall specify the expenditures that qualify as
46 an appropriate investment in maintenance. The long-range
47 maintenance plan shall be approved by the authority pursuant to
48 regulations promulgated by the authority that reflect national
49 building maintenance standards and other appropriate building

1 maintenance benchmarks. All contracts to implement a long-range
2 maintenance plan pursuant to this paragraph shall contain a project
3 labor agreement. The project labor agreement shall be subject to
4 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in
5 a manner that to the greatest extent possible enhances employment
6 opportunities for individuals residing in the county of the project's
7 location.

8 (3) The authority shall review all completed applications, and
9 request additional information as is needed to make a complete
10 assessment of the project. No project shall be undertaken until final
11 approval has been granted by the authority; provided, however, that
12 the authority shall retain the right to revoke approval if it
13 determines that the project has deviated from the plan submitted
14 pursuant to paragraph (2) of this subsection.

15 (4) The authority may promulgate any rules and regulations
16 necessary to implement this subsection, including provisions for
17 fees to cover administrative costs. ¶ (1) Prior to entering into a
18 public-private partnership, the State or county college shall
19 determine: (i) the benefits to be realized by the project; (ii) the cost
20 of project if it is developed by the public sector supported by
21 comparisons to comparable projects; (iii) the maximum public
22 contribution that the State or county college will allow under the
23 public-private partnership; (iv) a comparison of the financial and
24 non-financial benefits of the public-private partnership compared
25 to other options including the public sector option; (v) a list of
26 risks, liabilities and responsibilities to be transferred to the private
27 entity and those to be retained by the state or county college; and
28 (vi) if the project has a high, medium or low level of project
29 delivery risk and how the public is protected from these risks.

30 (2) Prior to entering into a public-private partnership, the State
31 or county college at a public meeting shall find that the project is in
32 the best interest of the public by finding that: (i) it will cost less
33 than the public sector option or if it costs more there are factors that
34 warrant the additional expense; (ii) there is a public need for the
35 project and the project is consistent with existing long-term plans;
36 (iii) there are specific significant benefits to the project; (iv) there
37 are specific significant benefits to using the public-private
38 partnership instead of other options including No-Build; (v) the
39 private development will result in timely and efficient development
40 and operation; and (vi) the risks, liabilities and responsibilities
41 transferred to the private entity provide sufficient benefits to
42 warrant not using other means of procurement.

43 (3) All projects proposed in accordance with this section shall
44 be submitted to the State Treasurer, in consultation with the
45 Secretary of Higher Education, and the New Jersey Educational
46 Facilities Authority is to be consulted if the project is to be financed
47 through the New Jersey Educational Facilities Authority, for review
48 and approval. The projects are encouraged, when practicable, to
49 adhere to the green building manual prepared by the Commissioner

1 of Community Affairs pursuant to section 1 of P.L.2007, c.132
2 (C.52:27D-130.6).

3 (4) All projects proposed in accordance with this section that
4 have a transportation component or impact the transportation
5 infrastructure shall be submitted to the State Treasurer, in
6 consultation with the Commissioner of the Department of
7 Transportation for review and approval.

8 (5) (a) In order for an application to be complete and considered
9 by the State Treasurer, the application shall include, but not be
10 limited to: (i) a full description of the proposed public-private
11 partnership agreement between the State or county college and the
12 private developer, including all information obtained by and
13 findings of the state or county college pursuant to paragraphs (1)
14 and (2) of this subsection; (ii) a full description of the project,
15 including a description of any agreement for the lease of a revenue-
16 producing facility related to the project; (iii) the estimated costs and
17 financial documentation for the project showing the underlying
18 financial models and assumptions that determined the estimated
19 costs. The financial documentation shall include at least three
20 different projected estimated costs showing scenarios in which
21 materially different economic circumstances are assumed and an
22 explanation for how the estimated costs were determined based on
23 the three scenarios; (iv) a timetable for completion of the
24 construction of the project; (v) an analysis of all available funding
25 options for the project, including an analysis of the financial
26 viability and advisability of the project, along with evidence of the
27 public benefit in advancing the project as a public-private
28 partnership; (vi) a record of the public hearing; and (vii) any other
29 requirements that the State Treasurer deems appropriate or
30 necessary. The application shall also include a resolution by the
31 governing body of the State or county college of its intent to enter
32 into a public-private partnership agreement pursuant to this section.

33 (b) As part of the estimated costs and financial documentation
34 for the project, the application shall contain a long-range
35 maintenance plan and a long-range maintenance bond and shall
36 specify the expenditures that qualify as an appropriate investment in
37 maintenance. The long-range maintenance plan shall be approved
38 by the State Treasurer pursuant to regulations promulgated by the
39 State Treasurer that reflect national building maintenance standards
40 and other appropriate building maintenance benchmarks. All
41 contracts to implement a long-range maintenance plan pursuant to
42 this paragraph shall contain a project labor agreement. The project
43 labor agreement shall be subject to the provisions of P.L.2002, c.44
44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
45 extent possible enhances employment opportunities for individuals
46 residing in the county of the project's location.

47 (6) The State Treasurer, in consultation with the Secretary of
48 Higher Education and the New Jersey Educational Facilities
49 Authority, shall review all completed applications, and request

1 additional information as is needed to make a complete assessment
2 of the project. No project shall commence the procurement process
3 or negotiate a contract for an unsolicited proposal until approval has
4 been granted by the State Treasurer. The State Treasurer shall find
5 that: the criteria for assessing the project shall include, but may not
6 be limited to: (i) the State's or county college's assumptions
7 regarding the project's scope, its benefits, its risks and the cost of
8 the public sector option were fully and reasonably developed; (ii)
9 the design of the project is feasible; (iii) the experience and
10 qualifications of the private entity are adequate; (iv) the financial
11 plan is sound; (v) the long-range maintenance plan is adequate to
12 protect the investment; (vi) the project is in the best interest of the
13 public using the criteria in paragraph (2) of this subsection f.; and
14 (vii) a resolution by the governing body of the State or county
15 college of its intent to enter into a public-private partnership
16 agreement for the project has been received; and (viii) the term
17 sheet for any proposed procurement contains all necessary
18 elements. Before the State or county college enters into a public-
19 private partnership agreement, the project shall be submitted to the
20 State Treasurer for final approval, provided, however, that the State
21 Treasurer shall retain the right to revoke approval if the project has
22 substantially deviated from the plan submitted pursuant to
23 paragraph (2) of this subsection.

24 (7) The State Treasurer, in consultation with the Secretary of
25 Higher Education, New Jersey Economic Development Authority
26 and the New Jersey Educational Facilities Authority, as to projects
27 to be financed through the New Jersey Educational Facilities
28 Authority, may promulgate any rules and regulations necessary to
29 implement this subsection, including, but not limited to, provisions
30 for fees to cover administrative costs, and for the determination of
31 minimum State or county college standards for the operation of the
32 project, and for the qualification for professional services,
33 construction contracting, and other relevant qualifications.

34 **【Where no public fund has been established for the financing of**
35 **a public improvement, the chief financial officer of the public**
36 **owner shall require the private entity for whom the public**
37 **improvement is being made to post, or cause to be posted, a bond**
38 **guaranteeing prompt payment of moneys due to the contractor, his**
39 **or her subcontractors and to all persons furnishing labor or**
40 **materials to the contractor or his or her subcontractors in the**
41 **prosecution of the work on the public improvement.】**

42 g. **【The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall**
43 **not apply to any project carried out pursuant to this section.】**
44 (Deleted by amendment, P.L. , c.) (pending before the
45 Legislature as this bill)

46 h. A project with an expenditure of under \$50 million
47 developed under a public-private partnership agreement shall
48 include a requirement that precludes contractors from engaging in
49 the project if the contractor has contributed to the private entity's

1 financing of the project in an amount of more than 10% of the
2 project's financing costs.

3 i. The power of eminent domain shall not be delegated to any
4 private entity under the provisions of P.L. , c. (C.)
5 (pending before the Legislature as this bill); however, a State or
6 county college may dedicate any property interest, including
7 improvements, and tangible personal property of the State or county
8 college for public use in a qualifying project if the State or county
9 college finds that so doing will serve the public purpose of the
10 project by minimizing the cost of the project to the State or county
11 college or reducing the delivery time of a project.

12 j. Any public-private partnership agreement, if appropriate,
13 shall include provisions affirming that the agreement and any work
14 performed under the agreement are subject to the provisions of the
15 “Construction Industry Independent Contractor Act,” P.L.2007,
16 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement
17 shall also include, at a minimum: (i) the term of the agreement; (ii)
18 the total project cost; (iii) a completion date guarantee; (iv) a
19 provision for damages if the private entity fails to meet the
20 completion date; and (v) a maximum rate of return to the private
21 entity and a provision for the distribution of excess earnings to the
22 local government unit or to the private party for debt reduction.

23 k. (1) A private entity seeking to enter into a public-private
24 partnership agreement with the State or county college shall be
25 qualified by the State or county college as part of the procurement
26 process, provided such process ensures that the private entity meets
27 at least the minimum State or county college standards for
28 qualification for professional services, construction contracting, and
29 other qualifications applicable to the project, prior to submitting a
30 proposal under the procurement process.

31 (2) A request for qualifications for a public-private partnership
32 agreement shall be advertised at least 45 days prior to the
33 anticipated date of receipt. The advertisement of the request for
34 qualifications shall be published on the official Internet website of
35 the State or county college and at least one or more newspapers
36 with statewide circulation.

37 (3) After the state or county college determines the qualified
38 respondents utilizing, at minimum, the qualification standards
39 promulgated by the State Treasurer, the State or county college
40 shall issue a request for proposals to each qualified respondent no
41 less than 90 days prior to the date established for submission of the
42 proposals. The request for proposals shall include relevant
43 technical submissions, documents, and the evaluation criteria to be
44 used in the selection of the designated respondent. The evaluation
45 criteria shall be, at minimum, criteria promulgated by the State
46 Treasurer, in consultation with the New Jersey Economic
47 Development Authority.

48 (4) The State or county college may accept unsolicited proposals
49 from private entities for public-private partnership agreements. If

1 the State or county college receives an unsolicited proposal and
2 determines that it meets the standards of this section, the State or
3 county college shall publish a notice of the receipt of the proposal
4 on the Internet site of the State or county college, or through at least
5 one or more newspapers with statewide circulation, and provide
6 notice of the proposal at its next scheduled public meeting and to
7 the State Treasurer. To qualify as an unsolicited proposal, the
8 unsolicited proposal shall at a minimum include a description of
9 the public-private project, the estimated construction and life-cycle
10 costs, a timeline for development, proposed plan of financing,
11 including projected revenues, public or private, debt, equity
12 investment or availability payments, description of how the project
13 meets needs identified in existing plans, the permits and approvals
14 needed to develop the project from local, state and federal agencies
15 and a projected schedule for obtaining such permits and approvals,
16 a statement of risks, liabilities and responsibilities to be assumed by
17 the private entity . If a notice is published exclusively in
18 newspapers, the notice shall appear in at least one or more
19 newspapers with statewide circulation where the proposed project is
20 to be located. The notice shall provide that the State or county
21 college will accept, for 120 days after the initial date of publication,
22 proposals meeting the standards of this section from other private
23 entities for eligible projects that satisfy the same basic purpose and
24 need. A copy of the notice shall be mailed to each municipal and
25 county local government body in the geographic area affected by
26 the proposal.

27 (5) After the proposal or proposals have been received, and any
28 public notification period has expired, the State or county college
29 shall rank the proposals in order of preference. In ranking the
30 proposals, the State or county college may consider factors that
31 include, but may not be limited to, professional qualifications,
32 general business terms, innovative engineering, architectural
33 services, or cost-reduction terms, finance plans, and the need for
34 State or county college funds to deliver the project and discharge
35 the agreement. The private entity selected shall comply with all
36 laws and regulations required by the State government entity,
37 including but not limited to section 1 of P.L.2001, c.134 (C.52:32-
38 44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38),
39 section 1 of P.L.1977, c.33 (C.52:25.24-2), P.L.2005, c.51
40 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al),
41 Executive Order No. 117 of 2008, Executive Order No. 118 of
42 2008, Executive Order No. 189, prior to executing the public
43 private partnership agreement. If only one proposal is received, the
44 State or county college shall negotiate in good faith and, if not
45 satisfied with the results of the negotiations, the State or county
46 college may, at its sole discretion, terminate negotiations.

47 (6) The State or county college may require that the private
48 entity assume responsibility for all costs incurred by the State or
49 county college before execution of the public-private partnership

1 agreement, including costs of retaining independent experts to
2 review, analyze, and advise the State or county college with respect
3 to the proposal.

4 (7) Stipends may be used on public private partnership projects
5 when there is a substantial opportunity for innovation and the costs
6 for developing a proposal are significant. The State or county
7 college may elect to pay unsuccessful proposers for the work
8 product they submit with their proposal in response to a request for
9 proposals. The use by the State or county college of any design
10 element contained in an unsuccessful proposal shall be at the sole
11 risk and discretion of the State or county college and shall not
12 confer liability on the recipient of the stipulated stipend amount.
13 After payment of the stipulated stipend amount, the State or county
14 college and the unsuccessful proposer shall jointly own the rights
15 to, and may make use of any work product contained in the
16 proposal, including the technologies, techniques, methods,
17 processes, ideas, and information contained in the proposal, project
18 design, and project financial plan. The use by the unsuccessful
19 proposer of any part of the work product contained in the proposal
20 shall be at the sole risk of the unsuccessful proposer and shall not
21 confer liability on the State or county college.

22 (8) The State or county college shall set aside one percent of
23 each project and remit it to the Public Private Partnership Review
24 fund established pursuant to P.L. c. (C.) (pending before the
25 Legislature as this bill), for purposes of plan review and analysis
26 required under the bill.

27 (9) Nothing in this section shall be construed as or deemed a
28 waiver of the sovereign immunity of the State, the State or county
29 college, or an affected locality or public entity or any officer or
30 employee thereof with respect to the participation in or approval of
31 all or any part of the public-private project.²

32 (cf: P.L.2013, c.161, s.26)

33
34 ²[6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to
35 read as follows:

36 5. The authority shall have the following powers:

37 a. To adopt bylaws for the regulation of its affairs and the
38 conduct of its business;

39 b. To adopt and have a seal and to alter the same at pleasure;

40 c. To sue and be sued;

41 d. To acquire in the name of the authority by purchase or
42 otherwise, on such terms and conditions and such manner as it may
43 deem proper, or by the exercise of the power of eminent domain in
44 the manner provided by the "Eminent Domain Act of 1971,"
45 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
46 other property which it may determine is reasonably necessary for
47 any project; provided, however, that the authority in connection
48 with any project shall not take by exercise of the power of eminent
49 domain any real property except upon consent thereto given by

- 1 resolution of the governing body of the municipality in which such
2 real property is located; and provided further that the authority shall
3 be limited in its exercise of the power of eminent domain in
4 connection with any project in qualifying municipalities as defined
5 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
6 municipalities which had a population, according to the latest
7 federal decennial census, in excess of 10,000;
- 8 e. To enter into contracts with a person upon such terms and
9 conditions as the authority shall determine to be reasonable,
10 including, but not limited to, reimbursement for the planning,
11 designing, financing, construction, reconstruction, improvement,
12 equipping, furnishing, operation and maintenance of the project and
13 to pay or compromise any claims arising therefrom;
- 14 f. To establish and maintain reserve and insurance funds with
15 respect to the financing of the project or the school facilities project
16 and any project financed pursuant to the "Municipal Rehabilitation
17 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
18 al.);
- 19 g. To sell, convey or lease to any person all or any portion of a
20 project for such consideration and upon such terms as the authority
21 may determine to be reasonable;
- 22 h. To mortgage, pledge or assign or otherwise encumber all or
23 any portion of a project, or revenues, whenever it shall find such
24 action to be in furtherance of the purposes of this act, P.L.2000,
25 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
26 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
27 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
28 P.L.2009, c.90 (C.52:27D-489c et al.);
- 29 i. To grant options to purchase or renew a lease for any of its
30 projects on such terms as the authority may determine to be
31 reasonable;
- 32 j. To contract for and to accept any gifts or grants or loans of
33 funds or property or financial or other aid in any form from the
34 United States of America or any agency or instrumentality thereof,
35 or from the State or any agency, instrumentality or political
36 subdivision thereof, or from any other source and to comply,
37 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
38 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
39 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
40 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
41 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
42 conditions thereof;
- 43 k. In connection with any action undertaken by the authority in
44 the performance of its duties and any application for assistance or
45 commitments therefor and modifications thereof, to require and
46 collect such fees and charges as the authority shall determine to be
47 reasonable, including but not limited to fees and charges for the
48 authority's administrative, organizational, insurance, operating,
49 legal, and other expenses;

- 1 l. To adopt, amend and repeal regulations to carry out the
2 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
3 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
4 the "Municipal Rehabilitation and Economic Recovery Act,"
5 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,
6 c.137 (C.52:18A-235 et al.);
- 7 m. To acquire, purchase, manage and operate, hold and dispose
8 of real and personal property or interests therein, take assignments
9 of rentals and leases and make and enter into all contracts, leases,
10 agreements and arrangements necessary or incidental to the
11 performance of its duties;
- 12 n. To purchase, acquire and take assignments of notes,
13 mortgages and other forms of security and evidences of
14 indebtedness;
- 15 o. To purchase, acquire, attach, seize, accept or take title to any
16 project or school facilities project by conveyance or by foreclosure,
17 and sell, lease, manage or operate any project or school facilities
18 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
19 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
20 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-
21 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-
22 489c et al.);
- 23 p. To borrow money and to issue bonds of the authority and to
24 provide for the rights of the holders thereof, as provided in
25 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
26 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
27 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
28 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
29 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 30 q. To extend credit or make loans to any person for the
31 planning, designing, acquiring, constructing, reconstructing,
32 improving, equipping and furnishing of a project or school facilities
33 project, which credits or loans may be secured by loan and security
34 agreements, mortgages, leases and any other instruments, upon such
35 terms and conditions as the authority shall deem reasonable,
36 including provision for the establishment and maintenance of
37 reserve and insurance funds, and to require the inclusion in any
38 mortgage, lease, contract, loan and security agreement or other
39 instrument, of such provisions for the construction, use, operation
40 and maintenance and financing of a project or school facilities
41 project as the authority may deem necessary or desirable;
- 42 r. To guarantee up to 90% of the amount of a loan to a person,
43 if the proceeds of the loan are to be applied to the purchase and
44 installation, in a building devoted to industrial or commercial
45 purposes, or in an office building, of an energy improvement
46 system;
- 47 s. To employ consulting engineers, architects, attorneys, real
48 estate counselors, appraisers, and such other consultants and
49 employees as may be required in the judgment of the redevelopment

1 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
2 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
3 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
4 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
5 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
6 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their
7 compensation from funds available to the redevelopment utility
8 therefor, all without regard to the provisions of Title 11A of the
9 New Jersey Statutes;

10 t. To do and perform any acts and things authorized by
11 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
12 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
13 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
14 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
15 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.),
16 under, through or by means of its own officers, agents and
17 employees, or by contract with any person;

18 u. To procure insurance against any losses in connection with
19 its property, operations or assets in such amounts and from such
20 insurers as it deems desirable;

21 v. To do any and all things necessary or convenient to carry out
22 its purposes and exercise the powers given and granted in P.L.1974,
23 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
24 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
25 Rehabilitation and Economic Recovery Act," P.L.2002,
26 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
27 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

28 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
29 maintain or repair or provide for the construction, reconstruction,
30 improvement, alteration, equipping or maintenance or repair of any
31 development property and lot, award and enter into construction
32 contracts, purchase orders and other contracts with respect thereto,
33 upon such terms and conditions as the authority shall determine to
34 be reasonable, including, but not limited to, reimbursement for the
35 planning, designing, financing, construction, reconstruction,
36 improvement, equipping, furnishing, operation and maintenance of
37 any such development property and the settlement of any claims
38 arising therefrom and the establishment and maintenance of reserve
39 funds with respect to the financing of such development property;

40 x. When authorized by the governing body of a municipality
41 exercising jurisdiction over an urban growth zone, to construct,
42 cause to be constructed or to provide financial assistance to projects
43 in an urban growth zone which shall be exempt from the terms and
44 requirements of the land use ordinances and regulations, including,
45 but not limited to, the master plan and zoning ordinances, of such
46 municipality;

47 y. To enter into business employment incentive agreements as
48 provided in the "Business Employment Incentive Program Act,"
49 P.L.1996, c.26 (C.34:1B-124 et al.);

1 z. To enter into agreements or contracts, execute instruments,
2 and do and perform all acts or things necessary, convenient or
3 desirable for the purposes of the redevelopment utility to carry out
4 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
5 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
6 c.137 (C.52:18A-235 et al.), including, but not limited to, entering
7 into contracts with the State Treasurer, the Commissioner of
8 Education, districts, the New Jersey Schools Development
9 Authority, and any other entity which may be required in order to
10 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),
11 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
12 P.L.2009, c.90 (C.52:27D-489c et al.);

13 aa. (Deleted by amendment, P.L.2007, c.137);

14 bb. To make and contract to make loans to local units to finance
15 the cost of school facilities projects and to acquire and contract to
16 acquire bonds, notes or other obligations issued or to be issued by
17 local units to evidence the loans, all in accordance with the
18 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
19 c.137 (C.52:18A-235 et al.);

20 cc. Subject to any agreement with holders of its bonds issued to
21 finance a project or school facilities project, obtain as security or to
22 provide liquidity for payment of all or any part of the principal of
23 and interest and premium on the bonds of the authority or for the
24 purchase upon tender or otherwise of the bonds, lines of credit,
25 letters of credit, reimbursement agreements, interest rate exchange
26 agreements, currency exchange agreements, interest rate floors or
27 caps, options, puts or calls to hedge payment, currency, rate, spread
28 or similar exposure or similar agreements, float agreements,
29 forward agreements, insurance contract, surety bond, commitment
30 to purchase or sell bonds, purchase or sale agreement, or
31 commitments or other contracts or agreements, and other security
32 agreements or instruments in any amounts and upon any terms as
33 the authority may determine and pay any fees and expenses required
34 in connection therewith;

35 dd. To charge to and collect from local units, the State and any
36 other person, any fees and charges in connection with the
37 authority's actions undertaken with respect to school facilities
38 projects, including, but not limited to, fees and charges for the
39 authority's administrative, organization, insurance, operating and
40 other expenses incident to the financing of school facilities projects;

41 ee. To make loans to refinance solid waste facility bonds
42 through the issuance of bonds or other obligations and the execution
43 of any agreements with counties or public authorities to effect the
44 refunding or rescheduling of solid waste facility bonds, or otherwise
45 provide for the payment of all or a portion of any series of solid
46 waste facility bonds. Any county or public authority refunding or
47 rescheduling its solid waste facility bonds pursuant to this
48 subsection shall provide for the payment of not less than fifty
49 percent of the aggregate debt service for the refunded or

1 rescheduled debt of the particular county or public authority for the
2 duration of the loan; except that, whenever the solid waste facility
3 bonds to be refinanced were issued by a public authority and the
4 county solid waste facility was utilized as a regional county solid
5 waste facility, as designated in the respective adopted district solid
6 waste management plans of the participating counties as approved
7 by the department prior to November 10, 1997, and the utilization
8 of the facility was established pursuant to tonnage obligations set
9 forth in their respective interdistrict agreements, the public
10 authority refunding or rescheduling its solid waste facility bonds
11 pursuant to this subsection shall provide for the payment of a
12 percentage of the aggregate debt service for the refunded or
13 rescheduled debt of the public authority not to exceed the
14 percentage of the specified tonnage obligation of the host county for
15 the duration of the loan. Whenever the solid waste facility bonds are
16 the obligation of a public authority, the relevant county shall
17 execute a deficiency agreement with the authority, which shall
18 provide that the county pledges to cover any shortfall and to pay
19 deficiencies in scheduled repayment obligations of the public
20 authority. All costs associated with the issuance of bonds pursuant
21 to this subsection may be paid by the authority from the proceeds of
22 these bonds. Any county or public authority is hereby authorized to
23 enter into any agreement with the authority necessary, desirable or
24 convenient to effectuate the provisions of this subsection.

