

LEGISLATIVE FISCAL ESTIMATE:	Yes	
VETO MESSAGE:	No	
GOVERNOR'S PRESS RELEASE ON SIGNING:	Yes	10-12-09

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

Projects get new oversight from state, The Star Ledger, 10-13-09, p.11
EnCap reforms become law, The Record, 10-13-09, p.L01
Gov. Corzine signs 'EnCap reform' legislation; Sierra club highly critical of final version, 10-13-09,
<http://www.newjerseynewsroom.com/state/gov-corzine-signs-qencap-reform-legislation-sierra-club-highly-critical-of-final-version>

LAW/RWH 12-09-09

[Fourth Reprint]

ASSEMBLY, No. 2650

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MAY 12, 2008

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Senators Gordon, Weinberg, Sarlo and Turner

SYNOPSIS

Establishes requirements concerning certain public contracts with private firms.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 22, 2009, with amendments.

(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning certain public contracts with private entities
2 and supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. As used in this act:

8 "Business" means a corporation; sole proprietorship; partnership;
9 corporation that has made an election under Subchapter S of
10 Chapter One of Subtitle A of the Internal Revenue Code of 1986, or
11 any other business entity through which income flows as a
12 distributive share to its owners; limited liability company; nonprofit
13 corporation; or any other form of business organization located
14 either within or outside this State², but excluding any ⁴public or⁴
15 private institution of higher education ⁴[that finances or refines
16 capital facilities through bonds issued by the New Jersey
17 Educational Facilities Authority that are secured solely by private
18 funds or assets²]⁴.

19 "Environmental infrastructure project" means the acquisition,
20 construction, improvement, repair or reconstruction of all or part of
21 any structure, facility or equipment, or real or personal property
22 necessary for or ancillary to any (1) wastewater treatment system
23 project, including any stormwater management or combined sewer
24 overflow abatement projects; or (2) water supply project, as
25 authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or
26 P.L.1997, c.224 (C.58:11B-10.1 et al.), including any water
27 resources project, as authorized pursuant to P.L.2003, c.162², but
28 excluding the acquisition, construction, repair, or reconstruction of
29 any building or other improvements to real property, or the
30 acquisition or installation of any equipment or other personal
31 property, that, upon completion, shall constitute a qualified
32 employment incentive facility².

33 ⁴"Financial assistance" means funds made available as a grant or
34 loan, including funds derived as proceeds from the issuance of tax-
35 exempt bonds by the entity providing such assistance.⁴

36 ²"Lead public agency" means the public entity designated by the
37 State Treasurer pursuant to section 4 of this act to serve as the point
38 of contact between a business and every State governmental entity
39 having oversight of, or involvement in, a project for which the
40 entity or entities are providing or will provide the business with
41 financial assistance.²

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:

¹Assembly ASG committee amendments adopted May 22, 2008.

²Assembly AAP committee amendments adopted December 8, 2008.

³Senate SSG committee amendments adopted February 26, 2009.

⁴Senate SBA committee amendments adopted June 22, 2009.

1 "Public entity" means the State, 'other than the Judicial branch
2 of State government,¹ any county, municipality, district^{2, 2} or other
3 political subdivision thereof, and any agency, authority^{2, 2} or
4 instrumentality of the foregoing ², including, but not limited to, any
5 county improvement authority and any economic development
6 agency, authority, or other entity².

7 ²"Qualified employment incentive facility" means any building
8 or other structure or portion of a building or other structure that,
9 following the date on which occupation of the building or structure
10 shall have commenced, shall be used exclusively as the premises of
11 a project, related to the creation, relocation, or retention of jobs,
12 that qualifies for incentives under the Business Retention and
13 Relocation Assistance Grant Program established by section 3 of
14 P.L.1996, c.25 (C.34:1B-114), the Business Employment Incentive
15 Program established by section 3 of P.L.1996, c.26 (C.34:1B-126),
16 the corporation business tax credit and insurance premium tax credit
17 certificate transfer program established pursuant to section 17 of
18 P.L.2004, c.65 (C.34:1B-120.2), the sales and use tax exemption
19 certificate program established pursuant to section 20 of P.L.2004,
20 c.65 (C.34:1B-186), the exemption of retail sales of energy and
21 utility service to qualified businesses within an urban enterprise
22 zone from the sales and use tax pursuant to section 23 of P.L.2004,
23 c.65 (C.52:27H-87.1), ⁴the urban transit hub tax credit program
24 established pursuant to section 3 of P.L.2007, c.346 (C.34:1B-
25 209),⁴ or any other program as the State Treasurer shall deem to be
26 of similar kind and purpose; provided, however, that such exclusive
27 use shall continue for the minimum period of time prescribed by the
28 applicable law or any regulation adopted pursuant thereto, or under
29 any project agreement or other contract executed pursuant to such
30 law or regulation, or if no such minimum period shall be so
31 prescribed, for a period of four years.²