25 The authority shall not issue bonds or other obligations to effect
26 the refunding or rescheduling of solid waste facility bonds after
27 December 31, 2002. The authority may refund its own bonds issued
28 for the purposes herein at any time;

29 ff. To pool loans for any local government units that are
30 refunding bonds and do and perform any and all acts or things
31 necessary, convenient or desirable for the purpose of the authority
32 to achieve more favorable interest rates and terms for those local
33 governmental units;

34 gg. To finance projects approved by the board, provide staff
35 support to the board, oversee and monitor progress on the part of
36 the board in carrying out the revitalization, economic development
37 and restoration projects authorized pursuant to the "Municipal
38 Rehabilitation and Economic Recovery Act," P.L.2002,
39 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
40 responsibilities pursuant thereto;

41 hh. To offer financial assistance to qualified film production
42 companies as provided in the "New Jersey Film Production
43 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[and]**

44 ii. To finance or develop private or public parking facilities or
45 structures, which may include the use of solar photovoltaic
46 equipment, in municipalities qualified to receive State aid pursuant
47 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
48 municipalities that contain areas designated pursuant to P.L.1985,
49 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),

1 Planning Area 2 (Suburban), or a town center, and to provide
 2 appropriate assistance, including but not limited to, extensions of
 3 credit, loans, and guarantees, to municipalities qualified to receive
 4 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
 5 178 et seq.) and municipalities that contain areas designated
 6 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
 7 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
 8 center, and their agencies and instrumentalities or to private entities
 9 whose projects are located in those municipalities, in order to
 10 facilitate the financing and development of parking facilities or
 11 structures in such municipalities. The authority may serve as the
 12 issuing agent of bonds to finance the undertaking of a project for
 13 the purposes of this subsection; and

14 jj. To consider, review, amend, and approve public-private
 15 partnership agreements for certain building or highway
 16 infrastructure development projects entered into by a private entity
 17 and a local government unit, a school district, a State government
 18 entity, or the New Jersey Institute of Technology pursuant to
 19 sections 1 through 4 of P.L. , c. (C. through C.) (pending
 20 before the Legislature as this bill) or by a private entity and a State
 21 or county college pursuant to section 43 of P.L.2009, c.90
 22 (C.18A:64-85), for the purposes set forth therein, and provide to a
 23 private entity that is a party to an agreement any tax-exempt private
 24 activity bond financing under terms and conditions established by
 25 the authority and as otherwise authorized under State or federal law.
 26 (cf: P.L.2010, c.28, s.3)]²

27

28 ²6. N.J.S.18A:72A-5 is amended to read as follows:

29 18A:72A-5. The authority shall have power:

30 (a) To adopt bylaws for the regulation of its affairs and the
 31 conduct of its business;

32 (b) To adopt and have an official common seal and alter the
 33 same at pleasure;

34 (c) To maintain an office at such place or places within the State
 35 as it may designate;

36 (d) To sue and be sued in its own name, and plead and be
 37 impleaded;

38 (e) To borrow money and to issue bonds and notes and other
 39 obligations of the authority and to provide for the rights of the
 40 holders thereof as provided in this chapter;

41 (f) To acquire, lease as lessee, hold and dispose of real and
 42 personal property or any interest therein, in the exercise of its
 43 powers and the performance of its duties under this chapter;

44 (g) To acquire in the name of the authority by purchase or
 45 otherwise, on such terms and conditions and in such manner as it
 46 may deem proper, or by the exercise of the power of eminent
 47 domain, any land or interest therein and other property which it may
 48 determine is reasonably necessary for any project, including any
 49 lands held by any county, municipality or other governmental

1 subdivision of the State; and to hold and use the same and to sell,
2 convey, lease or otherwise dispose of property so acquired, no
3 longer necessary for the authority's purposes;

4 (h) To receive and accept, from any federal or other public
5 agency or governmental entity, grants or loans for or in aid of the
6 acquisition or construction of any project, and to receive and accept
7 aid or contributions from any other source, of either money,
8 property, labor or other things of value, to be held, used and applied
9 only for the purposes for which such grants, loans and contributions
10 may be made;

11 (i) To prepare or cause to be prepared plans, specifications,
12 designs and estimates of costs for the construction and equipment of
13 projects for participating colleges under the provisions of this
14 chapter, and from time to time to modify such plans, specifications,
15 designs or estimates;

16 (j) By contract or contracts or by its own employees to
17 construct, acquire, reconstruct, rehabilitate and improve, and
18 furnish and equip, projects for participating colleges; however, in
19 any contract or contracts undertaken by the authority for the
20 construction, reconstruction, rehabilitation or improvement of any
21 public college project where the cost of such work will exceed
22 \$25,000, the contracting agent shall advertise for and receive in the
23 manner provided by law:

24 (1) separate bids for branches of work in the following
25 categories:

26 (a) the plumbing and gas fitting work;

27 (b) the refrigeration, heating and ventilating systems and
28 equipment;

29 (c) the electrical work, including any electrical power plants,
30 tele-data, fire alarm, or security system;

31 (d) the structural steel and ornamental iron work;

32 (e) general construction, which shall include all other work and
33 materials required for the completion of the project, or

34 (2) bids for all work and materials required to complete the
35 entire project if awarded as a single contract; or

36 (3) both (1) and (2) above.

37 In the case of separate bids pursuant to paragraph (1) or (3) of
38 this subsection, prime contractors shall not be required to name
39 subcontractors for categories (a) through (d) in their bid. In the
40 case of a single bid under paragraph (2) or (3), all bids submitted
41 shall set forth the names and license numbers of, and evidence of
42 performance security from, all subcontractors to whom the general
43 contractor will subcontract the work described in the foregoing
44 categories (a) through (d) in paragraph (1). Subcontractors who
45 furnish non-specialty trade work pursuant to category (e), or
46 subcontractors who furnish work to named subcontractors pursuant
47 to categories (a) through (d), shall not be named in the bid.
48 Notwithstanding the foregoing provisions of this subsection, an
49 authority may choose to require in its bid specification that a

1 subcontractor shall be named in a bid when, in the case of
2 paragraph (1), separate bids for each category, the work of that
3 subcontractor exceeds 35 percent of the authority's estimated
4 amount of value of the work, which shall be set forth in the bid
5 specification.

6 Contracts shall be awarded to the lowest responsible bidder
7 whose bid, conforming to the invitation for bids, will be the most
8 advantageous to the authority;

9 (k) To determine the location and character of any project to be
10 undertaken pursuant to the provisions of this chapter, and to
11 construct, reconstruct, maintain, repair, operate, lease, as lessee or
12 lessor, and regulate the same; to enter into contracts for any or all
13 such purposes; to enter into contracts for the management and
14 operation of a project, and to designate a participating college as its
15 agent to determine the location and character of a project
16 undertaken by such participating college under the provisions of
17 this chapter and, as the agent of the authority, to construct,
18 reconstruct, maintain, repair, operate, lease, as lessee or lessor, and
19 regulate the same, and, as agent of the authority, to enter into
20 contracts for any and all such purposes including contracts for the
21 management and operation of such project;

22 (l) To establish rules and regulations for the use of a project or
23 any portion thereof and to designate a participating college as its
24 agent to establish rules and regulations for the use of a project
25 undertaken by such participating college;

26 (m) Generally to fix and revise from time to time and to charge
27 and collect rates, rents, fees and other charges for the use of and for
28 the services furnished or to be furnished by a project or any portion
29 thereof and to contract with holders of its bonds and with any other
30 person, party, association, corporation or other body, public or
31 private, in respect thereof;

32 (n) To enter into any and all agreements or contracts, execute
33 any and all instruments, and do and perform any and all acts or
34 things necessary, convenient or desirable for the purposes of the
35 authority or to carry out any power expressly given in this chapter;

36 (o) To invest any moneys held in reserve or sinking funds, or
37 any moneys not required for immediate use or disbursement, at the
38 discretion of the authority, in such obligations as are authorized by
39 law for the investment of trust funds in the custody of the State
40 Treasurer;

41 (p) To enter into any lease relating to higher education
42 equipment with a public or private institution of higher education
43 pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et
44 al.);

45 (q) To enter into loan agreements with any county, to hold
46 bonds or notes of the county evidencing those loans, and to issue
47 bonds or notes of the authority to finance county college capital
48 projects pursuant to the provisions of the "County College Capital
49 Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

1 (r) To issue bonds and notes and other obligations of the
2 authority under the direction of law for the purpose of providing
3 financial assistance for the installation of fire prevention and safety
4 systems in dormitories.

5 (s) To consider and review public-private partnership
6 agreements for certain building projects entered into by a private
7 entity and the New Jersey Institute of Technology pursuant to
8 section 4 of P.L. , c. (C.) (pending before the Legislature as
9 this bill) or by a private entity and a State or county college
10 pursuant to section 43 of P.L. 2009, c. 90 (C.18A:64-85), for the
11 purposes set forth therein and to provide to a private entity that is a
12 party to an agreement any tax exempt private activity bond
13 financing, including but not limited to a loan of funds under terms
14 and conditions established by the authority in consultation with the
15 State Treasurer and as otherwise authorized under State or federal
16 law.²

17 (cf: P.L.2012, c.59, s.4)

18
19 7. (New section) The ²State Treasurer, in consultation with
20 the² New Jersey Economic Development Authority ², or the New
21 Jersey Educational Facilities Authority as to projects to be financed
22 through the New Jersey Educational Facilities Authority,² shall post
23 on ²[its] the Department of the Treasury's² official website the
24 status of each public-private partnership agreement subject to ²[its]
25 the State Treasurer's² consideration, review, amendment, or
26 approval ²[under subsection jj. of section 5 of P.L.1974, c.80
27 (C.34:1B-5)]², indicating the status of each agreement by
28 designating it as a proposed, under review, or active public-private
29 partnership project.

30
31 ²8. (New section) a. There is hereby established in the
32 Department of the Treasury the Public-Private Partnership Review
33 Fund. The purpose of the fund will be to support financial and
34 administrative review functions associated with the Public-Private
35 Partnership plan review by the State Treasurer, along with the New
36 Jersey Economic Development Authority, the Department of
37 Community Affairs, the Department of Education, the Schools
38 Development Authority, and the Department of Transportation,
39 established by P.L. , c. (C.) (pending before the Legislature as
40 this bill).

41 b. Notwithstanding the provisions of any law or regulation to
42 the contrary, upon entering into any public-private partnership
43 agreement which is backed, in whole or in part, by New Jersey
44 Economic Development Authority bonds pursuant to
45 P.L. , c. (C.) (pending before the Legislature as this bill), a
46 public entity shall remit one percent of the portion of the revenue
47 established under the agreement to the Department of the Treasury
48 to be placed in the Public-Private Partnership Review Fund.

1 c. The State Treasurer, in coordination with any relevant
2 agency, including the New Jersey Economic Development
3 Authority, Department of Transportation, and Department of
4 Community Affairs, shall provide, and make available to the public
5 on the Internet, an annual report, not later than December 31, 2019
6 and each year after that year, a list of all projects reviewed and the
7 percentage and amount of funds withheld and provided to the fund
8 pursuant to this section.²
9

10 ²9. (New section) Nothing in this act shall in any way be
11 construed to alter, limit or repeal any authority of any State entity to
12 enter into public-private partnership agreements as otherwise
13 provided by law, including but not limited to P.L.1997, c.136
14 (C.27:1D-1 et seq.) or subsection x. of section 5 of P.L.1979, c.150
15 (C.27:25-5).²
16

17 ²[8.] 10.² This act shall take effect ²[immediately] 180 days
18 following enactment².
19

20

21

22

23

24 Permits public-private partnership agreements for certain
25 building and highway infrastructure projects; provides for EDA
oversight.

SENATE, No. 865

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Singleton and Cruz-Perez

SYNOPSIS

Permits public-private partnership agreements for certain building and highway infrastructure projects; provides for EDA oversight.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 4/6/2018)

S865 SWEENEY, OROHO

2

1 AN ACT concerning public-private partnerships for certain building
2 and highway infrastructure projects, and amending and
3 supplementing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. As used in this section:

9 “Authority” means the New Jersey Economic Development
10 Authority established pursuant to section 4 of P.L.1974,
11 c.80 (C.34:1B-4).

12 “Availability payment” means a periodic payment made by a
13 local government unit to a private entity in exchange for making
14 available the use of a public building, road, structure, infrastructure,
15 or facility at a predetermined level of service, operation, or
16 maintenance.

17 “Bundling” means the use of a solicitation for multiple projects
18 in one single contract, through a public-private partnership project
19 delivery method, the result of which restricts competition.

20 “Local government unit” means a county, a municipality, or any
21 board, commission, committee, authority or agency thereof that is
22 subject to the provisions of the "Local Public Contracts Law,"
23 P.L.1971, c.198 (C.40A:11-1 et seq.).

24 “Project” means the development, construction, reconstruction,
25 repair, alteration, improvement, extension, operation, and
26 maintenance of any building, road, structure, infrastructure, or
27 facility constructed or acquired by a local government unit to house
28 local government functions, including any infrastructure or facility
29 used or to be used by the public or in support of a public purpose or
30 activity; provided that, with respect to a roadway or highway
31 project, a qualifying project shall include an expenditure of at least
32 \$10 million in public funds, or any expenditure in solely private
33 funds.

34 “Public-private partnership agreement” means an agreement
35 entered into by a local government unit and a private entity
36 pursuant to this section for the purpose of permitting a private entity
37 to assume financial and administrative responsibility for the
38 development, construction, reconstruction, repair, alteration,
39 improvement, extension, operation, and maintenance of a project of,
40 or for the benefit of, the local government unit.

41 b. (1) A local government unit may enter into a contract with a
42 private entity, subject to subsection f. of this section, to be referred
43 to as a public-private partnership agreement, that permits the private
44 entity to assume financial and administrative responsibility for a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 project of, or for the benefit of, the local government unit, provided
2 that the project is financed in whole or in part by the private entity.

3 (2) A public-private partnership agreement may include an
4 agreement under which a local government unit and a private entity
5 enter into a lease of a public building, road, structure, infrastructure,
6 or facility in exchange for up-front or structured financing by the
7 private entity for the project. Under the lease agreement, the
8 private entity may be responsible for the management, operation,
9 and maintenance of the building, road, structure, infrastructure, or
10 facility. The private entity may receive some or all, as per the
11 agreement, of the revenue generated by the building, road, structure,
12 infrastructure, or facility, and may operate the building, road
13 structure, infrastructure, or facility in accordance with local
14 government unit standards. At the end of the lease term, subsequent
15 revenue generated by the building, road, structure, infrastructure, or
16 facility, along with management, operation, and maintenance
17 responsibility, shall revert to the local government unit.

18 (3) A public-private partnership agreement may include the use
19 of availability payments if deemed to be in the best interest of the
20 public and the local government unit, provided the private entity
21 shall operate the building, road, structure, infrastructure or facility
22 in accordance with local government unit standards.

23 (4) Bundling of projects shall be prohibited under this section.

24 c. (1) Unless otherwise set forth herein, a private entity that
25 assumes financial and administrative responsibility for a project
26 pursuant to this section shall not be subject to the procurement and
27 contracting requirements of all statutes applicable to the local
28 government unit at which the project is completed, including, but
29 not limited to, the "Local Public Contracts Law," P.L.1971, c.198
30 (C.40A:11-1 et seq.).

31 (2) For the purposes of facilitating the financing of a project
32 pursuant to this section, a public entity may become the owner or
33 lessee of the project or the lessee of the land, or both, may become
34 the lessee of a revenue-producing building, structure, or facility to
35 which the local government unit holds title, may issue indebtedness
36 in accordance with the public entity's enabling legislation and,
37 notwithstanding any provision of law to the contrary, shall be
38 empowered to enter into contracts with a private entity and its
39 affiliates without being subject to the procurement and contracting
40 requirements of any statute applicable to the public entity provided
41 that the private entity has been selected by the local government
42 unit pursuant to a solicitation of proposals or qualifications from at
43 least two private entities. For the purposes of this subsection, a
44 public entity shall include the New Jersey Economic Development
45 Authority, and any project undertaken pursuant to this section of
46 which the authority becomes the owner or lessee, or which is
47 situated on land of which the authority becomes the lessee, shall be

1 deemed a "project" under the "The New Jersey Economic
2 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

3 (3) As the carrying out of any project described pursuant to this
4 section constitutes the performance of an essential public function,
5 all projects used in furtherance of the purposes of the local
6 government unit undertaken pursuant to this section, provided the
7 project is owned by or leased to a public entity, non-profit business
8 entity, foreign or domestic, or a business entity wholly owned by
9 such non-profit business entity, shall at all times be exempt from
10 property taxation and special assessments of the State, or any
11 municipality, or other political subdivision of the State and,
12 notwithstanding the provisions of section 15 of P.L.1974,
13 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
14 any other section of law to the contrary, shall not be required to
15 make payments in lieu of taxes. The land upon which the project is
16 located shall also at all times be exempt from property taxation.
17 The project and land upon which the project is located shall not be
18 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
19 1.10) regarding the tax liability of private parties conducting for
20 profit activities on tax exempt land, or section 1 of P.L.1949,
21 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
22 exempt property that are held by nonexempt parties.

23 (4) Prior to the commencement of work on a project, the private
24 entity shall establish a construction account and appoint a third-
25 party financial institution, who shall act as a collateral agent, to
26 manage the construction account. The construction account shall
27 include the funding, financial instruments, or both, that shall be
28 used to fully capitalize and fund the project, and the collateral agent
29 shall maintain a full accounting of the funds and instruments in the
30 account. The funds and instruments in the construction account
31 shall be held in trust for the benefit of the contractor, construction
32 manager, and design-build team involved in the project. The funds
33 and instruments in the construction account shall not be the
34 property of the private entity unless all amounts due to the
35 construction account beneficiaries are paid in full. The construction
36 account shall not be designated for more than one project.

37 d. Each worker employed in the construction, rehabilitation, or
38 building maintenance services of facilities by a private entity that
39 has entered into a public-private partnership agreement with a local
40 government unit pursuant to this section shall be paid not less than
41 the prevailing wage rate for the worker's craft or trade as
42 determined by the Commissioner of Labor and Workforce
43 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
44 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

45 e. (1) All building construction projects under a public-private
46 partnership agreement entered into pursuant to this section shall
47 contain a project labor agreement. The project labor agreement
48 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et

1 seq.), and shall be in a manner that to the greatest extent possible
2 enhances employment opportunities for individuals residing in the
3 county of the project's location. The general contractor,
4 construction manager, design-build team, or subcontractor for a
5 construction project proposed in accordance with this paragraph
6 shall be registered pursuant to the provisions of P.L.1999, c.238
7 (C.34:11-56.48 et seq.), and shall be classified by the Division of
8 Property Management and Construction, or shall be prequalified by
9 the Department of Transportation, as appropriate, to perform work
10 on a public-private partnership project.

11 (2) All projects proposed in accordance with this section shall
12 be submitted to the New Jersey Economic Development Authority
13 for its review and approval prior to commencing procurement of the
14 project and, when practicable, are encouraged to adhere to the
15 Leadership in Energy and Environmental Design Green Building
16 Rating System as adopted by the United States Green Building
17 Council, the Green Globes Program adopted by the Green Building
18 Initiative, or a comparable nationally recognized, accepted, and
19 appropriate sustainable development rating system.

20 (3) The general contractor, construction manager, or design-
21 build team shall be required to post a performance bond to ensure
22 the completion of the project and a payment bond guaranteeing
23 prompt payment of moneys due in accordance with and conforming
24 to the requirements of N.J.S.2A:44-143 et seq.

25 f. (1) All projects proposed in accordance with this section
26 shall be submitted to the New Jersey Economic Development
27 Authority for the authority's review and approval. The projects are
28 encouraged, when practicable, to adhere to the green building
29 manual prepared by the Commissioner of Community Affairs
30 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

31 (2) (a) In order for an application to be complete and
32 considered by the authority, the application shall include, but not be
33 limited to: (i) a full description of the proposed public-private
34 partnership agreement between the local government unit and the
35 private developer; (ii) a full description of the project, including a
36 description of any agreement for the lease of a revenue-producing
37 facility related to the project; (iii) the estimated costs and financial
38 documentation for the project; (iv) a timetable for completion of the
39 construction of the project extending no more than five years after
40 consideration and approval; and (v) any other requirements that the
41 authority deems appropriate or necessary.

42 (b) As part of the estimated costs and financial documentation
43 for the project, the application shall contain a long-range
44 maintenance plan and a long-range maintenance bond and shall
45 specify the expenditures that qualify as an appropriate investment in
46 maintenance. The long-range maintenance plan shall be approved
47 by the authority pursuant to regulations promulgated by the

1 authority that reflect national building maintenance standards and
2 other appropriate building maintenance benchmarks.

3 (3) The authority shall review all completed applications, and
4 request additional information as is needed to make a complete
5 assessment of the project. No project shall commence the
6 procurement process until final approval has been granted by the
7 authority; provided, however, that the authority shall retain the right
8 to revoke approval if it determines that the project has deviated
9 from the plan submitted pursuant to paragraph (2) of this
10 subsection, and shall retain the right to cancel a procurement after a
11 short list of private entities is developed if deemed in the public
12 interest as specified under subsection j. of this section.
13 Notwithstanding any provision of this section to the contrary, all
14 roadway or highway projects shall be subject to review and
15 approval by the State Treasurer, and the authority shall not approve
16 any roadway or highway project disapproved by the State Treasurer.

17 (4) The authority may promulgate any rules and regulations
18 necessary to implement this subsection, including provisions for
19 fees to cover administrative costs.

20 g. A project with an expenditure of under \$50 million
21 developed under a public-private partnership agreement shall
22 include a requirement that precludes contractors from engaging in
23 the project if the contractor has contributed to the private entity's
24 financing of the project in an amount of more than 10% of the
25 project's financing costs.

26 h. The power of eminent domain shall not be delegated to any
27 private entity under the provisions of P.L. , c. (C.)
28 (pending before the Legislature as this bill); however, a local
29 government unit may dedicate any property interest, including land,
30 improvements, and tangible personal property of the local
31 government unit for public use in a qualifying project if the local
32 government unit finds that so doing will serve the public purpose of
33 the project by minimizing the cost of the project to the local
34 government unit or reducing the delivery time of a project.

35 i. Any public-private partnership agreement, if appropriate,
36 shall include provisions affirming that the agreement and any work
37 performed under the agreement are subject to the provisions of the
38 "Construction Industry Independent Contractor Act," P.L.2007,
39 c.114 (C.34:20-1 et seq.).

40 j. (1) A private entity seeking to enter into a public-private
41 partnership agreement with the local government unit shall be
42 qualified by the local government unit as part of the procurement
43 process, provided such process ensures that the private entity meets
44 at least the minimum local government unit standards for
45 qualification for professional services, construction contracting, and
46 other qualifications applicable to the project, prior to submitting a
47 proposal under the procurement process. The qualification process
48 shall result in a list of qualified private entities, that may be ranked

1 in order to generate a short list of private entities requested to
2 submit a final proposal.

3 (2) The local government unit may accept unsolicited proposals
4 from private entities for public-private partnership agreements. If
5 the local government unit receives an unsolicited proposal and
6 determines that it meets the standards of this section, the local
7 government unit shall publish a notice of the receipt of the proposal
8 on the Internet site of the local government unit, or through
9 advertisements in newspapers. If a notice is published exclusively
10 in newspapers, the notice shall appear in two or more newspapers
11 circulated wholly or in part in the county where the proposed
12 project is to be located. The notice shall provide that the local
13 government unit will accept, for 45 days after the initial date of
14 publication, proposals meeting the standards of this section from
15 other private entities for eligible projects that satisfy the same basic
16 purpose and need. A copy of the notice shall be mailed to each
17 municipal and county local government body in the geographic area
18 affected by the proposal.

19 (3) After the proposal or proposals have been received, and any
20 public notification period has expired, the local government unit
21 shall rank the proposals in order of preference. In ranking the
22 proposals, the local government unit may consider factors that
23 include, but may not be limited to, professional qualifications,
24 general business terms, innovative engineering, architectural
25 services, or cost-reduction terms, finance plans, and the need for
26 local government funds to deliver the project and discharge the
27 agreement. If only one proposal is received, the local government
28 unit shall negotiate in good faith and, if not satisfied with the results
29 of the negotiations, the local government unit may, at its sole
30 discretion, terminate negotiations.

31 (4) The local government unit may require that the private entity
32 assume responsibility for all costs incurred by the local government
33 unit before execution of the public-private partnership agreement,
34 including costs of retaining independent experts to review, analyze,
35 and advise the local government unit with respect to the proposal.

36 (5) If the authority or State Treasurer deem it in the public's
37 interest to cancel a procurement after a short list of private entities
38 is developed, the authority shall pay for documented third party
39 costs, including, but not limited to, design services, legal advisors,
40 financial advisors, and reasonable expenditures.

41 (6) Stipends may be used on public private partnership projects
42 when there is a substantial opportunity for innovation and the costs
43 for developing a proposal are significant. The local government unit
44 may elect to pay unsuccessful proposers for the work product they
45 submit with their proposal in response to a request for proposals.
46 The use by the local government unit of any design element
47 contained in an unsuccessful proposal shall be at the sole risk and
48 discretion of the local government unit and shall not confer liability

1 on the recipient of the stipulated stipend amount. After payment of
2 the stipulated stipend amount, the local government unit and the
3 unsuccessful proposer shall jointly own the rights to, and may make
4 use of any work product contained in the proposal, including the
5 technologies, techniques, methods, processes, ideas, and
6 information contained in the proposal, project design, and project
7 financial plan. The use by the unsuccessful proposer of any part of
8 the work product contained in the proposal shall be at the sole risk
9 of the unsuccessful proposer and shall not confer liability on the
10 local government unit.

11

12 2. (New section) a. As used in this section:

13 "Authority" means the New Jersey Economic Development
14 Authority established pursuant to section 4 of P.L.1974,
15 c.80 (C.34:1B-4).

16 "Availability payment" means a periodic payment made by a
17 school district to a private entity in exchange for making available
18 the use of a public building, structure, infrastructure, or facility at a
19 predetermined level of service, operation, or maintenance.

20 "Bundling" means the use of a solicitation for multiple projects
21 in one single contract, through a public-private partnership project
22 delivery method, the result of which restricts competition.

23 "Project" shall have the same meaning as provided in section 3
24 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and
25 shall include any infrastructure or facility used or to be used by the
26 public or in support of a public purpose or activity.

27 "Public-private partnership agreement" means an agreement
28 entered into by a school district and a private entity pursuant to this
29 section for the purpose of permitting a private entity to assume
30 financial and administrative responsibility for the development,
31 construction, reconstruction, repair, alteration, improvement,
32 extension, operation, and maintenance of a school facilities project
33 of, or for the benefit of, the school district.

34 "School district" means and includes a local school district,
35 regional school district, or county special services school district or
36 county vocational school established and operating under the
37 provisions of Title 18A of the New Jersey Statutes. The term
38 "school district" shall not include a charter school established under
39 P.L.1995, c.426 (C.18A:36A-1 et seq.).

40 b. (1) A school district may enter into a contract with a private
41 entity, subject to subsection f. of this section, to be referred to as a
42 public-private partnership agreement, that permits the private entity
43 to assume financial and administrative responsibility for a project
44 of, or for the benefit of, the school district, provided that the project
45 is financed in whole or in part by the private entity.

46 (2) A public-private partnership agreement may include an
47 agreement under which a school district and a private entity enter
48 into a lease of a revenue-producing public building, structure, or

1 facility in exchange for up-front or structured financing by the
2 private entity for the project. Under the lease agreement, the
3 private entity may be responsible for the management, operation,
4 and maintenance of the building, structure, or facility. The private
5 entity may receive some or all, as per the agreement, of the revenue
6 generated by the building, structure, or facility, and may operate the
7 building, structure, or facility in accordance with school district
8 standards. At the end of the lease term, subsequent revenue
9 generated by the building, structure, or facility, along with
10 management, operation, and maintenance responsibility, shall revert
11 to the school district.

12 (3) A public-private partnership agreement may include the use
13 of availability payments if deemed to be in the best interest of the
14 public and the school district, provided the private entity shall
15 operate the building, structure, infrastructure or facility in
16 accordance with school district standards.

17 (4) Bundling of projects shall be prohibited under this section.

18 c. (1) A private entity that assumes financial and administrative
19 responsibility for a project pursuant to this section shall not be
20 subject to, unless otherwise set forth herein, the procurement and
21 contracting requirements of all statutes applicable to the school
22 district at which the project is completed, including, but not limited
23 to, the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

24 (2) For the purposes of facilitating the financing of a project
25 pursuant to this section, a public entity may become the owner or
26 lessee of the project or the lessee of the land, or both, may become
27 the lessee of a building, structure, or facility to which the school
28 district holds title, may issue indebtedness in accordance with the
29 public entity's enabling legislation and, notwithstanding any
30 provision of law to the contrary, shall be empowered to enter into
31 contracts with a private entity and its affiliates without being
32 subject to the procurement and contracting requirements of any
33 statute applicable to the public entity provided that the private
34 entity has been selected by the school district pursuant to a
35 solicitation of proposals or qualifications from at least two private
36 entities. For the purposes of this subsection, a public entity shall
37 include the New Jersey Economic Development Authority, and any
38 project undertaken pursuant to this section of which the authority
39 becomes the owner or lessee, or which is situated on land of which
40 the authority becomes the lessee, shall be deemed a "project" under
41 the "The New Jersey Economic Development Authority Act,"
42 P.L.1974, c.80 (C.34:1B-1 et seq.).

43 (3) As the carrying out of any project described pursuant to this
44 section constitutes the performance of an essential public function,
45 all projects predominantly used in furtherance of the purposes of the
46 school district undertaken pursuant to this section, provided the
47 project is owned by or leased to a public entity, non-profit business
48 entity, foreign or domestic, or a business entity wholly owned by

1 such non-profit business entity, shall at all times be exempt from
2 property taxation and special assessments of the State, or any
3 municipality, or other political subdivision of the State and,
4 notwithstanding the provisions of section 15 of P.L.1974,
5 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
6 any other section of law to the contrary, shall not be required to
7 make payments in lieu of taxes. The land upon which the project is
8 located shall also at all times be exempt from property taxation.
9 The project and land upon which the project is located shall not be
10 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
11 1.10) regarding the tax liability of private parties conducting for
12 profit activities on tax exempt land, or section 1 of P.L.1949,
13 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
14 exempt property that are held by nonexempt parties.

15 (4) Prior to the commencement of work on a project, the private
16 entity shall establish a construction account and appoint a third-
17 party financial institution, who shall act as a collateral agent, to
18 manage the construction account. The construction account shall
19 include the funding, financial instruments, or both, that shall be
20 used to fully capitalize and fund the project, and the collateral agent
21 shall maintain a full accounting of the funds and instruments in the
22 account. The funds and instruments in the construction account
23 shall be held in trust for the benefit of the contractor, construction
24 manager, and design-build team involved in the project. The funds
25 and instruments in the construction account shall not be the
26 property of the private entity unless all amounts due to the
27 construction account beneficiaries are paid in full. The construction
28 account shall not be designated for more than one project.

29 d. Each worker employed in the construction, rehabilitation, or
30 building maintenance services of facilities by a private entity that
31 has entered into a public-private partnership agreement with a
32 school district pursuant to this section shall be paid not less than the
33 prevailing wage rate for the worker's craft or trade as determined by
34 the Commissioner of Labor and Workforce Development pursuant
35 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,
36 c.379 (C.34:11-56.58 et seq.).

37 e. (1) All building construction projects under a public-private
38 partnership agreement entered into pursuant to this section shall
39 contain a project labor agreement. The project labor agreement
40 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
41 seq.), and shall be in a manner that to the greatest extent possible
42 enhances employment opportunities for individuals residing in the
43 county of the project's location. The general contractor,
44 construction manager, design-build team, or subcontractor for a
45 construction project proposed in accordance with this paragraph
46 shall be registered pursuant to the provisions of P.L.1999, c.238
47 (C.34:11-56.48 et seq.), and shall be classified by the Division of
48 Property Management and Construction, or shall be prequalified by

1 the Department of Transportation, as appropriate, to perform work
2 on a public-private partnership project.

3 (2) All projects proposed in accordance with this section shall
4 be submitted to the New Jersey Economic Development Authority
5 for its review and approval prior to commencing procurement of the
6 project and, when practicable, are encouraged to adhere to the
7 Leadership in Energy and Environmental Design Green Building
8 Rating System as adopted by the United States Green Building
9 Council, the Green Globes Program adopted by the Green Building
10 Initiative, or a comparable nationally recognized, accepted, and
11 appropriate sustainable development rating system.

12 (3) The general contractor, construction manager, or design-
13 build team shall be required to post a performance bond to ensure
14 the completion of the project and a payment bond guaranteeing
15 prompt payment of moneys due in accordance with and conforming
16 to the requirements of N.J.S.2A:44-143 et seq.

17 f. (1) All projects proposed in accordance with this section
18 shall be submitted to the New Jersey Economic Development
19 Authority for the authority's review and approval. The projects are
20 encouraged, when practicable, to adhere to the green building
21 manual prepared by the Commissioner of Community Affairs
22 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

23 (2) (a) In order for an application to be complete and
24 considered by the authority, the application shall include, but not be
25 limited to: (i) a full description of the proposed public-private
26 partnership agreement between the school district and the private
27 developer; (ii) a full description of the project, including a
28 description of any agreement for the lease of a revenue-producing
29 facility related to the project; (iii) the estimated costs and financial
30 documentation for the project; (iv) a timetable for completion of the
31 construction of the project extending no more than five years after
32 consideration and approval; and (v) any other requirements that the
33 authority deems appropriate or necessary.

34 (b) As part of the estimated costs and financial documentation
35 for the project, the application shall contain a long-range
36 maintenance plan and a long-range maintenance bond and shall
37 specify the expenditures that qualify as an appropriate investment in
38 maintenance. The long-range maintenance plan shall be approved
39 by the authority pursuant to regulations promulgated by the
40 authority that reflect national building maintenance standards and
41 other appropriate building maintenance benchmarks.

42 (3) The authority shall review all completed applications, and
43 request additional information as is needed to make a complete
44 assessment of the project. No project shall commence the
45 procurement process until final approval has been granted by the
46 authority; provided, however, that the authority shall retain the right
47 to revoke approval if it determines that the project has deviated
48 from the plan submitted pursuant to paragraph (2) of this

1 subsection, and shall retain the right to cancel a procurement after a
2 short list of private entities is developed if deemed in the public
3 interest as specified under subsection j. of this section.

4 (4) The authority may promulgate any rules and regulations
5 necessary to implement this subsection, including provisions for
6 fees to cover administrative costs.

7 g. A project with an expenditure of under \$50 million
8 developed under a public-private partnership agreement shall
9 include a requirement that precludes contractors from engaging in
10 the project if the contractor has contributed to the private entity's
11 financing of the project in an amount of more than 10% of the
12 project's financing costs.

13 h. The power of eminent domain shall not be delegated to any
14 private entity under the provisions of P.L. , c. (C.)
15 (pending before the Legislature as this bill); however, a school
16 district may dedicate any property interest, including land,
17 improvements, and tangible personal property of the school district
18 for public use in a qualifying project if the school district finds that
19 so doing will serve the public purpose of the project by minimizing
20 the cost of the project to the school district or reducing the delivery
21 time of a project.

22 i. Any public-private partnership agreement, if appropriate,
23 shall include provisions affirming that the agreement and any work
24 performed under the agreement are subject to the provisions of the
25 "Construction Industry Independent Contractor Act," P.L.2007,
26 c.114 (C.34:20-1 et seq.).

27 j. (1) A private entity seeking to enter into a public-private
28 partnership agreement with the school district shall be qualified by
29 the school district as part of the procurement process, provided such
30 process ensures that the private entity meets at least the minimum
31 school district standards for qualification for professional services,
32 construction contracting, and other qualifications applicable to the
33 project, prior to submitting a proposal under the procurement
34 process. The qualification process shall result in a list of qualified
35 private entities, that may be ranked in order to generate a short list
36 of private entities requested to submit a final proposal.

37 (2) The school district may accept unsolicited proposals from
38 private entities for public-private partnership agreements. If the
39 school district receives an unsolicited proposal and determines that
40 it meets the standards of this section, the school district shall
41 publish a notice of the receipt of the proposal on the Internet site of
42 the school district, or through advertisements in newspapers. If a
43 notice is published exclusively in newspapers, the notice shall
44 appear in two or more newspapers circulated wholly or in part in
45 the county where the proposed project is to be located. The notice
46 shall provide that the school district will accept, for 45 days after
47 the initial date of publication, proposals meeting the standards of
48 this section from other private entities for eligible projects that

1 satisfy the same basic purpose and need. A copy of the notice shall
2 be mailed to each municipal and county local government body in
3 the geographic area affected by the proposal.

4 (3) After the proposal or proposals have been received, and any
5 public notification period has expired, the school district shall rank
6 the proposals in order of preference. In ranking the proposals, the
7 school district may consider factors that include, but may not be
8 limited to, professional qualifications, general business terms,
9 innovative engineering, architectural services, or cost-reduction
10 terms, finance plans, and the need for school district funds to
11 deliver the project and discharge the agreement. If only one
12 proposal is received, the school district shall negotiate in good faith
13 and, if not satisfied with the results of the negotiations, the school
14 district may, at its sole discretion, terminate negotiations.

15 (4) The school district may require that the private entity assume
16 responsibility for all costs incurred by the school district before
17 execution of the public-private partnership agreement, including
18 costs of retaining independent experts to review, analyze, and
19 advise the school district with respect to the proposal.

20 (5) If the authority or State Treasurer deem it in the public's
21 interest to cancel a procurement after a short list of private entities
22 is developed, the authority shall pay for documented third party
23 costs, including, but not limited to, design services, legal advisors,
24 financial advisors, and reasonable expenditures.

25 (6) Stipends may be used on public private partnership projects
26 when there is a substantial opportunity for innovation and the costs
27 for developing a proposal are significant. The school district may
28 elect to pay unsuccessful proposers for the work product they
29 submit with their proposal in response to a request for proposals.
30 The use by the school district of any design element contained in an
31 unsuccessful proposal shall be at the sole risk and discretion of the
32 school district and shall not confer liability on the recipient of the
33 stipulated stipend amount. After payment of the stipulated stipend
34 amount, the school district and the unsuccessful proposer shall
35 jointly own the rights to, and may make use of any work product
36 contained in the proposal, including the technologies, techniques,
37 methods, processes, ideas, and information contained in the
38 proposal, project design, and project financial plan. The use by the
39 unsuccessful proposer of any part of the work product contained in
40 the proposal shall be at the sole risk of the unsuccessful proposer
41 and shall not confer liability on the school district.

42

43 3. (New section) a. As used in this section:

44 "Authority" means the New Jersey Economic Development
45 Authority established pursuant to section 4 of P.L.1974,
46 c.80 (C.34:1B-4).

47 "Availability payment" means a periodic payment made by a
48 State government entity to a private entity in exchange for making

1 available the use of a public building, road, structure, infrastructure,
2 or facility at a predetermined level of service, operation, or
3 maintenance.

4 “Building project” means the construction, reconstruction, repair,
5 alteration, improvement, or extension of any public building,
6 structure, or facility constructed or acquired by a State government
7 entity to house State government functions, including any
8 infrastructure or facility used or to be used by the public or in
9 support of a public purpose or activity.

10 “Bundling” means the use of a solicitation for multiple projects
11 in one single contract, through a public-private partnership project
12 delivery method, the result of which restricts competition.

13 “Highway project” means the construction, reconstruction,
14 repair, alteration, improvement, or extension of public expressways,
15 freeways, and parkways, including bridges, tunnels, overpasses,
16 underpasses, interchanges, rest areas, express bus roadways, bus
17 pullouts and turnarounds, and park and ride facilities, including any
18 infrastructure or facility used or to be used by the public or in
19 support of a public purpose or activity; provided that the project
20 shall include an expenditure of at least \$10 million in public funds,
21 or any expenditure in solely private funds.

22 “Public-private partnership agreement” means an agreement
23 entered into by a State government entity and a private entity
24 pursuant to this section for the purpose of permitting a private entity
25 to assume financial and administrative responsibility for the
26 construction, reconstruction, repair, alteration, improvement,
27 extension, operation, and maintenance of a building project or a
28 highway project of, or for the benefit of, the State government
29 entity.

30 “State government entity” means the State or any department,
31 agency, board, commission, committee, or authority thereof subject
32 to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et
33 seq.), but shall not include any State institution of higher education.

34 b. (1) A State government entity may enter into a contract with
35 a private entity, subject to subsection f. of this section, to be
36 referred to as a public-private partnership agreement, that permits
37 the private entity to assume financial and administrative
38 responsibility for the construction, reconstruction, repair, alteration,
39 improvement, extension, operation, and maintenance of a building
40 or highway of, or for the benefit of, the State government entity,
41 provided that the building or highway project is financed in whole
42 or in part by the private entity.

43 (2) A public-private partnership agreement may include an
44 agreement under which a State government entity and a private
45 entity enter into a lease of a revenue-producing public building or
46 highway in exchange for up-front or structured financing by the
47 private entity for the project. Under the lease agreement, the
48 private entity may be responsible for the management, operation,

1 and maintenance of the building or highway. The private entity
2 may receive some or all, as per the agreement, of the revenue
3 generated by the building or highway, and may operate the building
4 or highway in accordance with State government entity standards.
5 At the end of the lease term, subsequent revenue generated by the
6 building or highway, along with management, operation, and
7 maintenance responsibility, shall revert to the State government
8 entity.

9 (3) A public-private partnership agreement may include the use
10 of availability payments if deemed to be in the best interest of the
11 public and the State government entity, provided the private entity
12 shall operate the building, road, structure, infrastructure or facility
13 in accordance with State government entity standards.

14 (4) Bundling of projects shall be prohibited under this section.

15 c. (1) A private entity that assumes financial and administrative
16 responsibility for a building or highway project pursuant to this
17 section, unless otherwise set forth herein, shall not be subject to the
18 procurement and contracting requirements of all statutes applicable
19 to the State government entity at which the project is completed,
20 including, but not limited to, the public contracting provisions of
21 P.L.1954, c.48 (C.52:34-6 et seq.).

22 (2) For the purposes of facilitating the financing of a project
23 pursuant to this section, a public entity may become the owner or
24 lessee of the project or the lessee of the land, or both, may become
25 the lessee of a building or highway to which the State government
26 entity holds title and, notwithstanding any provision of law to the
27 contrary, shall be empowered to enter into contracts with a private
28 entity and its affiliates without being subject to the procurement and
29 contracting requirements, unless otherwise set forth herein, of any
30 statute applicable to the public entity provided that the private
31 entity has been selected by the public entity pursuant to a
32 solicitation of proposals or qualifications from at least two private
33 entities. For the purposes of this subsection, a public entity shall
34 include the New Jersey Department of Transportation, New Jersey
35 Turnpike Authority, South Jersey Transportation Authority, New
36 Jersey Transit, and the New Jersey Economic Development
37 Authority, and any project undertaken pursuant to this section of
38 which the public entity becomes the owner or lessee, or which is
39 situated on land of which the public entity becomes the lessee, shall
40 be deemed a "project" under the "New Jersey Economic
41 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

42 (3) As the carrying out of any project described pursuant to this
43 section constitutes the performance of an essential public function,
44 all projects predominantly used in furtherance of the purposes of the
45 State government entity undertaken pursuant to this section,
46 provided the project is owned by or leased to a public entity, non-
47 profit business entity, foreign or domestic, or a business entity
48 wholly owned by such non-profit business entity, shall at all times

1 be exempt from property taxation and special assessments of the
2 State, or any municipality, or other political subdivision of the State
3 and, notwithstanding the provisions of section 15 of P.L.1974, c.80
4 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or any
5 other section of law to the contrary, shall not be required to make
6 payments in lieu of taxes. The land upon which the project is
7 located shall also at all times be exempt from property taxation.
8 The project and land upon which the project is located shall not be
9 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
10 1.10) regarding the tax liability of private parties conducting for
11 profit activities on tax exempt land, or section 1 of P.L.1949, c.177
12 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt
13 property that are held by nonexempt parties.

14 (4) Prior to the commencement of work on a project, the private
15 entity shall establish a construction account and appoint a third-
16 party financial institution, who shall act as a collateral agent, to
17 manage the construction account. The construction account shall
18 include the funding, financial instruments, or both, that shall be
19 used to fully capitalize and fund the project, and the collateral agent
20 shall maintain a full accounting of the funds and instruments in the
21 account. The funds and instruments in the construction account
22 shall be held in trust for the benefit of the contractor, construction
23 manager, and design-build team involved in the project. The funds
24 and instruments in the construction account shall not be the
25 property of the private entity unless all amounts due to the
26 construction account beneficiaries are paid in full. The construction
27 account shall not be designated for more than one project.

28 d. Each worker employed in the construction, rehabilitation, or
29 maintenance services of buildings or highways by a private entity
30 that has entered into a public-private partnership agreement with a
31 State government entity pursuant to this section shall be paid not
32 less than the prevailing wage rate for the worker's craft or trade as
33 determined by the Commissioner of Labor and Workforce
34 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
35 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

36 e. (1) All building construction projects under a public-private
37 partnership agreement entered into pursuant to this section shall
38 contain a project labor agreement. The project labor agreement
39 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
40 seq.), and shall be in a manner that to the greatest extent possible
41 enhances employment opportunities for individuals residing in the
42 county of the project's location. The general contractor,
43 construction manager, design-build team, or subcontractor for a
44 construction project proposed in accordance with this paragraph
45 shall be registered pursuant to the provisions of P.L.1999, c.238
46 (C.34:11-56.48 et seq.), and shall be classified by the Division of
47 Property Management and Construction, or shall be prequalified by

1 the Department of Transportation, as appropriate, to perform work
2 on a public-private partnership project.

3 (2) All projects proposed in accordance with this section shall
4 be submitted to the New Jersey Economic Development Authority
5 for its review and approval prior to commencing procurement of the
6 project and, when practicable, are encouraged to adhere to the
7 Leadership in Energy and Environmental Design Green Building
8 Rating System as adopted by the United States Green Building
9 Council, the Green Globes Program adopted by the Green Building
10 Initiative, or a comparable nationally recognized, accepted, and
11 appropriate sustainable development rating system.

12 (3) The general contractor, construction manager, or design-
13 build team shall be required to post a performance bond to ensure
14 the completion of the project and a payment bond guaranteeing
15 prompt payment of moneys due in accordance with and conforming
16 to the requirements of N.J.S.2A:44-143 et seq.

17 f. (1) All projects proposed in accordance with this section
18 shall be submitted to the New Jersey Economic Development
19 Authority for the authority's review and approval. The projects are
20 encouraged, when practicable, to adhere to the green building
21 manual prepared by the Commissioner of Community Affairs
22 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

23 (2) (a) In order for an application to be complete and considered
24 by the authority, the application shall include, but not be limited to:
25 (i) a full description of the proposed public-private partnership
26 agreement between the State government entity and the private
27 developer; (ii) a full description of the project, including a
28 description of any agreement for the lease of a revenue-producing
29 building or highway related to the project; (iii) the estimated costs
30 and financial documentation for the project; (iv) a timetable for
31 completion of the construction of the project extending no more
32 than five years after consideration and approval; and (v) any other
33 requirements that the authority deems appropriate or necessary.

34 (b) As part of the estimated costs and financial documentation
35 for the project, the application shall contain a long-range
36 maintenance plan and a long-range maintenance bond and shall
37 specify the expenditures that qualify as an appropriate investment in
38 maintenance. The long-range maintenance plan shall be approved
39 by the authority pursuant to regulations promulgated by the
40 authority that reflect national building or highway maintenance
41 standards, as appropriate, and other appropriate maintenance
42 benchmarks.

43 (3) The authority shall review all completed applications, and
44 request additional information as is needed to make a complete
45 assessment of the project. No project shall commence the
46 procurement process until final approval has been granted by the
47 authority; provided, however, that the authority shall retain the right
48 to revoke approval if it determines that the project has deviated

1 from the plan submitted pursuant to paragraph (2) of this
2 subsection, and shall retain the right to cancel a procurement after a
3 short list of private entities is developed if deemed in the public
4 interest as specified under subsection j. of this section.
5 Notwithstanding any provision of this section to the contrary, all
6 roadway or highway projects shall be subject to review and
7 approval by the State Treasurer, and the authority shall not approve
8 any roadway or highway project disapproved by the State Treasurer.

9 (4) The authority may promulgate any rules and regulations
10 necessary to implement this subsection, including provisions for
11 fees to cover administrative costs.

12 g. A project with an expenditure of under \$50 million
13 developed under a public-private partnership agreement shall
14 include a requirement that precludes contractors from engaging in
15 the project if the contractor has contributed to the private entity's
16 financing of the project in an amount of more than 10% of the
17 project's financing costs.

18 h. The power of eminent domain shall not be delegated to any
19 private entity under the provisions of P.L. , c. (C.)
20 (pending before the Legislature as this bill); however, a State
21 government entity may dedicate any property interest, including
22 land, improvements, and tangible personal property of the State
23 government entity for public use in a qualifying project if the State
24 government entity finds that so doing will serve the public purpose
25 of the project by minimizing the cost of the project to the State
26 government entity or reducing the delivery time of a project.

27 i. Any public-private partnership agreement, if appropriate,
28 shall include provisions affirming that the agreement and any work
29 performed under the agreement are subject to the provisions of the
30 "Construction Industry Independent Contractor Act," P.L.2007,
31 c.114 (C.34:20-1 et seq.).

32 j. (1) A private entity seeking to enter into a public-private
33 partnership agreement with the State government entity shall be
34 qualified by the State government entity as part of the procurement
35 process, provided such process ensures that the private entity meets
36 at least the minimum State government entity standards for
37 qualification for professional services, construction contracting, and
38 other qualifications applicable to the project, prior to submitting a
39 proposal under the procurement process. The qualification process
40 shall result in a list of qualified private entities, that may be ranked
41 in order to generate a short list of private entities requested to
42 submit a final proposal.

43 (2) The State government entity may accept unsolicited
44 proposals from private entities for public-private partnership
45 agreements. If the State government entity receives an unsolicited
46 proposal and determines that it meets the standards of this section,
47 the State government entity shall publish a notice of the receipt of
48 the proposal on the Internet site of the State government entity, or

1 through advertisements in newspapers. If a notice is published
2 exclusively in newspapers, the notice shall appear in two or more
3 newspapers circulated wholly or in part in the county where the
4 proposed project is to be located. The notice shall provide that the
5 State government entity will accept, for 45 days after the initial date
6 of publication, proposals meeting the standards of this section from
7 other private entities for eligible projects that satisfy the same basic
8 purpose and need. A copy of the notice shall be mailed to each
9 municipal and county local government body in the geographic area
10 affected by the proposal.

11 (3) After the proposal or proposals have been received, and any
12 public notification period has expired, the State government entity
13 shall rank the proposals in order of preference. In ranking the
14 proposals, the State government entity may consider factors that
15 include, but may not be limited to, professional qualifications,
16 general business terms, innovative engineering, architectural
17 services, or cost-reduction terms, finance plans, and the need for
18 State government entity funds to deliver the project and discharge
19 the agreement. If only one proposal is received, the State
20 government entity shall negotiate in good faith and, if not satisfied
21 with the results of the negotiations, the State government entity
22 may, at its sole discretion, terminate negotiations.

23 (4) The State government entity may require that the private
24 entity assume responsibility for all costs incurred by the State
25 government entity before execution of the public-private
26 partnership agreement, including costs of retaining independent
27 experts to review, analyze, and advise the State government entity
28 with respect to the proposal.

29 (5) If the authority or State Treasurer deem it in the public's
30 interest to cancel a procurement after a short list of private entities
31 is developed, the authority shall pay for documented third party
32 costs, including, but not limited to, design services, legal advisors,
33 financial advisors, and reasonable expenditures.

34 (6) Stipends may be used on public private partnership projects
35 when there is a substantial opportunity for innovation and the costs
36 for developing a proposal are significant. The State government
37 entity may elect to pay unsuccessful proposers for the work product
38 they submit with their proposal in response to a request for
39 proposals. The use by the State government entity of any design
40 element contained in an unsuccessful proposal shall be at the sole
41 risk and discretion of the State government entity and shall not
42 confer liability on the recipient of the stipulated stipend amount.
43 After payment of the stipulated stipend amount, the State
44 government entity and the unsuccessful proposer shall jointly own
45 the rights to, and may make use of any work product contained in
46 the proposal, including the technologies, techniques, methods,
47 processes, ideas, and information contained in the proposal, project
48 design, and project financial plan. The use by the unsuccessful

1 proposer of any part of the work product contained in the proposal
2 shall be at the sole risk of the unsuccessful proposer and shall not
3 confer liability on the State government entity.
4

5 4. (New section) Notwithstanding the provisions of section 43
6 of P.L.2009, c.90 (C.18A:64-85) to the contrary, the New Jersey
7 Institute of Technology may enter into a public-private partnership
8 agreement in accordance with the provisions of that section.
9

10 5. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to
11 read as follows:

12 43. a. (1) A State college or county college may enter into a
13 contract with a private entity, subject to subsection f. of this section,
14 to be referred to as a public-private partnership agreement, that
15 permits the private entity to assume **【full】** financial and
16 administrative responsibility for the on-campus or off-campus
17 construction, reconstruction, repair, alteration, improvement,
18 extension, management, or operation of a building, structure, or
19 facility of, or for the benefit of, the institution, provided that the
20 project is financed in whole or in part by the private entity and that
21 the State or institution of higher education, as applicable, retains
22 full ownership of the land upon which the project is completed.

23 (2) A public-private partnership agreement may include an
24 agreement under which a State or county college **【leases to a**
25 **private entity the operation】** and the private entity enter into a lease
26 of a dormitory or other **【revenue-producing】** facility to which the
27 college holds title, in exchange for up-front or structured financing
28 by the private entity for the construction of classrooms,
29 laboratories, or other academic or research buildings. Under the
30 lease agreement, the college shall continue to hold title to the
31 facility, and the private entity shall be responsible for the
32 management, operation, and maintenance of the facility. The
33 private entity shall receive some or all, as per the agreement, of the
34 revenue generated by the facility and shall operate the facility in
35 accordance with college standards. **【A lease agreement shall not**
36 **affect the status or employment rights of college employees who are**
37 **assigned to, or provide services to, the leased facility.】** A lease
38 agreement shall not affect the status or employment rights of
39 college employees who are assigned to, or provide services to, the
40 leased facility. At the end of the lease term, subsequent revenue
41 generated by the facility, along with management, operation, and
42 maintenance responsibility, shall revert to the college.

43 (3) A public-private partnership agreement may include the use
44 of availability payments if deemed to be in the best interest of the
45 public and the State or county college, provided the private entity
46 shall operate the building, structure, infrastructure or facility in
47 accordance with State or county college standards. Bundling of

1 projects shall be prohibited. As used in this paragraph, “availability
2 payment” means a periodic payment made by a State or county
3 college to a private entity in exchange for making available the use
4 of a public building, structure, infrastructure, or facility at a
5 predetermined level of service, operation, or maintenance.
6 “Bundling” means the use of a solicitation for multiple projects in
7 one single contract, through a public-private partnership project
8 delivery method, the result of which restricts competition.

9 b. (1) A private entity that assumes financial and administrative
10 responsibility for a project pursuant to subsection a. of this section
11 shall not be subject, unless otherwise set forth herein, to the
12 procurement and contracting requirements of all statutes applicable
13 to the institution of higher education at which the project is
14 completed, including, but not limited to, the "State College
15 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the
16 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1
17 et seq.). For the purposes of facilitating the financing of a project
18 pursuant to subsection a. of this section, a public entity, including
19 any State or county college or public research university, may
20 become the owner or lessee of the project or the lessee of the land,
21 or both, may become the lessee of a dormitory or other revenue-
22 producing facility to which the college holds title, may issue
23 indebtedness in accordance with the public entity's or institution's
24 enabling legislation and, notwithstanding any provision of law to
25 the contrary, shall be empowered to enter into contracts with a
26 private entity and its affiliates, unless otherwise set forth herein,
27 without being subject to the procurement and contracting
28 requirements of any statute applicable to the public entity or
29 institution provided that the private entity has been selected by the
30 institution of higher education pursuant to a solicitation of
31 proposals or qualifications from at least two private entities. For
32 the purposes of this section, a public entity shall include the New
33 Jersey Economic Development Authority, and any project
34 undertaken pursuant to subsection a. of this section of which the
35 authority becomes the owner or lessee, or which is situated on land
36 of which the authority becomes the lessee, shall be deemed a
37 "project" under the "New Jersey Economic Development Authority
38 Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

39 (2) As the carrying out of any project described pursuant to this
40 section constitutes the performance of an essential public function,
41 all projects **【predominantly used in furtherance of the】** having the
42 primary stated purpose of furthering the educational purposes of the
43 institution undertaken pursuant to this section, provided it is owned
44 by or leased to a public entity, any State or county college or public
45 research university, non-profit business entity, foreign or domestic,
46 or a business entity wholly owned by such non-profit business
47 entity, shall at all times be exempt from property taxation and
48 special assessments of the State, or any municipality, or other

1 political subdivision of the State and, notwithstanding the
2 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2
3 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the
4 contrary, shall not be required to make payments in lieu of taxes.
5 The land upon which the project is located shall also at all times be
6 exempt from property taxation. Further, the project and land upon
7 which the project is located shall not be subject to the provisions of
8 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax
9 liability of private parties conducting for profit activities on tax
10 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding
11 the taxation of leasehold interests in exempt property that are held
12 by nonexempt parties.

13 (3) Prior to the commencement of work on a project, the private
14 entity shall establish a construction account and appoint a third-
15 party financial institution, who shall act as a collateral agent, to
16 manage the construction account. The construction account shall
17 include the funding, financial instruments, or both, that shall be
18 used to fully capitalize and fund the project, and the collateral agent
19 shall maintain a full accounting of the funds and instruments in the
20 account. The funds and instruments in the construction account
21 shall be held in trust for the benefit of the contractor, construction
22 manager, and design-build team involved in the project. The funds
23 and instruments in the construction account shall not be the
24 property of the private entity unless all amounts due to the
25 construction account beneficiaries are paid in full. The construction
26 account shall not be designated for more than one project.

27 c. Each worker employed in the construction, rehabilitation, or
28 building maintenance services of facilities by a private entity that
29 has entered into a public-private partnership agreement with a State
30 or county college pursuant to subsection a. of this section shall be
31 paid not less than the prevailing wage rate for the worker's craft or
32 trade as determined by the Commissioner of Labor and Workforce
33 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
34 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

35 d. (1) All building construction projects under a public-private
36 partnership agreement entered into pursuant to this section shall
37 contain a project labor agreement. The project labor agreement
38 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
39 seq.), and shall be in a manner that to the greatest extent possible
40 enhances employment opportunities for individuals residing in the
41 county of the project's location. Further, the general contractor,
42 construction manager, design-build team, or subcontractor for a
43 construction project proposed in accordance with this paragraph
44 shall be registered pursuant to the provisions of P.L.1999, c.238
45 (C.34:11-56.48 et seq.), and shall be classified by the Division of
46 Property Management and Construction, or shall be prequalified by
47 the Department of Transportation, as appropriate, to perform work
48 on a public-private partnership higher education project.

1 (2) All **【construction】** projects proposed in accordance with this
2 **【paragraph】** section shall be submitted to the New Jersey Economic
3 Development Authority for its review and approval prior to
4 commencing procurement of the project and, when practicable, are
5 encouraged to adhere to the Leadership in Energy and
6 Environmental Design Green Building Rating System as adopted by
7 the United States Green Building Council, the Green Globes
8 Program adopted by the Green Building Initiative, or a comparable
9 nationally recognized, accepted, and appropriate sustainable
10 development rating system.

11 **【(2) Where no public fund has been established for the**
12 **financing of a public improvement, the chief financial officer of the**
13 **public owner shall require the private entity for whom the public**
14 **improvement is being made】** (3) The general contractor,
15 construction manager, or design-build team shall be required to post
16 **【, or cause to be posted,】** a performance bond to ensure completion
17 of the project and a payment bond guaranteeing prompt payment of
18 moneys due 【to the contractor, his or her subcontractors and to all
19 persons furnishing labor or materials to the contractor or his or her
20 subcontractors in the prosecution of the work on the public
21 improvement】 in accordance with and conforming to the
22 requirements of N.J.S.2A:44-143 et seq.

23 e. **【A general contractor, construction manager, design-build**
24 **team, or subcontractor shall be registered pursuant to the provisions**
25 **of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified**
26 **by the Division of Property Management and Construction to**
27 **perform work on a public-private partnership higher education**
28 **project.】** (Deleted by amendment, P.L. , c.) (pending before the
29 Legislature as this bill)

30 f. (1) **【On or before August 1, 2015, all】** All projects proposed
31 in accordance with this section shall be submitted to the New Jersey
32 Economic Development Authority for the authority's review and
33 approval **【; except that in the case of projects proposed in**
34 **accordance with paragraph (2) of subsection a. of this section, all**
35 **projects shall be submitted on or before August 1, 2016】**. The
36 projects are encouraged, when practicable, to adhere to the green
37 building manual prepared by the Commissioner of Community
38 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).
39 **【Any application that is deemed to be incomplete on August 2,**
40 **2015, or on August 2, 2016 in the case of an application submitted**
41 **pursuant to paragraph (2) of subsection a. of this section, shall not**
42 **be eligible for consideration.】**

43 (2) (a) In order for an application to be complete and
44 considered by the authority, the application shall include, but not be
45 limited to: (i) a full description of the proposed public-private
46 partnership agreement between the State or county college and the
47 private developer; (ii) a full description of the project, including a

1 description of any agreement for the lease of a revenue-producing
2 facility related to the project; (iii) the estimated costs and financial
3 documentation for the project; (iv) a timetable for completion of the
4 construction of the project extending no more than five years after
5 consideration and approval; and (v) any other requirements that the
6 authority deems appropriate or necessary.

7 (b) As part of the estimated costs and financial documentation
8 for the project, the application shall contain a long-range
9 maintenance plan and a long-range maintenance bond and shall
10 specify the expenditures that qualify as an appropriate investment in
11 maintenance. The long-range maintenance plan shall be approved
12 by the authority pursuant to regulations promulgated by the
13 authority that reflect national building maintenance standards and
14 other appropriate building maintenance benchmarks. All contracts
15 to implement a long-range maintenance plan pursuant to this
16 paragraph shall contain a project labor agreement. The project
17 labor agreement shall be subject to the provisions of P.L.2002,
18 c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
19 extent possible enhances employment opportunities for individuals
20 residing in the county of the project's location.

21 (3) The authority shall review all completed applications, and
22 request additional information as is needed to make a complete
23 assessment of the project. No project shall **【be undertaken】**
24 commence the procurement process until final approval has been
25 granted by the authority; provided, however, that the authority shall
26 retain the right to revoke approval if it determines that the project
27 has deviated from the plan submitted pursuant to paragraph (2) of
28 this subsection, and shall retain the right to cancel a procurement
29 after a short list of private entities is developed if deemed in the
30 public interest as specified under subsection k. of this section.

31 (4) The authority may promulgate any rules and regulations
32 necessary to implement this subsection, including provisions for
33 fees to cover administrative costs.

34 **【Where no public fund has been established for the financing of**
35 **a public improvement, the chief financial officer of the public**
36 **owner shall require the private entity for whom the public**
37 **improvement is being made to post, or cause to be posted, a bond**
38 **guaranteeing prompt payment of moneys due to the contractor, his**
39 **or her subcontractors and to all persons furnishing labor or**
40 **materials to the contractor or his or her subcontractors in the**
41 **prosecution of the work on the public improvement.】**

42 g. **【The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall**
43 **not apply to any project carried out pursuant to this section.】**
44 (Deleted by amendment, P.L. , c.) (pending before the
45 Legislature as this bill)

46 h. A project with an expenditure of under \$50 million
47 developed under a public-private partnership agreement shall

1 include a requirement that precludes contractors from engaging in
2 the project if the contractor has contributed to the private entity's
3 financing of the project in an amount of more than 10% of the
4 project's financing costs.

5 i. The power of eminent domain shall not be delegated to any
6 private entity under the provisions of P.L. , c. (C.)
7 (pending before the Legislature as this bill); however, a State or
8 county college may dedicate any property interest, including land,
9 improvements, and tangible personal property of the State or county
10 college for public use in a qualifying project if the State or county
11 college finds that so doing will serve the public purpose of the
12 project by minimizing the cost of the project to the State or county
13 college or reducing the delivery time of a project.

14 j. Any public-private partnership agreement, if appropriate,
15 shall include provisions affirming that the agreement and any work
16 performed under the agreement are subject to the provisions of the
17 "Construction Industry Independent Contractor Act," P.L.2007,
18 c.114 (C.34:20-1 et seq.).

19 k. (1) A private entity seeking to enter into a public-private
20 partnership agreement with the State or county college shall be
21 qualified by the State or county college as part of the procurement
22 process, provided such process ensures that the private entity meets
23 at least the minimum State or county college standards for
24 qualification for professional services, construction contracting, and
25 other qualifications applicable to the project, prior to submitting a
26 proposal under the procurement process. The qualification process
27 shall result in a list of qualified private entities, that may be ranked
28 in order to generate a short list of private entities requested to
29 submit a final proposal.

30 (2) The State or county college may accept unsolicited proposals
31 from private entities for public-private partnership agreements. If
32 the State or county college receives an unsolicited proposal and
33 determines that it meets the standards of this section, the State or
34 county college shall publish a notice of the receipt of the proposal
35 on the Internet site of the State or county college, or through
36 advertisements in newspapers. If a notice is published exclusively
37 in newspapers, the notice shall appear in two or more newspapers
38 circulated wholly or in part in the county where the proposed
39 project is to be located. The notice shall provide that the State or
40 county college will accept, for 45 days after the initial date of
41 publication, proposals meeting the standards of this section from
42 other private entities for eligible projects that satisfy the same basic
43 purpose and need. A copy of the notice shall be mailed to each
44 municipal and county local government body in the geographic area
45 affected by the proposal.

46 (3) After the proposal or proposals have been received, and any
47 public notification period has expired, the State or county college
48 shall rank the proposals in order of preference. In ranking the

1 proposals, the State or county college may consider factors that
2 include, but may not be limited to, professional qualifications,
3 general business terms, innovative engineering, architectural
4 services, or cost-reduction terms, finance plans, and the need for
5 State or county college funds to deliver the project and discharge
6 the agreement. If only one proposal is received, the State or county
7 college shall negotiate in good faith and, if not satisfied with the
8 results of the negotiations, the State or county college may, at its
9 sole discretion, terminate negotiations.

10 (4) The State or county college may require that the private
11 entity assume responsibility for all costs incurred by the State or
12 county college before execution of the public-private partnership
13 agreement, including costs of retaining independent experts to
14 review, analyze, and advise the State or county college with respect
15 to the proposal.

16 (5) If the authority or State Treasurer deem it in the public's
17 interest to cancel a procurement after a short list of private entities
18 is developed, the authority shall pay for documented third party
19 costs, including, but not limited to, design services, legal advisors,
20 financial advisors, and reasonable expenditures.

21 (6) Stipends may be used on public private partnership projects
22 when there is a substantial opportunity for innovation and the costs
23 for developing a proposal are significant. The State or county
24 college may elect to pay unsuccessful proposers for the work
25 product they submit with their proposal in response to a request for
26 proposals. The use by the State or county college of any design
27 element contained in an unsuccessful proposal shall be at the sole
28 risk and discretion of the State or county college and shall not
29 confer liability on the recipient of the stipulated stipend amount.
30 After payment of the stipulated stipend amount, the State or county
31 college and the unsuccessful proposer shall jointly own the rights
32 to, and may make use of any work product contained in the
33 proposal, including the technologies, techniques, methods,
34 processes, ideas, and information contained in the proposal, project
35 design, and project financial plan. The use by the unsuccessful
36 proposer of any part of the work product contained in the proposal
37 shall be at the sole risk of the unsuccessful proposer and shall not
38 confer liability on the State or county college.

39 (cf: P.L.2013, c.161, s.26)

40
41 6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
42 as follows:

43 5. The authority shall have the following powers:

44 a. To adopt bylaws for the regulation of its affairs and the
45 conduct of its business;

46 b. To adopt and have a seal and to alter the same at pleasure;

47 c. To sue and be sued;

1 d. To acquire in the name of the authority by purchase or
2 otherwise, on such terms and conditions and such manner as it may
3 deem proper, or by the exercise of the power of eminent domain in
4 the manner provided by the "Eminent Domain Act of 1971,"
5 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
6 other property which it may determine is reasonably necessary for
7 any project; provided, however, that the authority in connection
8 with any project shall not take by exercise of the power of eminent
9 domain any real property except upon consent thereto given by
10 resolution of the governing body of the municipality in which such
11 real property is located; and provided further that the authority shall
12 be limited in its exercise of the power of eminent domain in
13 connection with any project in qualifying municipalities as defined
14 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
15 municipalities which had a population, according to the latest
16 federal decennial census, in excess of 10,000;

17 e. To enter into contracts with a person upon such terms and
18 conditions as the authority shall determine to be reasonable,
19 including, but not limited to, reimbursement for the planning,
20 designing, financing, construction, reconstruction, improvement,
21 equipping, furnishing, operation and maintenance of the project and
22 to pay or compromise any claims arising therefrom;

23 f. To establish and maintain reserve and insurance funds with
24 respect to the financing of the project or the school facilities project
25 and any project financed pursuant to the "Municipal Rehabilitation
26 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
27 al.);

28 g. To sell, convey or lease to any person all or any portion of a
29 project for such consideration and upon such terms as the authority
30 may determine to be reasonable;

31 h. To mortgage, pledge or assign or otherwise encumber all or
32 any portion of a project, or revenues, whenever it shall find such
33 action to be in furtherance of the purposes of this act, P.L.2000,
34 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
35 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
36 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
37 P.L.2009, c.90 (C.52:27D-489c et al.);

38 i. To grant options to purchase or renew a lease for any of its
39 projects on such terms as the authority may determine to be
40 reasonable;

41 j. To contract for and to accept any gifts or grants or loans of
42 funds or property or financial or other aid in any form from the
43 United States of America or any agency or instrumentality thereof,
44 or from the State or any agency, instrumentality or political
45 subdivision thereof, or from any other source and to comply,
46 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
47 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
48 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and

- 1 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
2 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
3 conditions thereof;
- 4 k. In connection with any action undertaken by the authority in
5 the performance of its duties and any application for assistance or
6 commitments therefor and modifications thereof, to require and
7 collect such fees and charges as the authority shall determine to be
8 reasonable, including but not limited to fees and charges for the
9 authority's administrative, organizational, insurance, operating,
10 legal, and other expenses;
- 11 l. To adopt, amend and repeal regulations to carry out the
12 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
13 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
14 the "Municipal Rehabilitation and Economic Recovery Act,"
15 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,
16 c.137 (C.52:18A-235 et al.);
- 17 m. To acquire, purchase, manage and operate, hold and dispose
18 of real and personal property or interests therein, take assignments
19 of rentals and leases and make and enter into all contracts, leases,
20 agreements and arrangements necessary or incidental to the
21 performance of its duties;
- 22 n. To purchase, acquire and take assignments of notes,
23 mortgages and other forms of security and evidences of
24 indebtedness;
- 25 o. To purchase, acquire, attach, seize, accept or take title to any
26 project or school facilities project by conveyance or by foreclosure,
27 and sell, lease, manage or operate any project or school facilities
28 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
29 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
30 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-
31 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-
32 489c et al.);
- 33 p. To borrow money and to issue bonds of the authority and to
34 provide for the rights of the holders thereof, as provided in
35 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
36 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
37 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
38 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
39 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 40 q. To extend credit or make loans to any person for the
41 planning, designing, acquiring, constructing, reconstructing,
42 improving, equipping and furnishing of a project or school facilities
43 project, which credits or loans may be secured by loan and security
44 agreements, mortgages, leases and any other instruments, upon such
45 terms and conditions as the authority shall deem reasonable,
46 including provision for the establishment and maintenance of
47 reserve and insurance funds, and to require the inclusion in any
48 mortgage, lease, contract, loan and security agreement or other

- 1 instrument, of such provisions for the construction, use, operation
2 and maintenance and financing of a project or school facilities
3 project as the authority may deem necessary or desirable;
- 4 r. To guarantee up to 90% of the amount of a loan to a person,
5 if the proceeds of the loan are to be applied to the purchase and
6 installation, in a building devoted to industrial or commercial
7 purposes, or in an office building, of an energy improvement
8 system;
- 9 s. To employ consulting engineers, architects, attorneys, real
10 estate counselors, appraisers, and such other consultants and
11 employees as may be required in the judgment of the redevelopment
12 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
13 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
14 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
15 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
16 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
17 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their
18 compensation from funds available to the redevelopment utility
19 therefor, all without regard to the provisions of Title 11A of the
20 New Jersey Statutes;
- 21 t. To do and perform any acts and things authorized by
22 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
23 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
24 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
25 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
26 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.),
27 under, through or by means of its own officers, agents and
28 employees, or by contract with any person;
- 29 u. To procure insurance against any losses in connection with
30 its property, operations or assets in such amounts and from such
31 insurers as it deems desirable;
- 32 v. To do any and all things necessary or convenient to carry out
33 its purposes and exercise the powers given and granted in P.L.1974,
34 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
35 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
36 Rehabilitation and Economic Recovery Act," P.L.2002,
37 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
38 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 39 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
40 maintain or repair or provide for the construction, reconstruction,
41 improvement, alteration, equipping or maintenance or repair of any
42 development property and lot, award and enter into construction
43 contracts, purchase orders and other contracts with respect thereto,
44 upon such terms and conditions as the authority shall determine to
45 be reasonable, including, but not limited to, reimbursement for the
46 planning, designing, financing, construction, reconstruction,
47 improvement, equipping, furnishing, operation and maintenance of
48 any such development property and the settlement of any claims

- 1 arising therefrom and the establishment and maintenance of reserve
2 funds with respect to the financing of such development property;
- 3 x. When authorized by the governing body of a municipality
4 exercising jurisdiction over an urban growth zone, to construct,
5 cause to be constructed or to provide financial assistance to projects
6 in an urban growth zone which shall be exempt from the terms and
7 requirements of the land use ordinances and regulations, including,
8 but not limited to, the master plan and zoning ordinances, of such
9 municipality;
- 10 y. To enter into business employment incentive agreements as
11 provided in the "Business Employment Incentive Program Act,"
12 P.L.1996, c.26 (C.34:1B-124 et al.);
- 13 z. To enter into agreements or contracts, execute instruments,
14 and do and perform all acts or things necessary, convenient or
15 desirable for the purposes of the redevelopment utility to carry out
16 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
17 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
18 c.137 (C.52:18A-235 et al.), including, but not limited to, entering
19 into contracts with the State Treasurer, the Commissioner of
20 Education, districts, the New Jersey Schools Development
21 Authority, and any other entity which may be required in order to
22 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),
23 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
24 P.L.2009, c.90 (C.52:27D-489c et al.);
- 25 aa. (Deleted by amendment, P.L.2007, c.137);
- 26 bb. To make and contract to make loans to local units to finance
27 the cost of school facilities projects and to acquire and contract to
28 acquire bonds, notes or other obligations issued or to be issued by
29 local units to evidence the loans, all in accordance with the
30 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
31 c.137 (C.52:18A-235 et al.);
- 32 cc. Subject to any agreement with holders of its bonds issued to
33 finance a project or school facilities project, obtain as security or to
34 provide liquidity for payment of all or any part of the principal of
35 and interest and premium on the bonds of the authority or for the
36 purchase upon tender or otherwise of the bonds, lines of credit,
37 letters of credit, reimbursement agreements, interest rate exchange
38 agreements, currency exchange agreements, interest rate floors or
39 caps, options, puts or calls to hedge payment, currency, rate, spread
40 or similar exposure or similar agreements, float agreements,
41 forward agreements, insurance contract, surety bond, commitment
42 to purchase or sell bonds, purchase or sale agreement, or
43 commitments or other contracts or agreements, and other security
44 agreements or instruments in any amounts and upon any terms as
45 the authority may determine and pay any fees and expenses required
46 in connection therewith;
- 47 dd. To charge to and collect from local units, the State and any
48 other person, any fees and charges in connection with the

1 authority's actions undertaken with respect to school facilities
2 projects, including, but not limited to, fees and charges for the
3 authority's administrative, organization, insurance, operating and
4 other expenses incident to the financing of school facilities projects;
5 ee. To make loans to refinance solid waste facility bonds
6 through the issuance of bonds or other obligations and the execution
7 of any agreements with counties or public authorities to effect the
8 refunding or rescheduling of solid waste facility bonds, or otherwise
9 provide for the payment of all or a portion of any series of solid
10 waste facility bonds. Any county or public authority refunding or
11 rescheduling its solid waste facility bonds pursuant to this
12 subsection shall provide for the payment of not less than fifty
13 percent of the aggregate debt service for the refunded or
14 rescheduled debt of the particular county or public authority for the
15 duration of the loan; except that, whenever the solid waste facility
16 bonds to be refinanced were issued by a public authority and the
17 county solid waste facility was utilized as a regional county solid
18 waste facility, as designated in the respective adopted district solid
19 waste management plans of the participating counties as approved
20 by the department prior to November 10, 1997, and the utilization
21 of the facility was established pursuant to tonnage obligations set
22 forth in their respective interdistrict agreements, the public
23 authority refunding or rescheduling its solid waste facility bonds
24 pursuant to this subsection shall provide for the payment of a
25 percentage of the aggregate debt service for the refunded or
26 rescheduled debt of the public authority not to exceed the
27 percentage of the specified tonnage obligation of the host county for
28 the duration of the loan. Whenever the solid waste facility bonds are
29 the obligation of a public authority, the relevant county shall
30 execute a deficiency agreement with the authority, which shall
31 provide that the county pledges to cover any shortfall and to pay
32 deficiencies in scheduled repayment obligations of the public
33 authority. All costs associated with the issuance of bonds pursuant
34 to this subsection may be paid by the authority from the proceeds of
35 these bonds. Any county or public authority is hereby authorized to
36 enter into any agreement with the authority necessary, desirable or
37 convenient to effectuate the provisions of this subsection.

38 The authority shall not issue bonds or other obligations to effect
39 the refunding or rescheduling of solid waste facility bonds after
40 December 31, 2002. The authority may refund its own bonds issued
41 for the purposes herein at any time;

42 ff. To pool loans for any local government units that are
43 refunding bonds and do and perform any and all acts or things
44 necessary, convenient or desirable for the purpose of the authority
45 to achieve more favorable interest rates and terms for those local
46 governmental units;

47 gg. To finance projects approved by the board, provide staff
48 support to the board, oversee and monitor progress on the part of

1 the board in carrying out the revitalization, economic development
 2 and restoration projects authorized pursuant to the "Municipal
 3 Rehabilitation and Economic Recovery Act," P.L.2002,
 4 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
 5 responsibilities pursuant thereto;

6 hh. To offer financial assistance to qualified film production
 7 companies as provided in the "New Jersey Film Production
 8 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[and]**

9 ii. To finance or develop private or public parking facilities or
 10 structures, which may include the use of solar photovoltaic
 11 equipment, in municipalities qualified to receive State aid pursuant
 12 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
 13 municipalities that contain areas designated pursuant to P.L.1985,
 14 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
 15 Planning Area 2 (Suburban), or a town center, and to provide
 16 appropriate assistance, including but not limited to, extensions of
 17 credit, loans, and guarantees, to municipalities qualified to receive
 18 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
 19 178 et seq.) and municipalities that contain areas designated
 20 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
 21 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
 22 center, and their agencies and instrumentalities or to private entities
 23 whose projects are located in those municipalities, in order to
 24 facilitate the financing and development of parking facilities or
 25 structures in such municipalities. The authority may serve as the
 26 issuing agent of bonds to finance the undertaking of a project for
 27 the purposes of this subsection; and

28 jj. To consider, review, amend, and approve public-private
 29 partnership agreements for certain building or highway
 30 infrastructure development projects entered into by a private entity
 31 and a local government unit, a school district, a State government
 32 entity, or the New Jersey Institute of Technology pursuant to
 33 sections 1 through 4 of P.L. , c. (C. through C.) (pending
 34 before the Legislature as this bill) or by a private entity and a State
 35 or county college pursuant to section 43 of P.L.2009, c.90
 36 (C.18A:64-85), for the purposes set forth therein, and provide to a
 37 private entity that is a party to an agreement any tax-exempt private
 38 activity bond financing under terms and conditions established by
 39 the authority and as otherwise authorized under State or federal law.
 40 (cf: P.L.2010, c.28, s.3)

41

42 7. (New section) The New Jersey Economic Development
 43 Authority shall post on its official website the status of each public-
 44 private partnership agreement subject to its consideration, review,
 45 amendment, or approval under subsection jj. of section 5 of
 46 P.L.1974, c.80 (C.34:1B-5), indicating the status of each agreement
 47 by designating it as a proposed, under review, or active public-
 48 private partnership project.

1 8. This act shall take effect immediately.

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STATEMENT

5

6 This bill permits certain government entities to enter into public-
7 private partnership agreements with private entities for undertaking
8 certain building and highway infrastructure projects, and provides
9 for oversight of these agreements by the New Jersey Economic
10 Development Authority (EDA).

11 Under the bill, local government units, school districts, and State
12 government entities would be eligible to enter into public-private
13 partnership agreements with private entities. Under current law, a
14 State college or county college is already authorized to enter into
15 public-private partnership agreements under the provisions of
16 N.J.S.A.18A:64-85, and Rowan University may also do so under
17 that statute pursuant to N.J.S.A.18A:64M-9.1. This bill authorizes
18 the New Jersey Institute of Technology to also enter into public-
19 private partnership agreements under N.J.S.A.18A:64-85.

20 The bill specifically allows the government entity to enter into a
21 public-private partnership agreement under which the private entity
22 assumes financial and administrative responsibility for the
23 development, construction, reconstruction, repair, alteration,
24 improvement, extension, operation, and maintenance of a project of,
25 or for the benefit of, the government entity, provided that the
26 project is financed in whole or in part by the private entity.

27 The bill requires that workers employed in the construction,
28 rehabilitation, or building maintenance services of a project by a
29 private entity that has entered into an agreement with a government
30 entity be subject to the applicable provisions of the "New Jersey
31 Prevailing Wage Act;" that building construction projects
32 undertaken pursuant to an agreement contain a project labor
33 agreement; and that the general contractor, construction manager,
34 design-build team, or subcontractor for a project is registered and
35 classified by the State to perform work on a project.

36 Under the bill, a public-private partnership project may be
37 structured using availability payments as a financing method.
38 However, the bundling of multiple projects would be prohibited. In
39 addition, roadway or highway projects must include an expenditure
40 of at least \$10 million in public funds or any expenditure in private
41 funds. A private entity would be required to establish a construction
42 account to fully capitalize and fund the project, while the general
43 contractor, construction manager, or design-build team would be
44 required to post performance and payment bonds, instead of the
45 chief financial officer of the public entity. A contractor would be
46 precluded from engaging in a project having an expenditure of
47 under \$50 million if the contractor contributed more than 10% of

1 the project's financing. All projects would be required to undergo a
2 procurement process established under the bill.

3 All applications for agreements authorized under the bill are to
4 be submitted to the EDA for its review and approval prior to
5 commencing the procurement process. The EDA would have the
6 power to cancel procurement after a short list of private entities is
7 developed, if deemed in the public interest. The bill also requires
8 the EDA to post on its official website the status of each public-
9 private partnership agreement subject to its consideration, review,
10 amendment, or approval, indicating the status of each agreement by
11 designating it as a proposed, under review, or active public-private
12 partnership project.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 865

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 865.

The bill permits certain government entities to enter into public-private partnership agreements with private entities for undertaking certain building and highway infrastructure projects, and provides for oversight of these agreements by the New Jersey Economic Development Authority (EDA).

Under the bill, local government units, school districts, and State government entities are eligible to enter into public-private partnership agreements with private entities. Under current law, a State college or county college is already authorized to enter into public-private partnership agreements under the provisions of N.J.S.A.18A:64-85, and Rowan University may also do so pursuant to N.J.S.A.18A:64M-9.1. This bill authorizes the New Jersey Institute of Technology to also enter into public-private partnership agreements under N.J.S.A.18A:64-85.

The bill specifically allows the government entity to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity.

The bill requires that workers employed in the construction, rehabilitation, or building maintenance services of a project by a private entity that has entered into an agreement with a government entity be subject to the applicable provisions of the "New Jersey Prevailing Wage Act;" that building construction projects undertaken pursuant to an agreement contain a project labor agreement; and that the general contractor, construction manager, design-build team, or subcontractor for a project is registered and classified by the State to perform work on a project.

Under the bill, a public-private partnership project may be structured using availability payments as a financing method. However, the bundling of multiple projects is prohibited. In addition, roadway or highway projects must include an expenditure of at least \$10 million in public funds or any expenditure in private funds. A private entity is required to establish a construction

account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor is precluded from engaging in a project having an expenditure of under \$50 million if the contractor contributed more than 10 percent of the project's financing. All projects are required to undergo a procurement process established under the bill.

All applications for agreements authorized under the bill are to be submitted to the EDA for its review and approval prior to commencing the procurement process. The EDA would have the power to cancel procurement after a short list of private entities is developed, if deemed in the public interest. The bill also requires the EDA to post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 865

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 865, with committee amendments.

As amended, this bill permits certain government entities to enter into public-private partnership agreements with private entities for undertaking certain building and highway infrastructure projects, and provides for oversight of these agreements by the New Jersey Economic Development Authority (EDA).

Under the bill, local government units, school districts, and State government entities are eligible to enter into public-private partnership agreements with private entities. Furthermore, a State college or county college is already authorized to enter into public-private partnership agreements under the provisions of N.J.S.A.18A:64-85, and Rowan University may also do so pursuant to N.J.S.A.18A:64M-9.1. The New Jersey Institute of Technology may enter into public-private partnership agreements pursuant to N.J.S.A.18A:64-85.

The bill specifically allows the government entity to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity. If the agreement includes the lease of a public building, road, infrastructure, or facility in exchange for up-front or structured financing by the private entity, the term of the lease may not be for a period greater than 30 years.

The bill requires that workers employed in the construction, rehabilitation, or building maintenance services of a project by a private entity that has entered into an agreement with a government entity be subject to the applicable provisions of the "New Jersey Prevailing Wage Act;" that building construction projects undertaken pursuant to an agreement contain a project labor agreement; and that the general contractor, construction manager, design-build team, or subcontractor for a project is registered and classified by the State to perform work on a project.

Under the bill, the bundling of multiple projects is prohibited. In addition, roadway or highway projects must include an expenditure of

at least \$10 million in public funds or any expenditure in private funds. A private entity is required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor is precluded from engaging in a project having an expenditure of under \$50 million if the contractor contributed more than 10 percent of the project's financing. All projects are required to undergo a procurement process established under the bill.

All applications for agreements authorized under the bill are to be submitted to the EDA for review and approval prior to commencing the procurement process. However, the EDA must consult with the Commissioner of Community Affairs and the Commissioner of Education upon the review and approval of proposed local government unit and school district projects, respectively; the State Treasurer must consult with the Commissioner of Transportation concerning review and approval of roadway and highway projects. A project must be resubmitted to the EDA for final approval after the procurement process is conducted but before the government entity enters into the public-private partnership agreement. The EDA is empowered to cancel procurement after a short list of private entities is developed, if deemed in the public interest, and may also revoke final approval upon its determination that the project substantially deviates from the approved plan.

The EDA must post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) include housing authorities, redevelopment agencies, charter schools, renaissance schools, and the South Jersey Port Corporation as entities eligible to enter into public-private partnerships; and exclude public entities that have entered into a contract with a private firm or public authority pursuant to the "New Jersey Wastewater Treatment Public-Private Contracting Act" for the provision of wastewater treatment services;

(2) limit lease agreements to a maximum duration of 30 years, and eliminate the option of availability payment agreements;

(3) require the New Jersey Economic Development Authority to review and approve proposed local government unit and school district projects in consultation with the Commissioners of the Departments of Community Affairs and Education, respectively;

(4) require the State Treasurer to consult with the Commissioner of the Department of Transportation when reviewing and approving roadway or highway projects;

(5) require a resolution by the governing body of the local government unit, school district, or State or county college of its intention to enter into a public-private partnership to be included in the project application submitted to the authority;

(6) specify the criteria the authority must follow for assessing the project, including, but not limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the governing body of the local government unit, school district, or State or county college of its intent to enter into a public-private partnership agreement for the project;

(7) following the issuance of a request for proposals by the public entity, require a 45-day timeframe for the submission of proposals and a 45-day timeframe for the production of a short list of qualified private entities; and require a 120-day timeframe for the submission of proposals in the case of unsolicited proposals;

(8) require resubmission of the project to the authority for final approval, including the short list of private entities, after the procurement process is conducted but before the public entity enters into the public-private partnership agreement with the private entity;

(9) provide that the authority retains the right to revoke final approval if determines that the project has substantially deviated from the approved plan;

(10) add New Jersey Transit and the New Jersey Turnpike Authority as entities with which the general contractor, construction manager, design-build team, or subcontractor for a construction project must be prequalified, as appropriate; and

(11) add the New Jersey Educational Facilities Authority as a public entity eligible to become the owner or lessee of a project concerning a State or county college.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.

STATEMENT TO
[First Reprint]
SENATE, No. 865

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: JUNE 21, 2018

These Senate amendments:

(1) include leaseback agreements;

(2) specify that this bill would not exempt a local government unit from the provisions of the Local Bond Law or the Local Authorities Fiscal Control Law, or other law, that may apply to local government unit borrowing or financing, including but not limited to, provisions requiring review by and approval from the Local Finance Board or the Director of the Division of Local Government Services in the Department of Community Affairs;

(3) define “school district” as provided in section 3 of P.L.2000, c.72 (C.18A:7G-3) and including a local school district, regional school district, or county special services school district or county vocational school established and operating under the provisions of Title 18A of the New Jersey Statutes that can demonstrate to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority that a school facility is necessary due to overcrowding or is in need of replacement; the term also includes a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.);

(4) include consultation by the State Treasurer with the Department of Education and the Schools Development Authority for school projects;

(5) delete the New Jersey Economic Development Authority, and other State entities, as public entities that would have qualified as a public partner for public-private partnership projects when it is the owner or lessee of the project or the land;

(6) eliminate the provisions providing property tax exemptions for certain projects;

(7) provide for project review and approval by the State Treasurer;

(8) require projects to be subject to a public hearing, the record of which will be made available to the public within seven days following the conclusion of the hearing, after the ranking of proposals;

(9) prior to entering into a public-private partnership, require the public entity to determine: (i) the benefits to be realized by the project, (ii) the cost of the project if it is developed by the public sector supported by comparisons to comparable projects, (iii) the maximum public contribution that the public entity will allow under the public-private partnership, (iv) a comparison of the financial and non-financial benefits of the public-private partnership compared to other

options including the public sector option, (v) a list of risks, liabilities and responsibilities to be transferred to the private entity and those to be retained by the public entity, and (vi) if the project has a high, medium or low level of project delivery risk and how the public is protected from these risks;

(10) require the public entity, prior to entering into a public-private partnership, to find at a public hearing that the project is in the best interest of the public by finding that: (i) it will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense, (ii) there is a public need for the project and the project is consistent with existing long-term plans, (iii) there are specific significant benefits to the project, (iv) there are specific significant benefits to using the public-private partnership instead of other options including No-Build, (v) the private development will result in timely and efficient development and operation, and (vi) the risks, liabilities and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;

(11) require that projects that have a transportation component or impact the transportation infrastructure be submitted to the State Treasurer, in consultation with the Commissioner of the Department of Transportation, for review and approval;

(12) add criteria concerning financial models, assumptions, and funding analysis to the criteria the State Treasurer shall use when considering project applications;

(13) require that any public-private partnership agreement will also include, at a minimum, (i) the term of the agreement, (ii) the total project cost, (iii) a completion date guarantee, (iv) a provision for damages if the private entity fails to meet the completion date, and (v) a maximum rate of return to the private entity and a provision for the distribution of excess earnings to the public entity or to the private party for debt reduction;

(14) require that a request for qualifications for a public-private partnership agreement shall be advertised at least 45 days prior to the anticipated date of receipt; that the advertisement of the request for qualifications shall be published on the official Internet website of the public entity, and at least one or more newspapers with statewide circulation;

(15) after the public entity determines the qualified respondents, require the entity to issue a request for proposals to each qualified respondent within a specified timeframe, prior to the date established for submission of the proposals, in accordance with criteria promulgated by the State Treasurer, in consultation with the specified State entities;

(16) provide for specific advertisement in the case of unsolicited proposals;

(17) require the private entity to comply with all applicable laws and regulations;

(18) require the public entity to set aside one percent of each project and remit it to the Public-Private Partnership Review fund

established under the bill, for purposes of plan review and analysis required under the bill;

(19) require highway projects to have an expenditure of at least \$100 million, and limit the total number of highway projects approved by the State to eight at any given time;

(20) add New Jersey Transit to the definition of “State government entity;”

(21) specify responsibility of the private entity for the project, and ownership of the land by the public entity;

(22) allow 50-year leases for projects with a highway component;

(23) provide that any conveyance of real property, capital improvements and personal property owned by the State shall not be subject to the approval of the State House Commission or the State Legislature, provided the State Treasurer approves of such transfer as being necessary to meet the goals of the bill;

(24) delete the requirement for a resolution by the governing body of a State or county college;

(25) delete the ability of the New Jersey Economic Development Authority or State Treasurer to cancel a procurement offer after a short list of private entities is developed by the State or county college;

(26) for State and county colleges, add oversight by the New Jersey Educational Facilities Authority under the “New Jersey Educational Facilities Authority Law;”

(27) require the New Jersey Educational Facilities Authority to consider, or review, amend and approve public-private partnership agreements for certain building projects entered into by a private entity and the New Jersey Institute of Technology, or by a private entity and a State or county college, for the purposes set forth in the bill, and to provide to a private entity that is a party to an agreement any tax exempt private activity bond financing, including but not limited to a loan of funds under terms and conditions established by the authority in consultation with the State Treasurer and as otherwise authorized under State or federal law;

(28) establish in the Department of the Treasury the Public-Private Partnership Review fund, to support financial and administrative review functions associated with the Public Private Partnership plan review by the State Treasurer, along with the New Jersey Economic Development Authority, the Department of Community Affairs, and the Department of Transportation;

(29) provide that nothing in this bill would be construed to alter, limit or repeal any authority of any State entity to enter into public private partnership agreements as otherwise provided by law; and

(30) change the effective date to 180 days following the date of enactment.

STATEMENT TO
[Second Reprint]
SENATE, No. 865

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: JUNE 25, 2018

These Senate amendments remove language that would have exempted a State government entity from seeking State House Commission approval for the conveyance of real property, capital improvements and personal property owned by the State if the State Treasurer approved of such transfer as being necessary to meet the goals of the bill.

ASSEMBLY, No. 1299

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

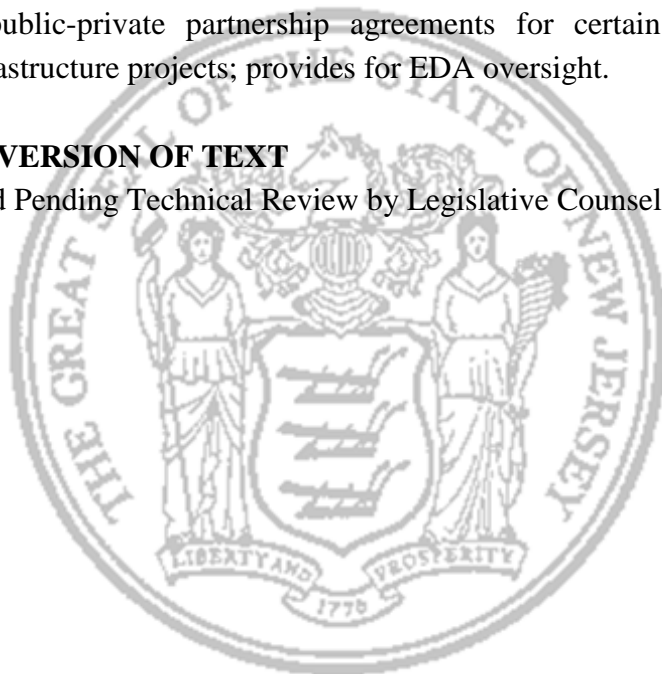
**Assemblywoman Handlin, Assemblymen Eustace, A.M.Bucco, Thomson,
Assemblywoman B.DeCroce, Assemblyman Benson, Assemblywoman
Chaparro and Assemblyman Holley**

SYNOPSIS

Permits public-private partnership agreements for certain building and highway infrastructure projects; provides for EDA oversight.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/11/2018)

1 AN ACT concerning public-private partnerships for certain building
2 and highway infrastructure projects, and amending and
3 supplementing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. As used in this section:

9 “Authority” means the New Jersey Economic Development
10 Authority established pursuant to section 4 of P.L.1974,
11 c.80 (C.34:1B-4).

12 “Availability payment” means a periodic payment made by a
13 local government unit to a private entity in exchange for making
14 available the use of a public building, road, structure, infrastructure,
15 or facility at a predetermined level of service, operation, or
16 maintenance.

17 “Bundling” means the use of a solicitation for multiple projects
18 in one single contract, through a public-private partnership project
19 delivery method, the result of which restricts competition.

20 “Local government unit” means a county, a municipality, or any
21 board, commission, committee, authority or agency thereof that is
22 subject to the provisions of the "Local Public Contracts Law,"
23 P.L.1971, c.198 (C.40A:11-1 et seq.).

24 “Project” means the development, construction, reconstruction,
25 repair, alteration, improvement, extension, operation, and
26 maintenance of any building, road, structure, infrastructure, or
27 facility constructed or acquired by a local government unit to house
28 local government functions, including any infrastructure or facility
29 used or to be used by the public or in support of a public purpose or
30 activity; provided that, with respect to a roadway or highway
31 project, a qualifying project shall include an expenditure of at least
32 \$10 million in public funds, or any expenditure in solely private
33 funds.

34 “Public-private partnership agreement” means an agreement
35 entered into by a local government unit and a private entity
36 pursuant to this section for the purpose of permitting a private entity
37 to assume financial and administrative responsibility for the
38 development, construction, reconstruction, repair, alteration,
39 improvement, extension, operation, and maintenance of a project of,
40 or for the benefit of, the local government unit.

41 b. (1) A local government unit may enter into a contract with a
42 private entity, subject to subsection f. of this section, to be referred
43 to as a public-private partnership agreement, that permits the private
44 entity to assume financial and administrative responsibility for a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 project of, or for the benefit of, the local government unit, provided
2 that the project is financed in whole or in part by the private entity.

3 (2) A public-private partnership agreement may include an
4 agreement under which a local government unit and a private entity
5 enter into a lease of a public building, road, structure, infrastructure,
6 or facility in exchange for up-front or structured financing by the
7 private entity for the project. Under the lease agreement, the
8 private entity may be responsible for the management, operation,
9 and maintenance of the building, road, structure, infrastructure, or
10 facility. The private entity may receive some or all, as per the
11 agreement, of the revenue generated by the building, road, structure,
12 infrastructure, or facility, and may operate the building, road
13 structure, infrastructure, or facility in accordance with local
14 government unit standards. At the end of the lease term, subsequent
15 revenue generated by the building, road, structure, infrastructure, or
16 facility, along with management, operation, and maintenance
17 responsibility, shall revert to the local government unit.

18 (3) A public-private partnership agreement may include the use
19 of availability payments if deemed to be in the best interest of the
20 public and the local government unit, provided the private entity
21 shall operate the building, road, structure, infrastructure or facility
22 in accordance with local government unit standards.

23 (4) Bundling of projects shall be prohibited under this section.

24 c. (1) Unless otherwise set forth herein, a private entity that
25 assumes financial and administrative responsibility for a project
26 pursuant to this section shall not be subject to the procurement and
27 contracting requirements of all statutes applicable to the local
28 government unit at which the project is completed, including, but
29 not limited to, the "Local Public Contracts Law," P.L.1971, c.198
30 (C.40A:11-1 et seq.).

31 (2) For the purposes of facilitating the financing of a project
32 pursuant to this section, a public entity may become the owner or
33 lessee of the project or the lessee of the land, or both, may become
34 the lessee of a revenue-producing building, structure, or facility to
35 which the local government unit holds title, may issue indebtedness
36 in accordance with the public entity's enabling legislation and,
37 notwithstanding any provision of law to the contrary, shall be
38 empowered to enter into contracts with a private entity and its
39 affiliates without being subject to the procurement and contracting
40 requirements of any statute applicable to the public entity provided
41 that the private entity has been selected by the local government
42 unit pursuant to a solicitation of proposals or qualifications from at
43 least two private entities. For the purposes of this subsection, a
44 public entity shall include the New Jersey Economic Development
45 Authority, and any project undertaken pursuant to this section of
46 which the authority becomes the owner or lessee, or which is
47 situated on land of which the authority becomes the lessee, shall be

1 deemed a "project" under the "The New Jersey Economic
2 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

3 (3) As the carrying out of any project described pursuant to this
4 section constitutes the performance of an essential public function,
5 all projects used in furtherance of the purposes of the local
6 government unit undertaken pursuant to this section, provided the
7 project is owned by or leased to a public entity, non-profit business
8 entity, foreign or domestic, or a business entity wholly owned by
9 such non-profit business entity, shall at all times be exempt from
10 property taxation and special assessments of the State, or any
11 municipality, or other political subdivision of the State and,
12 notwithstanding the provisions of section 15 of P.L.1974,
13 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
14 any other section of law to the contrary, shall not be required to
15 make payments in lieu of taxes. The land upon which the project is
16 located shall also at all times be exempt from property taxation.
17 The project and land upon which the project is located shall not be
18 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
19 1.10) regarding the tax liability of private parties conducting for
20 profit activities on tax exempt land, or section 1 of P.L.1949,
21 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
22 exempt property that are held by nonexempt parties.

23 (4) Prior to the commencement of work on a project, the private
24 entity shall establish a construction account and appoint a third-
25 party financial institution, who shall act as a collateral agent, to
26 manage the construction account. The construction account shall
27 include the funding, financial instruments, or both, that shall be
28 used to fully capitalize and fund the project, and the collateral agent
29 shall maintain a full accounting of the funds and instruments in the
30 account. The funds and instruments in the construction account
31 shall be held in trust for the benefit of the contractor, construction
32 manager, and design-build team involved in the project. The funds
33 and instruments in the construction account shall not be the
34 property of the private entity unless all amounts due to the
35 construction account beneficiaries are paid in full. The construction
36 account shall not be designated for more than one project.

37 d. Each worker employed in the construction, rehabilitation, or
38 building maintenance services of facilities by a private entity that
39 has entered into a public-private partnership agreement with a local
40 government unit pursuant to this section shall be paid not less than
41 the prevailing wage rate for the worker's craft or trade as
42 determined by the Commissioner of Labor and Workforce
43 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
44 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

45 e. (1) All building construction projects under a public-private
46 partnership agreement entered into pursuant to this section shall
47 contain a project labor agreement. The project labor agreement
48 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et

1 seq.), and shall be in a manner that to the greatest extent possible
2 enhances employment opportunities for individuals residing in the
3 county of the project's location. The general contractor,
4 construction manager, design-build team, or subcontractor for a
5 construction project proposed in accordance with this paragraph
6 shall be registered pursuant to the provisions of P.L.1999, c.238
7 (C.34:11-56.48 et seq.), and shall be classified by the Division of
8 Property Management and Construction, or shall be prequalified by
9 the Department of Transportation, as appropriate, to perform work
10 on a public-private partnership project.

11 (2) All projects proposed in accordance with this section shall
12 be submitted to the New Jersey Economic Development Authority
13 for its review and approval prior to commencing procurement of the
14 project and, when practicable, are encouraged to adhere to the
15 Leadership in Energy and Environmental Design Green Building
16 Rating System as adopted by the United States Green Building
17 Council, the Green Globes Program adopted by the Green Building
18 Initiative, or a comparable nationally recognized, accepted, and
19 appropriate sustainable development rating system.

20 (3) The general contractor, construction manager, or design-
21 build team shall be required to post a performance bond to ensure
22 the completion of the project and a payment bond guaranteeing
23 prompt payment of moneys due in accordance with and conforming
24 to the requirements of N.J.S.2A:44-143 et seq.

25 f. (1) On or before August 1, 2020, all projects proposed in
26 accordance with this section shall be submitted to the New Jersey
27 Economic Development Authority for the authority's review and
28 approval. The projects are encouraged, when practicable, to adhere
29 to the green building manual prepared by the Commissioner of
30 Community Affairs pursuant to section 1 of P.L.2007,
31 c.132 (C.52:27D-130.6). Any application that is deemed to be
32 incomplete on August 2, 2020, including in the case of an
33 application submitted pursuant to paragraph (2) of subsection b. of
34 this section, shall not be eligible for consideration.

35 (2) (a) In order for an application to be complete and
36 considered by the authority, the application shall include, but not be
37 limited to: (i) a full description of the proposed public-private
38 partnership agreement between the local government unit and the
39 private developer; (ii) a full description of the project, including a
40 description of any agreement for the lease of a revenue-producing
41 facility related to the project; (iii) the estimated costs and financial
42 documentation for the project; (iv) a timetable for completion of the
43 construction of the project extending no more than five years after
44 consideration and approval; and (v) any other requirements that the
45 authority deems appropriate or necessary.

46 (b) As part of the estimated costs and financial documentation
47 for the project, the application shall contain a long-range
48 maintenance plan and a long-range maintenance bond and shall

1 specify the expenditures that qualify as an appropriate investment in
2 maintenance. The long-range maintenance plan shall be approved
3 by the authority pursuant to regulations promulgated by the
4 authority that reflect national building maintenance standards and
5 other appropriate building maintenance benchmarks.

6 (3) The authority shall review all completed applications, and
7 request additional information as is needed to make a complete
8 assessment of the project. No project shall commence the
9 procurement process until final approval has been granted by the
10 authority; provided, however, that the authority shall retain the right
11 to revoke approval if it determines that the project has deviated
12 from the plan submitted pursuant to paragraph (2) of this
13 subsection, and shall retain the right to cancel a procurement after a
14 short list of private entities is developed if deemed in the public
15 interest as specified under subsection j. of this section.
16 Notwithstanding any provision of this section to the contrary, all
17 roadway or highway projects shall be subject to review and
18 approval by the State Treasurer, and the authority shall not approve
19 any roadway or highway project disapproved by the State Treasurer.

20 (4) The authority may promulgate any rules and regulations
21 necessary to implement this subsection, including provisions for
22 fees to cover administrative costs.

23 g. A project with an expenditure of under \$50 million
24 developed under a public-private partnership agreement shall
25 include a requirement that precludes contractors from engaging in
26 the project if the contractor has contributed to the private entity's
27 financing of the project in an amount of more than 10% of the
28 project's financing costs.

29 h. The power of eminent domain shall not be delegated to any
30 private entity under the provisions of P.L. , c. (C.)
31 (pending before the Legislature as this bill); however, a local
32 government unit may dedicate any property interest, including land,
33 improvements, and tangible personal property of the local
34 government unit for public use in a qualifying project if the local
35 government unit finds that so doing will serve the public purpose of
36 the project by minimizing the cost of the project to the local
37 government unit or reducing the delivery time of a project.

38 i. Any public-private partnership agreement, if appropriate,
39 shall include provisions affirming that the agreement and any work
40 performed under the agreement are subject to the provisions of the
41 "Construction Industry Independent Contractor Act," P.L.2007,
42 c.114 (C.34:20-1 et seq.).

43 j. (1) A private entity seeking to enter into a public-private
44 partnership agreement with the local government unit shall be
45 qualified by the local government unit as part of the procurement
46 process, provided such process ensures that the private entity meets
47 at least the minimum local government unit standards for
48 qualification for professional services, construction contracting, and

1 other qualifications applicable to the project, prior to submitting a
2 proposal under the procurement process. The qualification process
3 shall result in a list of qualified private entities, that may be ranked
4 in order to generate a short list of private entities requested to
5 submit a final proposal.

6 (2) The local government unit may accept unsolicited proposals
7 from private entities for public-private partnership agreements. If
8 the local government unit receives an unsolicited proposal and
9 determines that it meets the standards of this section, the local
10 government unit shall publish a notice of the receipt of the proposal
11 on the Internet site of the local government unit, or through
12 advertisements in newspapers. If a notice is published exclusively
13 in newspapers, the notice shall appear in two or more newspapers
14 circulated wholly or in part in the county where the proposed
15 project is to be located. The notice shall provide that the local
16 government unit will accept, for 45 days after the initial date of
17 publication, proposals meeting the standards of this section from
18 other private entities for eligible projects that satisfy the same basic
19 purpose and need. A copy of the notice shall be mailed to each
20 municipal and county local government body in the geographic area
21 affected by the proposal.

22 (3) After the proposal or proposals have been received, and any
23 public notification period has expired, the local government unit
24 shall rank the proposals in order of preference. In ranking the
25 proposals, the local government unit may consider factors that
26 include, but may not be limited to, professional qualifications,
27 general business terms, innovative engineering, architectural
28 services, or cost-reduction terms, finance plans, and the need for
29 local government funds to deliver the project and discharge the
30 agreement. If only one proposal is received, the local government
31 unit shall negotiate in good faith and, if not satisfied with the results
32 of the negotiations, the local government unit may, at its sole
33 discretion, terminate negotiations.

34 (4) The local government unit may require that the private entity
35 assume responsibility for all costs incurred by the local government
36 unit before execution of the public-private partnership agreement,
37 including costs of retaining independent experts to review, analyze,
38 and advise the local government unit with respect to the proposal.

39 (5) If the authority or State Treasurer deem it in the public's
40 interest to cancel a procurement after a short list of private entities
41 is developed, the authority shall pay for documented third party
42 costs, including, but not limited to, design services, legal advisors,
43 financial advisors, and reasonable expenditures.

44 (6) Stipends may be used on public private partnership projects
45 when there is a substantial opportunity for innovation and the costs
46 for developing a proposal are significant. The local government unit
47 may elect to pay unsuccessful proposers for the work product they
48 submit with their proposal in response to a request for proposals.

1 The use by the local government unit of any design element
2 contained in an unsuccessful proposal shall be at the sole risk and
3 discretion of the local government unit and shall not confer liability
4 on the recipient of the stipulated stipend amount. After payment of
5 the stipulated stipend amount, the local government unit and the
6 unsuccessful proposer shall jointly own the rights to, and may make
7 use of any work product contained in the proposal, including the
8 technologies, techniques, methods, processes, ideas, and
9 information contained in the proposal, project design, and project
10 financial plan. The use by the unsuccessful proposer of any part of
11 the work product contained in the proposal shall be at the sole risk
12 of the unsuccessful proposer and shall not confer liability on the
13 local government unit.

14

15 2. (New section) a. As used in this section:

16 "Authority" means the New Jersey Economic Development
17 Authority established pursuant to section 4 of P.L.1974,
18 c.80 (C.34:1B-4).

19 "Availability payment" means a periodic payment made by a
20 school district to a private entity in exchange for making available
21 the use of a public building, structure, infrastructure, or facility at a
22 predetermined level of service, operation, or maintenance.

23 "Bundling" means the use of a solicitation for multiple projects
24 in one single contract, through a public-private partnership project
25 delivery method, the result of which restricts competition.

26 "Project" shall have the same meaning as provided in section 3
27 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and
28 shall include any infrastructure or facility used or to be used by the
29 public or in support of a public purpose or activity.

30 "Public-private partnership agreement" means an agreement
31 entered into by a school district and a private entity pursuant to this
32 section for the purpose of permitting a private entity to assume
33 financial and administrative responsibility for the development,
34 construction, reconstruction, repair, alteration, improvement,
35 extension, operation, and maintenance of a school facilities project
36 of, or for the benefit of, the school district.

37 "School district" means and includes a local school district,
38 regional school district, or county special services school district or
39 county vocational school established and operating under the
40 provisions of Title 18A of the New Jersey Statutes. The term
41 "school district" shall not include a charter school established under
42 P.L.1995, c.426 (C.18A:36A-1 et seq.).

43 b. (1) A school district may enter into a contract with a private
44 entity, subject to subsection f. of this section, to be referred to as a
45 public-private partnership agreement, that permits the private entity
46 to assume financial and administrative responsibility for a project
47 of, or for the benefit of, the school district, provided that the project
48 is financed in whole or in part by the private entity.

1 (2) A public-private partnership agreement may include an
2 agreement under which a school district and a private entity enter
3 into a lease of a revenue-producing public building, structure, or
4 facility in exchange for up-front or structured financing by the
5 private entity for the project. Under the lease agreement, the
6 private entity may be responsible for the management, operation,
7 and maintenance of the building, structure, or facility. The private
8 entity may receive some or all, as per the agreement, of the revenue
9 generated by the building, structure, or facility, and may operate the
10 building, structure, or facility in accordance with school district
11 standards. At the end of the lease term, subsequent revenue
12 generated by the building, structure, or facility, along with
13 management, operation, and maintenance responsibility, shall revert
14 to the school district.

15 (3) A public-private partnership agreement may include the use
16 of availability payments if deemed to be in the best interest of the
17 public and the school district, provided the private entity shall
18 operate the building, structure, infrastructure or facility in
19 accordance with school district standards.

20 (4) Bundling of projects shall be prohibited under this section.

21 c. (1) A private entity that assumes financial and administrative
22 responsibility for a project pursuant to this section shall not be
23 subject to, unless otherwise set forth herein, the procurement and
24 contracting requirements of all statutes applicable to the school
25 district at which the project is completed, including, but not limited
26 to, the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.

27 (2) For the purposes of facilitating the financing of a project
28 pursuant to this section, a public entity may become the owner or
29 lessee of the project or the lessee of the land, or both, may become
30 the lessee of a building, structure, or facility to which the school
31 district holds title, may issue indebtedness in accordance with the
32 public entity's enabling legislation and, notwithstanding any
33 provision of law to the contrary, shall be empowered to enter into
34 contracts with a private entity and its affiliates without being
35 subject to the procurement and contracting requirements of any
36 statute applicable to the public entity provided that the private
37 entity has been selected by the school district pursuant to a
38 solicitation of proposals or qualifications from at least two private
39 entities. For the purposes of this subsection, a public entity shall
40 include the New Jersey Economic Development Authority, and any
41 project undertaken pursuant to this section of which the authority
42 becomes the owner or lessee, or which is situated on land of which
43 the authority becomes the lessee, shall be deemed a "project" under
44 the "The New Jersey Economic Development Authority Act,"
45 P.L.1974, c.80 (C.34:1B-1 et seq.).

46 (3) As the carrying out of any project described pursuant to this
47 section constitutes the performance of an essential public function,
48 all projects predominantly used in furtherance of the purposes of the

1 school district undertaken pursuant to this section, provided the
2 project is owned by or leased to a public entity, non-profit business
3 entity, foreign or domestic, or a business entity wholly owned by
4 such non-profit business entity, shall at all times be exempt from
5 property taxation and special assessments of the State, or any
6 municipality, or other political subdivision of the State and,
7 notwithstanding the provisions of section 15 of P.L.1974,
8 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
9 any other section of law to the contrary, shall not be required to
10 make payments in lieu of taxes. The land upon which the project is
11 located shall also at all times be exempt from property taxation.
12 The project and land upon which the project is located shall not be
13 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
14 1.10) regarding the tax liability of private parties conducting for
15 profit activities on tax exempt land, or section 1 of P.L.1949,
16 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
17 exempt property that are held by nonexempt parties.

18 (4) Prior to the commencement of work on a project, the private
19 entity shall establish a construction account and appoint a third-
20 party financial institution, who shall act as a collateral agent, to
21 manage the construction account. The construction account shall
22 include the funding, financial instruments, or both, that shall be
23 used to fully capitalize and fund the project, and the collateral agent
24 shall maintain a full accounting of the funds and instruments in the
25 account. The funds and instruments in the construction account
26 shall be held in trust for the benefit of the contractor, construction
27 manager, and design-build team involved in the project. The funds
28 and instruments in the construction account shall not be the
29 property of the private entity unless all amounts due to the
30 construction account beneficiaries are paid in full. The construction
31 account shall not be designated for more than one project.

32 d. Each worker employed in the construction, rehabilitation, or
33 building maintenance services of facilities by a private entity that
34 has entered into a public-private partnership agreement with a
35 school district pursuant to this section shall be paid not less than the
36 prevailing wage rate for the worker's craft or trade as determined by
37 the Commissioner of Labor and Workforce Development pursuant
38 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,
39 c.379 (C.34:11-56.58 et seq.).

40 e. (1) All building construction projects under a public-private
41 partnership agreement entered into pursuant to this section shall
42 contain a project labor agreement. The project labor agreement
43 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
44 seq.), and shall be in a manner that to the greatest extent possible
45 enhances employment opportunities for individuals residing in the
46 county of the project's location. The general contractor,
47 construction manager, design-build team, or subcontractor for a
48 construction project proposed in accordance with this paragraph

1 shall be registered pursuant to the provisions of P.L.1999, c.238
2 (C.34:11-56.48 et seq.), and shall be classified by the Division of
3 Property Management and Construction, or shall be prequalified by
4 the Department of Transportation, as appropriate, to perform work
5 on a public-private partnership project.

6 (2) All projects proposed in accordance with this section shall
7 be submitted to the New Jersey Economic Development Authority
8 for its review and approval prior to commencing procurement of the
9 project and, when practicable, are encouraged to adhere to the
10 Leadership in Energy and Environmental Design Green Building
11 Rating System as adopted by the United States Green Building
12 Council, the Green Globes Program adopted by the Green Building
13 Initiative, or a comparable nationally recognized, accepted, and
14 appropriate sustainable development rating system.

15 (3) The general contractor, construction manager, or design-
16 build team shall be required to post a performance bond to ensure
17 the completion of the project and a payment bond guaranteeing
18 prompt payment of moneys due in accordance with and conforming
19 to the requirements of N.J.S.2A:44-143 et seq.

20 f. (1) On or before August 1, 2020, all projects proposed in
21 accordance with this section shall be submitted to the New Jersey
22 Economic Development Authority for the authority's review and
23 approval. The projects are encouraged, when practicable, to adhere
24 to the green building manual prepared by the Commissioner of
25 Community Affairs pursuant to section 1 of P.L.2007,
26 c.132 (C.52:27D-130.6). Any application that is deemed to be
27 incomplete on August 2, 2020, including in the case of an
28 application submitted pursuant to paragraph (2) of subsection b. of
29 this section, shall not be eligible for consideration.

30 (2) (a) In order for an application to be complete and
31 considered by the authority, the application shall include, but not be
32 limited to: (i) a full description of the proposed public-private
33 partnership agreement between the school district and the private
34 developer; (ii) a full description of the project, including a
35 description of any agreement for the lease of a revenue-producing
36 facility related to the project; (iii) the estimated costs and financial
37 documentation for the project; (iv) a timetable for completion of the
38 construction of the project extending no more than five years after
39 consideration and approval; and (v) any other requirements that the
40 authority deems appropriate or necessary.

41 (b) As part of the estimated costs and financial documentation
42 for the project, the application shall contain a long-range
43 maintenance plan and a long-range maintenance bond and shall
44 specify the expenditures that qualify as an appropriate investment in
45 maintenance. The long-range maintenance plan shall be approved
46 by the authority pursuant to regulations promulgated by the
47 authority that reflect national building maintenance standards and
48 other appropriate building maintenance benchmarks.

1 (3) The authority shall review all completed applications, and
2 request additional information as is needed to make a complete
3 assessment of the project. No project shall commence the
4 procurement process until final approval has been granted by the
5 authority; provided, however, that the authority shall retain the right
6 to revoke approval if it determines that the project has deviated
7 from the plan submitted pursuant to paragraph (2) of this
8 subsection, and shall retain the right to cancel a procurement after a
9 short list of private entities is developed if deemed in the public
10 interest as specified under subsection j. of this section.

11 (4) The authority may promulgate any rules and regulations
12 necessary to implement this subsection, including provisions for
13 fees to cover administrative costs.

14 g. A project with an expenditure of under \$50 million
15 developed under a public-private partnership agreement shall
16 include a requirement that precludes contractors from engaging in
17 the project if the contractor has contributed to the private entity's
18 financing of the project in an amount of more than 10% of the
19 project's financing costs.

20 h. The power of eminent domain shall not be delegated to any
21 private entity under the provisions of P.L. , c. (C.)
22 (pending before the Legislature as this bill); however, a school
23 district may dedicate any property interest, including land,
24 improvements, and tangible personal property of the school district
25 for public use in a qualifying project if the school district finds that
26 so doing will serve the public purpose of the project by minimizing
27 the cost of the project to the school district or reducing the delivery
28 time of a project.

29 i. Any public-private partnership agreement, if appropriate,
30 shall include provisions affirming that the agreement and any work
31 performed under the agreement are subject to the provisions of the
32 "Construction Industry Independent Contractor Act," P.L.2007,
33 c.114 (C.34:20-1 et seq.).

34 j. (1) A private entity seeking to enter into a public-private
35 partnership agreement with the school district shall be qualified by
36 the school district as part of the procurement process, provided such
37 process ensures that the private entity meets at least the minimum
38 school district standards for qualification for professional services,
39 construction contracting, and other qualifications applicable to the
40 project, prior to submitting a proposal under the procurement
41 process. The qualification process shall result in a list of qualified
42 private entities, that may be ranked in order to generate a short list
43 of private entities requested to submit a final proposal.

44 (2) The school district may accept unsolicited proposals from
45 private entities for public-private partnership agreements. If the
46 school district receives an unsolicited proposal and determines that
47 it meets the standards of this section, the school district shall
48 publish a notice of the receipt of the proposal on the Internet site of

1 the school district, or through advertisements in newspapers. If a
2 notice is published exclusively in newspapers, the notice shall
3 appear in two or more newspapers circulated wholly or in part in
4 the county where the proposed project is to be located. The notice
5 shall provide that the school district will accept, for 45 days after
6 the initial date of publication, proposals meeting the standards of
7 this section from other private entities for eligible projects that
8 satisfy the same basic purpose and need. A copy of the notice shall
9 be mailed to each municipal and county local government body in
10 the geographic area affected by the proposal.

11 (3) After the proposal or proposals have been received, and any
12 public notification period has expired, the school district shall rank
13 the proposals in order of preference. In ranking the proposals, the
14 school district may consider factors that include, but may not be
15 limited to, professional qualifications, general business terms,
16 innovative engineering, architectural services, or cost-reduction
17 terms, finance plans, and the need for school district funds to
18 deliver the project and discharge the agreement. If only one
19 proposal is received, the school district shall negotiate in good faith
20 and, if not satisfied with the results of the negotiations, the school
21 district may, at its sole discretion, terminate negotiations.

22 (4) The school district may require that the private entity assume
23 responsibility for all costs incurred by the school district before
24 execution of the public-private partnership agreement, including
25 costs of retaining independent experts to review, analyze, and
26 advise the school district with respect to the proposal.

27 (5) If the authority or State Treasurer deem it in the public's
28 interest to cancel a procurement after a short list of private entities
29 is developed, the authority shall pay for documented third party
30 costs, including, but not limited to, design services, legal advisors,
31 financial advisors, and reasonable expenditures.

32 (6) Stipends may be used on public private partnership projects
33 when there is a substantial opportunity for innovation and the costs
34 for developing a proposal are significant. The school district may
35 elect to pay unsuccessful proposers for the work product they
36 submit with their proposal in response to a request for proposals.
37 The use by the school district of any design element contained in an
38 unsuccessful proposal shall be at the sole risk and discretion of the
39 school district and shall not confer liability on the recipient of the
40 stipulated stipend amount. After payment of the stipulated stipend
41 amount, the school district and the unsuccessful proposer shall
42 jointly own the rights to, and may make use of any work product
43 contained in the proposal, including the technologies, techniques,
44 methods, processes, ideas, and information contained in the
45 proposal, project design, and project financial plan. The use by the
46 unsuccessful proposer of any part of the work product contained in
47 the proposal shall be at the sole risk of the unsuccessful proposer
48 and shall not confer liability on the school district.

1 3. (New section) a. As used in this section:

2 “Authority” means the New Jersey Economic Development
3 Authority established pursuant to section 4 of P.L.1974,
4 c.80 (C.34:1B-4).

5 “Availability payment” means a periodic payment made by a
6 State government entity to a private entity in exchange for making
7 available the use of a public building, road, structure, infrastructure,
8 or facility at a predetermined level of service, operation, or
9 maintenance.

10 “Building project” means the construction, reconstruction, repair,
11 alteration, improvement, or extension of any public building,
12 structure, or facility constructed or acquired by a State government
13 entity to house State government functions, including any
14 infrastructure or facility used or to be used by the public or in
15 support of a public purpose or activity.

16 “Bundling” means the use of a solicitation for multiple projects
17 in one single contract, through a public-private partnership project
18 delivery method, the result of which restricts competition.

19 “Highway project” means the construction, reconstruction,
20 repair, alteration, improvement, or extension of public expressways,
21 freeways, and parkways, including bridges, tunnels, overpasses,
22 underpasses, interchanges, rest areas, express bus roadways, bus
23 pullouts and turnarounds, and park and ride facilities, including any
24 infrastructure or facility used or to be used by the public or in
25 support of a public purpose or activity; provided that the project
26 shall include an expenditure of at least \$10 million in public funds,
27 or any expenditure in solely private funds.

28 “Public-private partnership agreement” means an agreement
29 entered into by a State government entity and a private entity
30 pursuant to this section for the purpose of permitting a private entity
31 to assume financial and administrative responsibility for the
32 construction, reconstruction, repair, alteration, improvement,
33 extension, operation, and maintenance of a building project or a
34 highway project of, or for the benefit of, the State government
35 entity.

36 “State government entity” means the State or any department,
37 agency, board, commission, committee, or authority thereof subject
38 to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et
39 seq.), but shall not include any State institution of higher education.

40 b. (1) A State government entity may enter into a contract with
41 a private entity, subject to subsection f. of this section, to be
42 referred to as a public-private partnership agreement, that permits
43 the private entity to assume financial and administrative
44 responsibility for the construction, reconstruction, repair, alteration,
45 improvement, extension, operation, and maintenance of a building
46 or highway of, or for the benefit of, the State government entity,
47 provided that the building or highway project is financed in whole
48 or in part by the private entity.

1 (2) A public-private partnership agreement may include an
2 agreement under which a State government entity and a private
3 entity enter into a lease of a revenue-producing public building or
4 highway in exchange for up-front or structured financing by the
5 private entity for the project. Under the lease agreement, the
6 private entity may be responsible for the management, operation,
7 and maintenance of the building or highway. The private entity
8 may receive some or all, as per the agreement, of the revenue
9 generated by the building or highway, and may operate the building
10 or highway in accordance with State government entity standards.
11 At the end of the lease term, subsequent revenue generated by the
12 building or highway, along with management, operation, and
13 maintenance responsibility, shall revert to the State government
14 entity.

15 (3) A public-private partnership agreement may include the use
16 of availability payments if deemed to be in the best interest of the
17 public and the State government entity, provided the private entity
18 shall operate the building, road, structure, infrastructure or facility
19 in accordance with State government entity standards.

20 (4) Bundling of projects shall be prohibited under this section.

21 c. (1) A private entity that assumes financial and administrative
22 responsibility for a building or highway project pursuant to this
23 section, unless otherwise set forth herein, shall not be subject to the
24 procurement and contracting requirements of all statutes applicable
25 to the State government entity at which the project is completed,
26 including, but not limited to, the public contracting provisions of
27 P.L.1954, c.48 (C.52:34-6 et seq.).

28 (2) For the purposes of facilitating the financing of a project
29 pursuant to this section, a public entity may become the owner or
30 lessee of the project or the lessee of the land, or both, may become
31 the lessee of a building or highway to which the State government
32 entity holds title and, notwithstanding any provision of law to the
33 contrary, shall be empowered to enter into contracts with a private
34 entity and its affiliates without being subject to the procurement and
35 contracting requirements, unless otherwise set forth herein, of any
36 statute applicable to the public entity provided that the private
37 entity has been selected by the public entity pursuant to a
38 solicitation of proposals or qualifications from at least two private
39 entities. For the purposes of this subsection, a public entity shall
40 include the New Jersey Department of Transportation, New Jersey
41 Turnpike Authority, South Jersey Transportation Authority, New
42 Jersey Transit, and the New Jersey Economic Development
43 Authority, and any project undertaken pursuant to this section of
44 which the public entity becomes the owner or lessee, or which is
45 situated on land of which the public entity becomes the lessee, shall
46 be deemed a "project" under the "New Jersey Economic
47 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

1 (3) As the carrying out of any project described pursuant to this
2 section constitutes the performance of an essential public function,
3 all projects predominantly used in furtherance of the purposes of the
4 State government entity undertaken pursuant to this section,
5 provided the project is owned by or leased to a public entity, non-
6 profit business entity, foreign or domestic, or a business entity
7 wholly owned by such non-profit business entity, shall at all times
8 be exempt from property taxation and special assessments of the
9 State, or any municipality, or other political subdivision of the State
10 and, notwithstanding the provisions of section 15 of P.L.1974, c.80
11 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or any
12 other section of law to the contrary, shall not be required to make
13 payments in lieu of taxes. The land upon which the project is
14 located shall also at all times be exempt from property taxation.
15 The project and land upon which the project is located shall not be
16 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
17 1.10) regarding the tax liability of private parties conducting for
18 profit activities on tax exempt land, or section 1 of P.L.1949, c.177
19 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt
20 property that are held by nonexempt parties.

21 (4) Prior to the commencement of work on a project, the private
22 entity shall establish a construction account and appoint a third-
23 party financial institution, who shall act as a collateral agent, to
24 manage the construction account. The construction account shall
25 include the funding, financial instruments, or both, that shall be
26 used to fully capitalize and fund the project, and the collateral agent
27 shall maintain a full accounting of the funds and instruments in the
28 account. The funds and instruments in the construction account
29 shall be held in trust for the benefit of the contractor, construction
30 manager, and design-build team involved in the project. The funds
31 and instruments in the construction account shall not be the
32 property of the private entity unless all amounts due to the
33 construction account beneficiaries are paid in full. The construction
34 account shall not be designated for more than one project.

35 d. Each worker employed in the construction, rehabilitation, or
36 maintenance services of buildings or highways by a private entity
37 that has entered into a public-private partnership agreement with a
38 State government entity pursuant to this section shall be paid not
39 less than the prevailing wage rate for the worker's craft or trade as
40 determined by the Commissioner of Labor and Workforce
41 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
42 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

43 e. (1) All building construction projects under a public-private
44 partnership agreement entered into pursuant to this section shall
45 contain a project labor agreement. The project labor agreement
46 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1
47 et seq.), and shall be in a manner that to the greatest extent possible
48 enhances employment opportunities for individuals residing in the

1 county of the project's location. The general contractor,
2 construction manager, design-build team, or subcontractor for a
3 construction project proposed in accordance with this paragraph
4 shall be registered pursuant to the provisions of P.L.1999, c.238
5 (C.34:11-56.48 et seq.), and shall be classified by the Division of
6 Property Management and Construction, or shall be prequalified by
7 the Department of Transportation, as appropriate, to perform work
8 on a public-private partnership project.

9 (2) All projects proposed in accordance with this section shall
10 be submitted to the New Jersey Economic Development Authority
11 for its review and approval prior to commencing procurement of the
12 project and, when practicable, are encouraged to adhere to the
13 Leadership in Energy and Environmental Design Green Building
14 Rating System as adopted by the United States Green Building
15 Council, the Green Globes Program adopted by the Green Building
16 Initiative, or a comparable nationally recognized, accepted, and
17 appropriate sustainable development rating system.

18 (3) The general contractor, construction manager, or design-
19 build team shall be required to post a performance bond to ensure
20 the completion of the project and a payment bond guaranteeing
21 prompt payment of moneys due in accordance with and conforming
22 to the requirements of N.J.S.2A:44-143 et seq.

23 f. (1) On or before August 1, 2020, all projects proposed in
24 accordance with this section shall be submitted to the New Jersey
25 Economic Development Authority for the authority's review and
26 approval. The projects are encouraged, when practicable, to adhere
27 to the green building manual prepared by the Commissioner of
28 Community Affairs pursuant to section 1 of P.L.2007,
29 c.132 (C.52:27D-130.6). Any application that is deemed to be
30 incomplete on August 2, 2020, including in the case of an
31 application submitted pursuant to paragraph (2) of subsection b. of
32 this section, shall not be eligible for consideration.

33 (2) (a) In order for an application to be complete and
34 considered by the authority, the application shall include, but not be
35 limited to: (i) a full description of the proposed public-private
36 partnership agreement between the State government entity and the
37 private developer; (ii) a full description of the project, including a
38 description of any agreement for the lease of a revenue-producing
39 building or highway related to the project; (iii) the estimated costs
40 and financial documentation for the project; (iv) a timetable for
41 completion of the construction of the project extending no more
42 than five years after consideration and approval; and (v) any other
43 requirements that the authority deems appropriate or necessary.

44 (b) As part of the estimated costs and financial documentation
45 for the project, the application shall contain a long-range
46 maintenance plan and a long-range maintenance bond and shall
47 specify the expenditures that qualify as an appropriate investment in
48 maintenance. The long-range maintenance plan shall be approved

1 by the authority pursuant to regulations promulgated by the
2 authority that reflect national building or highway maintenance
3 standards, as appropriate, and other appropriate maintenance
4 benchmarks.

5 (3) The authority shall review all completed applications, and
6 request additional information as is needed to make a complete
7 assessment of the project. No project shall commence the
8 procurement process until final approval has been granted by the
9 authority; provided, however, that the authority shall retain the right
10 to revoke approval if it determines that the project has deviated
11 from the plan submitted pursuant to paragraph (2) of this
12 subsection, and shall retain the right to cancel a procurement after a
13 short list of private entities is developed if deemed in the public
14 interest as specified under subsection j. of this section.
15 Notwithstanding any provision of this section to the contrary, all
16 roadway or highway projects shall be subject to review and
17 approval by the State Treasurer, and the authority shall not approve
18 any roadway or highway project disapproved by the State Treasurer.

19 (4) The authority may promulgate any rules and regulations
20 necessary to implement this subsection, including provisions for
21 fees to cover administrative costs.

22 g. A project with an expenditure of under \$50 million
23 developed under a public-private partnership agreement shall
24 include a requirement that precludes contractors from engaging in
25 the project if the contractor has contributed to the private entity's
26 financing of the project in an amount of more than 10% of the
27 project's financing costs.

28 h. The power of eminent domain shall not be delegated to any
29 private entity under the provisions of P.L. , c. (C.)
30 (pending before the Legislature as this bill); however, a State
31 government entity may dedicate any property interest, including
32 land, improvements, and tangible personal property of the State
33 government entity for public use in a qualifying project if the State
34 government entity finds that so doing will serve the public purpose
35 of the project by minimizing the cost of the project to the State
36 government entity or reducing the delivery time of a project.

37 i. Any public-private partnership agreement, if appropriate,
38 shall include provisions affirming that the agreement and any work
39 performed under the agreement are subject to the provisions of the
40 "Construction Industry Independent Contractor Act," P.L.2007,
41 c.114 (C.34:20-1 et seq.).

42 j. (1) A private entity seeking to enter into a public-private
43 partnership agreement with the State government entity shall be
44 qualified by the State government entity as part of the procurement
45 process, provided such process ensures that the private entity meets
46 at least the minimum State government entity standards for
47 qualification for professional services, construction contracting, and
48 other qualifications applicable to the project, prior to submitting a

1 proposal under the procurement process. The qualification process
2 shall result in a list of qualified private entities, that may be ranked
3 in order to generate a short list of private entities requested to
4 submit a final proposal.

5 (2) The State government entity may accept unsolicited
6 proposals from private entities for public-private partnership
7 agreements. If the State government entity receives an unsolicited
8 proposal and determines that it meets the standards of this section,
9 the State government entity shall publish a notice of the receipt of
10 the proposal on the Internet site of the State government entity, or
11 through advertisements in newspapers. If a notice is published
12 exclusively in newspapers, the notice shall appear in two or more
13 newspapers circulated wholly or in part in the county where the
14 proposed project is to be located. The notice shall provide that the
15 State government entity will accept, for 45 days after the initial date
16 of publication, proposals meeting the standards of this section from
17 other private entities for eligible projects that satisfy the same basic
18 purpose and need. A copy of the notice shall be mailed to each
19 municipal and county local government body in the geographic area
20 affected by the proposal.

21 (3) After the proposal or proposals have been received, and any
22 public notification period has expired, the State government entity
23 shall rank the proposals in order of preference. In ranking the
24 proposals, the State government entity may consider factors that
25 include, but may not be limited to, professional qualifications,
26 general business terms, innovative engineering, architectural
27 services, or cost-reduction terms, finance plans, and the need for
28 State government entity funds to deliver the project and discharge
29 the agreement. If only one proposal is received, the State
30 government entity shall negotiate in good faith and, if not satisfied
31 with the results of the negotiations, the State government entity
32 may, at its sole discretion, terminate negotiations.

33 (4) The State government entity may require that the private
34 entity assume responsibility for all costs incurred by the State
35 government entity before execution of the public-private
36 partnership agreement, including costs of retaining independent
37 experts to review, analyze, and advise the State government entity
38 with respect to the proposal.

39 (5) If the authority or State Treasurer deem it in the public's
40 interest to cancel a procurement after a short list of private entities
41 is developed, the authority shall pay for documented third party
42 costs, including, but not limited to, design services, legal advisors,
43 financial advisors, and reasonable expenditures.

44 (6) Stipends may be used on public private partnership projects
45 when there is a substantial opportunity for innovation and the costs
46 for developing a proposal are significant. The State government
47 entity may elect to pay unsuccessful proposers for the work product
48 they submit with their proposal in response to a request for

1 proposals. The use by the State government entity of any design
2 element contained in an unsuccessful proposal shall be at the sole
3 risk and discretion of the State government entity and shall not
4 confer liability on the recipient of the stipulated stipend amount.
5 After payment of the stipulated stipend amount, the State
6 government entity and the unsuccessful proposer shall jointly own
7 the rights to, and may make use of any work product contained in
8 the proposal, including the technologies, techniques, methods,
9 processes, ideas, and information contained in the proposal, project
10 design, and project financial plan. The use by the unsuccessful
11 proposer of any part of the work product contained in the proposal
12 shall be at the sole risk of the unsuccessful proposer and shall not
13 confer liability on the State government entity.
14

15 4. (New section) Notwithstanding the provisions of section 43
16 of P.L.2009, c.90 (C.18A:64-85) to the contrary, the New Jersey
17 Institute of Technology may enter into a public-private partnership
18 agreement in accordance with the provisions of that section.
19

20 5. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to
21 read as follows:

22 43. a. (1) A State college or county college may enter into a
23 contract with a private entity, subject to subsection f. of this section,
24 to be referred to as a public-private partnership agreement, that
25 permits the private entity to assume **[full]** financial and
26 administrative responsibility for the on-campus or off-campus
27 construction, reconstruction, repair, alteration, improvement,
28 extension, management, or operation of a building, structure, or
29 facility of, or for the benefit of, the institution, provided that the
30 project is financed in whole or in part by the private entity and that
31 the State or institution of higher education, as applicable, retains
32 full ownership of the land upon which the project is completed.

33 (2) A public-private partnership agreement may include an
34 agreement under which a State or county college **[leases to a**
35 **private entity the operation]** and the private entity enter into a lease
36 of a dormitory or other **[revenue-producing]** facility to which the
37 college holds title, in exchange for up-front or structured financing
38 by the private entity for the construction of classrooms,
39 laboratories, or other academic or research buildings. Under the
40 lease agreement, the college shall continue to hold title to the
41 facility, and the private entity shall be responsible for the
42 management, operation, and maintenance of the facility. The
43 private entity shall receive some or all, as per the agreement, of the
44 revenue generated by the facility and shall operate the facility in
45 accordance with college standards. A lease agreement shall not
46 affect the status or employment rights of college employees who are
47 assigned to, or provide services to, the leased facility. At the end of
48 the lease term, subsequent revenue generated by the facility, along

1 with management, operation, and maintenance responsibility, shall
2 revert to the college.

3 (3) A public-private partnership agreement may include the use
4 of availability payments if deemed to be in the best interest of the
5 public and the State or county college, provided the private entity
6 shall operate the building, structure, infrastructure or facility in
7 accordance with State or county college standards. Bundling of
8 projects shall be prohibited. As used in this paragraph, "availability
9 payment" means a periodic payment made by a State or county
10 college to a private entity in exchange for making available the use
11 of a public building, structure, infrastructure, or facility at a
12 predetermined level of service, operation, or maintenance.
13 "Bundling" means the use of a solicitation for multiple projects in
14 one single contract, through a public-private partnership project
15 delivery method, the result of which restricts competition.

16 b. (1) A private entity that assumes financial and administrative
17 responsibility for a project pursuant to subsection a. of this section
18 shall not be subject, unless otherwise set forth herein, to the
19 procurement and contracting requirements of all statutes applicable
20 to the institution of higher education at which the project is
21 completed, including, but not limited to, the "State College
22 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the
23 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-
24 25.1 et seq.). For the purposes of facilitating the financing of a
25 project pursuant to subsection a. of this section, a public entity,
26 including any State or county college or public research university,
27 may become the owner or lessee of the project or the lessee of the
28 land, or both, may become the lessee of a dormitory or other
29 revenue-producing facility to which the college holds title, may
30 issue indebtedness in accordance with the public entity's or
31 institution's enabling legislation and, notwithstanding any provision
32 of law to the contrary, shall be empowered to enter into contracts
33 with a private entity and its affiliates, unless otherwise set forth
34 herein, without being subject to the procurement and contracting
35 requirements of any statute applicable to the public entity or
36 institution provided that the private entity has been selected by the
37 institution of higher education pursuant to a solicitation of
38 proposals or qualifications from at least two private entities. For
39 the purposes of this section, a public entity shall include the New
40 Jersey Economic Development Authority, and any project
41 undertaken pursuant to subsection a. of this section of which the
42 authority becomes the owner or lessee, or which is situated on land
43 of which the authority becomes the lessee, shall be deemed a
44 "project" under the "New Jersey Economic Development Authority
45 Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

46 (2) As the carrying out of any project described pursuant to this
47 section constitutes the performance of an essential public function,
48 all projects **【**predominantly used in furtherance of the**】** having the

1 primary stated purpose of furthering the educational purposes of the
2 institution undertaken pursuant to this section, provided it is owned
3 by or leased to a public entity , any State or county college or public
4 research university, non-profit business entity, foreign or domestic,
5 or a business entity wholly owned by such non-profit business
6 entity, shall at all times be exempt from property taxation and
7 special assessments of the State, or any municipality, or other
8 political subdivision of the State and, notwithstanding the
9 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2
10 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the
11 contrary, shall not be required to make payments in lieu of taxes.
12 The land upon which the project is located shall also at all times be
13 exempt from property taxation. Further, the project and land upon
14 which the project is located shall not be subject to the provisions of
15 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax
16 liability of private parties conducting for profit activities on tax
17 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding
18 the taxation of leasehold interests in exempt property that are held
19 by nonexempt parties.

20 (3) Prior to the commencement of work on a project, the private
21 entity shall establish a construction account and appoint a third-
22 party financial institution, who shall act as a collateral agent, to
23 manage the construction account. The construction account shall
24 include the funding, financial instruments, or both, that shall be
25 used to fully capitalize and fund the project, and the collateral agent
26 shall maintain a full accounting of the funds and instruments in the
27 account. The funds and instruments in the construction account
28 shall be held in trust for the benefit of the contractor, construction
29 manager, and design-build team involved in the project. The funds
30 and instruments in the construction account shall not be the
31 property of the private entity unless all amounts due to the
32 construction account beneficiaries are paid in full. The construction
33 account shall not be designated for more than one project.

34 c. Each worker employed in the construction, rehabilitation, or
35 building maintenance services of facilities by a private entity that
36 has entered into a public-private partnership agreement with a State
37 or county college pursuant to subsection a. of this section shall be
38 paid not less than the prevailing wage rate for the worker's craft or
39 trade as determined by the Commissioner of Labor and Workforce
40 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
41 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

42 d. (1) All building construction projects under a public-private
43 partnership agreement entered into pursuant to this section shall
44 contain a project labor agreement. The project labor agreement
45 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-
46 1 et seq.), and shall be in a manner that to the greatest extent
47 possible enhances employment opportunities for individuals
48 residing in the county of the project's location. Further, the general

1 contractor, construction manager, design-build team, or
2 subcontractor for a construction project proposed in accordance
3 with this paragraph shall be registered pursuant to the provisions of
4 P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by
5 the Division of Property Management and Construction, or shall be
6 prequalified by the Department of Transportation, as appropriate, to
7 perform work on a public-private partnership higher education
8 project.

9 (2) All **【construction】** projects proposed in accordance with this
10 **【paragraph】** section shall be submitted to the New Jersey Economic
11 Development Authority for its review and approval prior to
12 commencing procurement of the project and, when practicable, are
13 encouraged to adhere to the Leadership in Energy and
14 Environmental Design Green Building Rating System as adopted by
15 the United States Green Building Council, the Green Globes
16 Program adopted by the Green Building Initiative, or a comparable
17 nationally recognized, accepted, and appropriate sustainable
18 development rating system.

19 **【(2) Where no public fund has been established for the financing**
20 **of a public improvement, the chief financial officer of the public**
21 **owner shall require the private entity for whom the public**
22 **improvement is being made】** (3) The general contractor,
23 construction manager, or design-build team shall be required to
24 post **【, or cause to be posted,】** a performance bond to ensure
25 completion of the project and a payment bond guaranteeing prompt
26 payment of moneys due **【to the contractor, his or her subcontractors**
27 and to all persons furnishing labor or materials to the contractor or
28 his or her subcontractors in the prosecution of the work on the
29 public improvement**】** in accordance with and conforming to the
30 requirements of N.J.S.2A:44-143 et seq.

31 e. **【A general contractor, construction manager, design-build**
32 **team, or subcontractor shall be registered pursuant to the provisions**
33 **of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified**
34 **by the Division of Property Management and Construction to**
35 **perform work on a public-private partnership higher education**
36 **project.】** (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill)

38 f. (1) On or before August 1, **【2015】** 2020, all projects
39 proposed in accordance with this section shall be submitted to the
40 New Jersey Economic Development Authority for the authority's
41 review and approval **【;** except that in the case of projects proposed
42 in accordance with paragraph (2) of subsection a. of this section, all
43 projects shall be submitted on or before August 1, 2016**】**. The
44 projects are encouraged, when practicable, to adhere to the green
45 building manual prepared by the Commissioner of Community
46 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).
47 Any application that is deemed to be incomplete on August 2,

1 **【2015, or on August 2, 2016】** 2020, including in the case of an
2 application submitted pursuant to paragraph (2) of subsection a. of
3 this section, shall not be eligible for consideration.

4 (2) (a) In order for an application to be complete and
5 considered by the authority, the application shall include, but not be
6 limited to: (i) a full description of the proposed public-private
7 partnership agreement between the State or county college and the
8 private developer; (ii) a full description of the project, including a
9 description of any agreement for the lease of a revenue-producing
10 facility related to the project; (iii) the estimated costs and financial
11 documentation for the project; (iv) a timetable for completion of the
12 construction of the project extending no more than five years after
13 consideration and approval; and (v) any other requirements that the
14 authority deems appropriate or necessary.

15 (b) As part of the estimated costs and financial documentation
16 for the project, the application shall contain a long-range
17 maintenance plan and a long-range maintenance bond and shall
18 specify the expenditures that qualify as an appropriate investment in
19 maintenance. The long-range maintenance plan shall be approved
20 by the authority pursuant to regulations promulgated by the
21 authority that reflect national building maintenance standards and
22 other appropriate building maintenance benchmarks. All contracts
23 to implement a long-range maintenance plan pursuant to this
24 paragraph shall contain a project labor agreement. The project
25 labor agreement shall be subject to the provisions of P.L.2002,
26 c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
27 extent possible enhances employment opportunities for individuals
28 residing in the county of the project's location.

29 (3) The authority shall review all completed applications, and
30 request additional information as is needed to make a complete
31 assessment of the project. No project shall **【be undertaken】**
32 commence the procurement process until final approval has been
33 granted by the authority; provided, however, that the authority shall
34 retain the right to revoke approval if it determines that the project
35 has deviated from the plan submitted pursuant to paragraph (2) of
36 this subsection, and shall retain the right to cancel a procurement
37 after a short list of private entities is developed if deemed in the
38 public interest as specified under subsection k. of this section.

39 (4) The authority may promulgate any rules and regulations
40 necessary to implement this subsection, including provisions for
41 fees to cover administrative costs.

42 **【Where no public fund has been established for the financing of**
43 **a public improvement, the chief financial officer of the public**
44 **owner shall require the private entity for whom the public**
45 **improvement is being made to post, or cause to be posted, a bond**
46 **guaranteeing prompt payment of moneys due to the contractor, his**
47 **or her subcontractors and to all persons furnishing labor or**

1 materials to the contractor or his or her subcontractors in the
2 prosecution of the work on the public improvement.】

3 g. 【The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall
4 not apply to any project carried out pursuant to this section.】
5 (Deleted by amendment, P.L. , c.) (pending before the
6 Legislature as this bill)

7 h. A project with an expenditure of under \$50 million
8 developed under a public-private partnership agreement shall
9 include a requirement that precludes contractors from engaging in
10 the project if the contractor has contributed to the private entity's
11 financing of the project in an amount of more than 10% of the
12 project's financing costs.

13 i. The power of eminent domain shall not be delegated to any
14 private entity under the provisions of P.L. , c. (C.)
15 (pending before the Legislature as this bill); however, a State or
16 county college may dedicate any property interest, including land,
17 improvements, and tangible personal property of the State or county
18 college for public use in a qualifying project if the State or county
19 college finds that so doing will serve the public purpose of the
20 project by minimizing the cost of the project to the State or county
21 college or reducing the delivery time of a project.

22 j. Any public-private partnership agreement, if appropriate,
23 shall include provisions affirming that the agreement and any work
24 performed under the agreement are subject to the provisions of the
25 "Construction Industry Independent Contractor Act," P.L.2007,
26 c.114 (C.34:20-1 et seq.).

27 k. (1) A private entity seeking to enter into a public-private
28 partnership agreement with the State or county college shall be
29 qualified by the State or county college as part of the procurement
30 process, provided such process ensures that the private entity meets
31 at least the minimum State or county college standards for
32 qualification for professional services, construction contracting, and
33 other qualifications applicable to the project, prior to submitting a
34 proposal under the procurement process. The qualification process
35 shall result in a list of qualified private entities, that may be ranked
36 in order to generate a short list of private entities requested to
37 submit a final proposal.

38 (2) The State or county college may accept unsolicited proposals
39 from private entities for public-private partnership agreements. If
40 the State or county college receives an unsolicited proposal and
41 determines that it meets the standards of this section, the State or
42 county college shall publish a notice of the receipt of the proposal
43 on the Internet site of the State or county college, or through
44 advertisements in newspapers. If a notice is published exclusively
45 in newspapers, the notice shall appear in two or more newspapers
46 circulated wholly or in part in the county where the proposed
47 project is to be located. The notice shall provide that the State or
48 county college will accept, for 45 days after the initial date of

1 publication, proposals meeting the standards of this section from
2 other private entities for eligible projects that satisfy the same basic
3 purpose and need. A copy of the notice shall be mailed to each
4 municipal and county local government body in the geographic area
5 affected by the proposal.

6 (3) After the proposal or proposals have been received, and any
7 public notification period has expired, the State or county college
8 shall rank the proposals in order of preference. In ranking the
9 proposals, the State or county college may consider factors that
10 include, but may not be limited to, professional qualifications,
11 general business terms, innovative engineering, architectural
12 services, or cost-reduction terms, finance plans, and the need for
13 State or county college funds to deliver the project and discharge
14 the agreement. If only one proposal is received, the State or county
15 college shall negotiate in good faith and, if not satisfied with the
16 results of the negotiations, the State or county college may, at its
17 sole discretion, terminate negotiations.

18 (4) The State or county college may require that the private
19 entity assume responsibility for all costs incurred by the State or
20 county college before execution of the public-private partnership
21 agreement, including costs of retaining independent experts to
22 review, analyze, and advise the State or county college with respect
23 to the proposal.

24 (5) If the authority or State Treasurer deem it in the public's
25 interest to cancel a procurement after a short list of private entities
26 is developed, the authority shall pay for documented third party
27 costs, including, but not limited to, design services, legal advisors,
28 financial advisors, and reasonable expenditures.

29 (6) Stipends may be used on public private partnership projects
30 when there is a substantial opportunity for innovation and the costs
31 for developing a proposal are significant. The State or county
32 college may elect to pay unsuccessful proposers for the work
33 product they submit with their proposal in response to a request for
34 proposals. The use by the State or county college of any design
35 element contained in an unsuccessful proposal shall be at the sole
36 risk and discretion of the State or county college and shall not
37 confer liability on the recipient of the stipulated stipend amount.
38 After payment of the stipulated stipend amount, the State or county
39 college and the unsuccessful proposer shall jointly own the rights
40 to, and may make use of any work product contained in the
41 proposal, including the technologies, techniques, methods,
42 processes, ideas, and information contained in the proposal, project
43 design, and project financial plan. The use by the unsuccessful
44 proposer of any part of the work product contained in the proposal
45 shall be at the sole risk of the unsuccessful proposer and shall not
46 confer liability on the State or county college.

47 (cf: P.L.2013, c.161, s.26)

- 1 6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
2 as follows:
- 3 5. The authority shall have the following powers:
- 4 a. To adopt bylaws for the regulation of its affairs and the
5 conduct of its business;
- 6 b. To adopt and have a seal and to alter the same at pleasure;
- 7 c. To sue and be sued;
- 8 d. To acquire in the name of the authority by purchase or
9 otherwise, on such terms and conditions and such manner as it may
10 deem proper, or by the exercise of the power of eminent domain in
11 the manner provided by the "Eminent Domain Act of 1971,"
12 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
13 other property which it may determine is reasonably necessary for
14 any project; provided, however, that the authority in connection
15 with any project shall not take by exercise of the power of eminent
16 domain any real property except upon consent thereto given by
17 resolution of the governing body of the municipality in which such
18 real property is located; and provided further that the authority shall
19 be limited in its exercise of the power of eminent domain in
20 connection with any project in qualifying municipalities as defined
21 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
22 municipalities which had a population, according to the latest
23 federal decennial census, in excess of 10,000;
- 24 e. To enter into contracts with a person upon such terms and
25 conditions as the authority shall determine to be reasonable,
26 including, but not limited to, reimbursement for the planning,
27 designing, financing, construction, reconstruction, improvement,
28 equipping, furnishing, operation and maintenance of the project and
29 to pay or compromise any claims arising therefrom;
- 30 f. To establish and maintain reserve and insurance funds with
31 respect to the financing of the project or the school facilities project
32 and any project financed pursuant to the "Municipal Rehabilitation
33 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-
34 1 et al.);
- 35 g. To sell, convey or lease to any person all or any portion of a
36 project for such consideration and upon such terms as the authority
37 may determine to be reasonable;
- 38 h. To mortgage, pledge or assign or otherwise encumber all or
39 any portion of a project, or revenues, whenever it shall find such
40 action to be in furtherance of the purposes of this act, P.L.2000,
41 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
42 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
43 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
44 P.L.2009, c.90 (C.52:27D-489c et al.);
- 45 i. To grant options to purchase or renew a lease for any of its
46 projects on such terms as the authority may determine to be
47 reasonable;

1 j. To contract for and to accept any gifts or grants or loans of
2 funds or property or financial or other aid in any form from the
3 United States of America or any agency or instrumentality thereof,
4 or from the State or any agency, instrumentality or political
5 subdivision thereof, or from any other source and to comply,
6 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
7 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
8 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
9 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
10 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
11 conditions thereof;

12 k. In connection with any action undertaken by the authority in
13 the performance of its duties and any application for assistance or
14 commitments therefor and modifications thereof, to require and
15 collect such fees and charges as the authority shall determine to be
16 reasonable, including but not limited to fees and charges for the
17 authority's administrative, organizational, insurance, operating,
18 legal, and other expenses;

19 l. To adopt, amend and repeal regulations to carry out the
20 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
21 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
22 the "Municipal Rehabilitation and Economic Recovery Act,"
23 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,
24 c.137 (C.52:18A-235 et al.);

25 m. To acquire, purchase, manage and operate, hold and dispose
26 of real and personal property or interests therein, take assignments
27 of rentals and leases and make and enter into all contracts, leases,
28 agreements and arrangements necessary or incidental to the
29 performance of its duties;

30 n. To purchase, acquire and take assignments of notes,
31 mortgages and other forms of security and evidences of
32 indebtedness;

33 o. To purchase, acquire, attach, seize, accept or take title to any
34 project or school facilities project by conveyance or by foreclosure,
35 and sell, lease, manage or operate any project or school facilities
36 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
37 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
38 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-
39 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-
40 489c et al.);

41 p. To borrow money and to issue bonds of the authority and to
42 provide for the rights of the holders thereof, as provided in
43 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
44 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
45 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
46 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
47 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

1 q. To extend credit or make loans to any person for the
2 planning, designing, acquiring, constructing, reconstructing,
3 improving, equipping and furnishing of a project or school facilities
4 project, which credits or loans may be secured by loan and security
5 agreements, mortgages, leases and any other instruments, upon such
6 terms and conditions as the authority shall deem reasonable,
7 including provision for the establishment and maintenance of
8 reserve and insurance funds, and to require the inclusion in any
9 mortgage, lease, contract, loan and security agreement or other
10 instrument, of such provisions for the construction, use, operation
11 and maintenance and financing of a project or school facilities
12 project as the authority may deem necessary or desirable;

13 r. To guarantee up to 90% of the amount of a loan to a person,
14 if the proceeds of the loan are to be applied to the purchase and
15 installation, in a building devoted to industrial or commercial
16 purposes, or in an office building, of an energy improvement
17 system;

18 s. To employ consulting engineers, architects, attorneys, real
19 estate counselors, appraisers, and such other consultants and
20 employees as may be required in the judgment of the redevelopment
21 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-
22 1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
23 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
24 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
25 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
26 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their
27 compensation from funds available to the redevelopment utility
28 therefor, all without regard to the provisions of Title 11A of the
29 New Jersey Statutes;

30 t. To do and perform any acts and things authorized by
31 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
32 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
33 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
34 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
35 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.),
36 under, through or by means of its own officers, agents and
37 employees, or by contract with any person;

38 u. To procure insurance against any losses in connection with
39 its property, operations or assets in such amounts and from such
40 insurers as it deems desirable;

41 v. To do any and all things necessary or convenient to carry out
42 its purposes and exercise the powers given and granted in P.L.1974,
43 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
44 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
45 Rehabilitation and Economic Recovery Act," P.L.2002,
46 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
47 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

1 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
2 maintain or repair or provide for the construction, reconstruction,
3 improvement, alteration, equipping or maintenance or repair of any
4 development property and lot, award and enter into construction
5 contracts, purchase orders and other contracts with respect thereto,
6 upon such terms and conditions as the authority shall determine to
7 be reasonable, including, but not limited to, reimbursement for the
8 planning, designing, financing, construction, reconstruction,
9 improvement, equipping, furnishing, operation and maintenance of
10 any such development property and the settlement of any claims
11 arising therefrom and the establishment and maintenance of reserve
12 funds with respect to the financing of such development property;

13 x. When authorized by the governing body of a municipality
14 exercising jurisdiction over an urban growth zone, to construct,
15 cause to be constructed or to provide financial assistance to projects
16 in an urban growth zone which shall be exempt from the terms and
17 requirements of the land use ordinances and regulations, including,
18 but not limited to, the master plan and zoning ordinances, of such
19 municipality;

20 y. To enter into business employment incentive agreements as
21 provided in the "Business Employment Incentive Program Act,"
22 P.L.1996, c.26 (C.34:1B-124 et al.);

23 z. To enter into agreements or contracts, execute instruments,
24 and do and perform all acts or things necessary, convenient or
25 desirable for the purposes of the redevelopment utility to carry out
26 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
27 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
28 c.137 (C.52:18A-235 et al.), including, but not limited to, entering
29 into contracts with the State Treasurer, the Commissioner of
30 Education, districts, the New Jersey Schools Development
31 Authority, and any other entity which may be required in order to
32 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),
33 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
34 P.L.2009, c.90 (C.52:27D-489c et al.);

35 aa. (Deleted by amendment, P.L.2007, c.137);

36 bb. To make and contract to make loans to local units to finance
37 the cost of school facilities projects and to acquire and contract to
38 acquire bonds, notes or other obligations issued or to be issued by
39 local units to evidence the loans, all in accordance with the
40 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
41 c.137 (C.52:18A-235 et al.);

42 cc. Subject to any agreement with holders of its bonds issued to
43 finance a project or school facilities project, obtain as security or to
44 provide liquidity for payment of all or any part of the principal of
45 and interest and premium on the bonds of the authority or for the
46 purchase upon tender or otherwise of the bonds, lines of credit,
47 letters of credit, reimbursement agreements, interest rate exchange
48 agreements, currency exchange agreements, interest rate floors or

1 caps, options, puts or calls to hedge payment, currency, rate, spread
2 or similar exposure or similar agreements, float agreements,
3 forward agreements, insurance contract, surety bond, commitment
4 to purchase or sell bonds, purchase or sale agreement, or
5 commitments or other contracts or agreements, and other security
6 agreements or instruments in any amounts and upon any terms as
7 the authority may determine and pay any fees and expenses required
8 in connection therewith;

9 dd. To charge to and collect from local units, the State and any
10 other person, any fees and charges in connection with the
11 authority's actions undertaken with respect to school facilities
12 projects, including, but not limited to, fees and charges for the
13 authority's administrative, organization, insurance, operating and
14 other expenses incident to the financing of school facilities projects;

15 ee. To make loans to refinance solid waste facility bonds
16 through the issuance of bonds or other obligations and the execution
17 of any agreements with counties or public authorities to effect the
18 refunding or rescheduling of solid waste facility bonds, or otherwise
19 provide for the payment of all or a portion of any series of solid
20 waste facility bonds. Any county or public authority refunding or
21 rescheduling its solid waste facility bonds pursuant to this
22 subsection shall provide for the payment of not less than fifty
23 percent of the aggregate debt service for the refunded or
24 rescheduled debt of the particular county or public authority for the
25 duration of the loan; except that, whenever the solid waste facility
26 bonds to be refinanced were issued by a public authority and the
27 county solid waste facility was utilized as a regional county solid
28 waste facility, as designated in the respective adopted district solid
29 waste management plans of the participating counties as approved
30 by the department prior to November 10, 1997, and the utilization
31 of the facility was established pursuant to tonnage obligations set
32 forth in their respective interdistrict agreements, the public
33 authority refunding or rescheduling its solid waste facility bonds
34 pursuant to this subsection shall provide for the payment of a
35 percentage of the aggregate debt service for the refunded or
36 rescheduled debt of the public authority not to exceed the
37 percentage of the specified tonnage obligation of the host county for
38 the duration of the loan. Whenever the solid waste facility bonds are
39 the obligation of a public authority, the relevant county shall
40 execute a deficiency agreement with the authority, which shall
41 provide that the county pledges to cover any shortfall and to pay
42 deficiencies in scheduled repayment obligations of the public
43 authority. All costs associated with the issuance of bonds pursuant
44 to this subsection may be paid by the authority from the proceeds of
45 these bonds. Any county or public authority is hereby authorized to
46 enter into any agreement with the authority necessary, desirable or
47 convenient to effectuate the provisions of this subsection.

- 1 The authority shall not issue bonds or other obligations to effect
2 the refunding or rescheduling of solid waste facility bonds after
3 December 31, 2002. The authority may refund its own bonds issued
4 for the purposes herein at any time;
- 5 ff. To pool loans for any local government units that are
6 refunding bonds and do and perform any and all acts or things
7 necessary, convenient or desirable for the purpose of the authority
8 to achieve more favorable interest rates and terms for those local
9 governmental units;
- 10 gg. To finance projects approved by the board, provide staff
11 support to the board, oversee and monitor progress on the part of
12 the board in carrying out the revitalization, economic development
13 and restoration projects authorized pursuant to the "Municipal
14 Rehabilitation and Economic Recovery Act," P.L.2002,
15 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
16 responsibilities pursuant thereto;
- 17 hh. To offer financial assistance to qualified film production
18 companies as provided in the "New Jersey Film Production
19 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[and]**
- 20 ii. To finance or develop private or public parking facilities or
21 structures, which may include the use of solar photovoltaic
22 equipment, in municipalities qualified to receive State aid pursuant
23 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
24 municipalities that contain areas designated pursuant to P.L.1985,
25 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
26 Planning Area 2 (Suburban), or a town center, and to provide
27 appropriate assistance, including but not limited to, extensions of
28 credit, loans, and guarantees, to municipalities qualified to receive
29 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
30 178 et seq.) and municipalities that contain areas designated
31 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
32 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
33 center, and their agencies and instrumentalities or to private entities
34 whose projects are located in those municipalities, in order to
35 facilitate the financing and development of parking facilities or
36 structures in such municipalities. The authority may serve as the
37 issuing agent of bonds to finance the undertaking of a project for
38 the purposes of this subsection; and
- 39 jj. To consider, review, amend, and approve public-private
40 partnership agreements for certain building or highway
41 infrastructure development projects entered into by a private entity
42 and a local government unit, a school district, a State government
43 entity, or the New Jersey Institute of Technology pursuant to
44 sections 1 through 4 of P.L. , c. (C. through C.) (pending
45 before the Legislature as this bill) or by a private entity and a State
46 or county college pursuant to section 43 of P.L.2009, c.90
47 (C.18A:64-85), for the purposes set forth therein, and provide to a
48 private entity that is a party to an agreement any tax-exempt private

1 activity bond financing under terms and conditions established by
2 the authority and as otherwise authorized under State or federal law.
3 (cf: P.L.2010, c.28, s.3)
4

5 7. (New section) The New Jersey Economic Development
6 Authority shall post on its official website the status of each public-
7 private partnership agreement subject to its consideration, review,
8 amendment, or approval under subsection jj. of section 5 of
9 P.L.1974, c.80 (C.34:1B-5), indicating the status of each agreement
10 by designating it as a proposed, under review, or active public-
11 private partnership project.
12

13 8. This act shall take effect immediately.
14
15

16 STATEMENT
17

18 This bill permits certain government entities to enter into
19 public-private partnership agreements with private entities for
20 undertaking certain building and highway infrastructure projects, and
21 provides for oversight of these agreements by the New Jersey
22 Economic Development Authority (EDA).

23 Under the bill, local government units, school districts, and
24 State government entities would be eligible to enter into public-private
25 partnership agreements with private entities. Under current law, a
26 State college or county college is already authorized to enter into
27 public-private partnership agreements under the provisions of
28 N.J.S.A.18A:64-85, and Rowan University may also do so under that
29 statute pursuant to N.J.S.A.18A:64M-9.1. This bill authorizes the
30 New Jersey Institute of Technology to also enter into public-private
31 partnership agreements under N.J.S.A.18A:64-85.

32 The bill specifically allows the government entity to enter into
33 a public-private partnership agreement under which the private entity
34 assumes financial and administrative responsibility for the
35 development, construction, reconstruction, repair, alteration,
36 improvement, extension, operation, and maintenance of a project of, or
37 for the benefit of, the government entity, provided that the project is
38 financed in whole or in part by the private entity.

39 The bill requires that workers employed in the construction,
40 rehabilitation, or building maintenance services of a project by a
41 private entity that has entered into an agreement with a government
42 entity be subject to the applicable provisions of the "New Jersey
43 Prevailing Wage Act;" that building construction projects undertaken
44 pursuant to an agreement contain a project labor agreement; and that
45 the general contractor, construction manager, design-build team, or
46 subcontractor for a project is registered and classified by the State to
47 perform work on a project.

1 Under the bill a public-private partnership project may be
2 structured using availability payments as a financing method.
3 However, the bundling of multiple projects would be prohibited. In
4 addition, roadway or highway projects must include an expenditure of
5 at least \$10 million in public funds or any expenditure in private funds.
6 A private entity would be required to establish a construction account
7 to fully capitalize and fund the project, while the general contractor,
8 construction manager, or design-build team would be required to post
9 performance and payment bonds, instead of the chief financial officer
10 of the public entity. A contractor would be precluded from engaging
11 in a project having an expenditure of under \$50 million if the
12 contractor contributed more than 10% of the project's financing. All
13 projects would be required to undergo a procurement process
14 established under the bill.

15 All applications for agreements authorized under the bill are to
16 be submitted to the EDA for its review and approval prior to
17 commencing the procurement process. The EDA would have the
18 power to cancel procurement after a short list of private entities is
19 developed, if deemed in the public interest. The bill also requires the
20 EDA to post on its official website the status of each public-private
21 partnership agreement subject to its consideration, review, amendment,
22 or approval, indicating the status of each agreement by designating it
23 as a proposed, under review, or active public-private partnership
24 project.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1299

STATE OF NEW JERSEY

DATED: MAY 10, 2018

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 1299.

This bill permits certain government entities to enter into public-private partnership agreements with private entities for undertaking certain building and highway infrastructure projects, and provides for oversight of these agreements by the New Jersey Economic Development Authority (EDA).

Under the bill, local government units, school districts, and State government entities would be eligible to enter into public-private partnership agreements with private entities. Under current law, a State college or county college is already authorized to enter into public-private partnership agreements under the provisions of N.J.S.A.18A:64-85, and Rowan University may also do so under that statute pursuant to N.J.S.A.18A:64M-9.1. This bill authorizes the New Jersey Institute of Technology to also enter into public-private partnership agreements under N.J.S.A.18A:64-85.

The bill specifically allows the government entity to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity.

The bill requires that workers employed in the construction, rehabilitation, or building maintenance services of a project by a private entity that has entered into an agreement with a government entity be subject to the applicable provisions of the "New Jersey Prevailing Wage Act;" that building construction projects undertaken pursuant to an agreement contain a project labor agreement; and that the general contractor, construction manager, design-build team, or subcontractor for a project is registered and classified by the State to perform work on a project.

Under the bill a public-private partnership project may be structured using availability payments as a financing method. However, the bundling of multiple projects would be prohibited. In addition, roadway or highway projects must include an expenditure of

at least \$10 million in public funds or any expenditure in private funds. A private entity would be required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team would be required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor would be precluded from engaging in a project having an expenditure of under \$50 million if the contractor contributed more than 10% of the project's financing. All projects would be required to undergo a procurement process established under the bill.

All applications for agreements authorized under the bill are to be submitted to the EDA for its review and approval prior to commencing the procurement process. The EDA would have the power to cancel procurement after a short list of private entities is developed, if deemed in the public interest. The bill also requires the EDA to post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 1299

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: MAY 24, 2018

These Assembly amendments:

(1) include housing authorities, redevelopment agencies, charter schools, renaissance schools, and the South Jersey Port Corporation as entities eligible to enter into public-private partnerships; and exclude public entities that have entered into a contract with a private firm or public authority pursuant to the “New Jersey Wastewater Treatment Public-Private Contracting Act” for the provision of wastewater treatment services;

(2) limit lease agreements to a maximum duration of 30 years, and eliminate the option of availability payment agreements;

(3) require the New Jersey Economic Development Authority to review and approve proposed local government unit and school district projects in consultation with the Commissioners of the Departments of Community Affairs and Education, respectively;

(4) require the State Treasurer to consult with the Commissioner of the Department of Transportation when reviewing and approving roadway or highway projects;

(5) require a resolution by the governing body of the local government unit, school district, or State or county college of its intention to enter into a public-private partnership to be included in the project application submitted to the authority;

(6) specify the criteria the authority must follow for assessing the project, including, but not limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the governing body of the local government unit, school district, or State or county college of its intent to enter into a public-private partnership agreement for the project;

(7) following the issuance of a request for proposals by the public entity, require a 45-day timeframe for the submission of proposals and a 45-day timeframe for the production of a short list of qualified private entities; and require a 120-day timeframe for the submission of proposals in the case of unsolicited proposals;

(8) require resubmission of the project to the authority for final approval, including the short list of private entities, after the procurement process is conducted but before the public entity enters into the public-private partnership agreement with the private entity;

(9) provide that the authority retains the right to revoke final approval if it determines that the project has substantially deviated from the approved plan;

(10) add New Jersey Transit and the New Jersey Turnpike Authority as entities with which the general contractor, construction manager, design-build team, or subcontractor for a construction project must be prequalified, as appropriate;

(11) add the New Jersey Educational Facilities Authority as a public entity eligible to become the owner or lessee of a project concerning a State or county college; and

(12) remove the sunset provisions for project applications.

STATEMENT TO
[First Reprint]
Assembly, No. 1299

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: JUNE 21, 2018

These Assembly amendments:

(1) include leaseback agreements;

(2) specify that this bill would not exempt a local government unit from the provisions of the Local Bond Law or the Local Authorities Fiscal Control Law, or other law, that may apply to local government unit borrowing or financing, including but not limited to, provisions requiring review by and approval from the Local Finance Board or the Director of the Division of Local Government Services in the Department of Community Affairs;

(3) define “school district” as provided in section 3 of P.L.2000, c.72 (C.18A:7G-3) and including a local school district, regional school district, or county special services school district or county vocational school established and operating under the provisions of Title 18A of the New Jersey Statutes that can demonstrate to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority that a school facility is necessary due to overcrowding or is in need of replacement; the term also includes a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.);

(4) include consultation by the State Treasurer with the Department of Education and the Schools Development Authority for school projects;

(5) delete the New Jersey Economic Development Authority, and other State entities, as public entities that would have qualified as a public partner for public-private partnership projects when it is the owner or lessee of the project or the land;

(6) eliminate the provisions providing property tax exemptions for certain projects;

(7) provide for project review and approval by the State Treasurer;

(8) require projects to be subject to a public hearing, the record of which will be made available to the public within seven days following the conclusion of the hearing, after the ranking of proposals;

(9) prior to entering into a public-private partnership, require the public entity to determine: (i) the benefits to be realized by the project, (ii) the cost of the project if it is developed by the public sector supported by comparisons to comparable projects, (iii) the maximum public contribution that the public entity will allow under the public-private partnership, (iv) a comparison of the financial and non-financial benefits of the public-private partnership compared to other

options including the public sector option, (v) a list of risks, liabilities and responsibilities to be transferred to the private entity and those to be retained by the public entity, and (vi) if the project has a high, medium or low level of project delivery risk and how the public is protected from these risks;

(10) require the public entity, prior to entering into a public-private partnership, to find at a public hearing that the project is in the best interest of the public by finding that: (i) it will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense, (ii) there is a public need for the project and the project is consistent with existing long-term plans, (iii) there are specific significant benefits to the project, (iv) there are specific significant benefits to using the public-private partnership instead of other options including No-Build, (v) the private development will result in timely and efficient development and operation, and (vi) the risks, liabilities and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;

(11) require that projects that have a transportation component or impact the transportation infrastructure be submitted to the State Treasurer, in consultation with the Commissioner of the Department of Transportation, for review and approval;

(12) add criteria concerning financial models, assumptions, and funding analysis to the criteria the State Treasurer shall use when considering project applications;

(13) require that any public-private partnership agreement will also include, at a minimum, (i) the term of the agreement, (ii) the total project cost, (iii) a completion date guarantee, (iv) a provision for damages if the private entity fails to meet the completion date, and (v) a maximum rate of return to the private entity and a provision for the distribution of excess earnings to the public entity or to the private party for debt reduction;

(14) require that a request for qualifications for a public-private partnership agreement shall be advertised at least 45 days prior to the anticipated date of receipt; that the advertisement of the request for qualifications shall be published on the official Internet website of the public entity, and at least one or more newspapers with statewide circulation;

(15) after the public entity determines the qualified respondents, require the entity to issue a request for proposals to each qualified respondent within a specified timeframe, prior to the date established for submission of the proposals, in accordance with criteria promulgated by the State Treasurer, in consultation with the specified State entities;

(16) provide for specific advertisement in the case of unsolicited proposals;

(17) require the private entity to comply with all applicable laws and regulations;

(18) require the public entity to set aside one percent of each project and remit it to the Public-Private Partnership Review fund

established under the bill, for purposes of plan review and analysis required under the bill;

(19) require highway projects to have an expenditure of at least \$100 million, and limit the total number of highway projects approved by the State to eight at any given time;

(20) add New Jersey Transit to the definition of “State government entity;”

(21) specify responsibility of the private entity for the project, and ownership of the land by the public entity;

(22) allow 50-year leases for projects with a highway component;

(23) provide that any conveyance of real property, capital improvements and personal property owned by the State shall not be subject to the approval of the State House Commission or the State Legislature, provided the State Treasurer approves of such transfer as being necessary to meet the goals of the bill;

(24) delete the requirement for a resolution by the governing body of a State or county college;

(25) delete the ability of the New Jersey Economic Development Authority or State Treasurer to cancel a procurement offer after a short list of private entities is developed by the State or county college;

(26) for State and county colleges, add oversight by the New Jersey Educational Facilities Authority under the “New Jersey Educational Facilities Authority Law;”

(27) require the New Jersey Educational Facilities Authority to consider, or review, amend and approve public-private partnership agreements for certain building projects entered into by a private entity and the New Jersey Institute of Technology, or by a private entity and a State or county college, for the purposes set forth in the bill, and to provide to a private entity that is a party to an agreement any tax exempt private activity bond financing, including but not limited to a loan of funds under terms and conditions established by the authority in consultation with the State Treasurer and as otherwise authorized under State or federal law;

(28) establish in the Department of the Treasury the Public-Private Partnership Review fund, to support financial and administrative review functions associated with the Public Private Partnership plan review by the State Treasurer, along with the New Jersey Economic Development Authority, the Department of Community Affairs, and the Department of Transportation;

(29) provide that nothing in this bill would be construed to alter, limit or repeal any authority of any State entity to enter into public private partnership agreements as otherwise provided by law; and

(30) change the effective date to 180 days following the date of enactment.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1299

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: JUNE 25, 2018

These Assembly amendments remove language that would have exempted a State government entity from seeking State House Commission approval for the conveyance of real property, capital improvements and personal property owned by the State if the State Treasurer approved of such transfer as being necessary to meet the goals of the bill.



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Newark, N.J.

Governor Phil Murphy Signs Bipartisan Legislation to Provide Communities with Opportunities for Valuable Public-Private Partnerships

08/14/2018

P3 Legislation Allows Flexibility and Collaboration for Community-Focused Improvements and Job Creation

TRENTON – Governor Phil Murphy today signed bipartisan legislation to further foster economic growth in New Jersey through public-private partnership (P3) agreements between government entities and the private sector for building and highway infrastructure projects in the state. The bill, S-865, provides for financial oversight and approval of these agreements by the State Treasurer.

“Today, I’m proud to enact bipartisan legislation that gives our communities greater opportunities to benefit from commonsense public-private partnerships for essential construction and capital projects,” **said Governor Murphy**. “Democrats and Republicans alike recognize the tremendous benefits that can arise when public officials and private sector partners work together. By doing so, we give state, county, and local officials the much-needed flexibility they need to improve their communities while creating good-paying new jobs – in most cases good, union jobs - while leveraging private capital to invest in public infrastructure.”

Governor Murphy signed the bill at The College of New Jersey’s Campus Town development, a project built collaboratively with private-sector partners. Similar developments have occurred at Montclair State University as well as Stockton University’s Atlantic City Gateway project.

Under S-865, government bodies, including school districts, municipalities, counties and state entities, may enter into a public-private partnership agreement with a private organization, which would assume the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a government-related project that is financed in whole by the private sector organization. However, the law requires local public input and finance controls, as well as land use and financial approvals, should a municipality, county, or school district seek to pursue a P3. If the agreement includes the lease of a public building, road, infrastructure, or facility in exchange for up-front or structured financing by the private entity, the term of the lease may not be for a period greater than 30 years.

The legislation also requires that workers employed in the construction, rehabilitation, or building maintenance services of a project be subject to the applicable provisions of the “New Jersey Prevailing Wage Act;” that building construction projects contain a project labor agreement; and that the general contractor, construction manager, design-build team, or subcontractor for a project be registered and classified by the State to perform work on a project.

Additionally, the legislation allows for a small number (8) of statewide roadway or highway projects that require not

only private investment, but also public support (at least \$100 million). For local projects this limit is significantly lower (\$10 million). A private entity is required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds to ensure the completion of the project. The legislation prohibits the bundling of multiple projects. All projects are required to undergo a procurement process established under the bill.

As the department providing oversight, the State Treasurer must provide the status on each public-private partnership agreement on its website. Postings must indicate the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

Sponsors of S-865 include Senate President Steve Sweeney, Senator Steven V. Oroho, Speaker Craig Coughlin and Assemblymen Louis D. Greenwald, Jon M. Bramnick and Joseph A. Lagana.

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Governor Phil Murphy

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