32 "Redevelopment project" means a specific work or improvement,
33 including lands, buildings, structures, improvements, real and
34 personal property or any interest therein, including lands under
35 water, riparian rights, space rights and air rights, acquired, owned,
36 cleared, graded, developed or redeveloped, constructed,
37 reconstructed, rehabilitated or improved, undertaken by a developer
38 ², but excluding the acquisition, construction, repair, or
39 reconstruction of any building or other improvements to real
40 property, or the acquisition or installation of any equipment or other
41 personal property, that, upon completion, shall constitute a qualified
42 employment incentive facility².

43 "Remediation" or "remediate" means all necessary actions to
44 investigate and clean up or respond to any known, suspected, or
45 threatened discharge of contaminants, including, as necessary, the
46 preliminary assessment, site investigation, remedial investigation,
47 and remedial action, provided, however, that "remediation" or

1 "remediate" shall not include the payment of compensation for
 2 damage to, or loss of, natural resources², and shall not include the
 3 acquisition, construction, repair, or reconstruction of any building
 4 or other improvements to real property, or the acquisition or
 5 installation of any equipment or other personal property, that, upon
 6 completion, shall constitute a qualified employment incentive
 7 facility².

8 "State governmental entity" means the Executive¹,~~]~~ and¹
 9 Legislative ¹~~[and Judicial]~~¹ branches of the State government, any
 10 agency or instrumentality of the State, including any board, bureau,
 11 commission, corporation, department, or division, any independent
 12 State authority, ²including, but not limited to, any economic
 13 development authority or agency,² and any State institution of
 14 higher education. A county, municipality, or school district, or any
 15 agency or instrumentality thereof, shall not be deemed a State
 16 governmental entity.

17
 18 2. Notwithstanding any law, rule, regulation¹,¹ or order to the
 19 contrary, any business receiving any ¹~~[compensation,]~~¹ ⁴~~[grant,~~
 20 ~~loan~~¹,¹ or other type of⁴ financial assistance ²~~[in an aggregate~~
 21 ~~amount totaling \$25 million or more,]~~² for the cost of undertaking
 22 any redevelopment project, project involving remediation, or
 23 environmental infrastructure project pursuant to ²~~[one or more~~
 24 ~~contracts]~~ any contract² with any public entity shall include ²~~[the~~
 25 ~~following]~~² in ²~~[any such]~~ that² contract ²~~[or contracts], as a~~
 26 condition of the public entity's agreement thereto, provisions
 27 requiring that upon disbursement to the business, by or through that
 28 or any other public entity, of such financial assistance with respect
 29 to the project in an aggregate amount totaling \$50 million or more²:

30 a. ²~~[a provision that the]~~ With respect to the cost of the entire
 31 project, the amount that the² business shall spend ²of funds from
 32 sources other than a public entity shall be not less than² a minimum
 33 of \$1 for every \$5 ⁴in financial assistance⁴ received from ²any²
 34 public ²~~[funds]~~ entity for expenditure² on any project cited in the
 35 contract, except that this provision shall not apply if the financial
 36 assistance is provided pursuant to a statute, or subject to a rule or
 37 regulation, requiring that expenditure by the business ²of funds
 38 from sources other than a public entity² on the project exceed
 39 ¹~~[one-fifth]~~ ²~~[one-sixth]~~¹ one-fifth² of the amount ⁴of financial
 40 assistance⁴ received from ²~~the~~² public ²~~[funds]~~ entity²;

41 b. ²~~[except as provided in subsection a. of section 3 of this act, a~~
 42 ~~provision that the]~~² The public entity shall ²~~[place]~~ retain a
 43 percentage, not exceeding² 10 percent of the total amount of
 44 ⁴~~[funds]~~ financial assistance⁴ provided for in the contract ²~~[in an~~
 45 ~~escrow account],~~² which ²retainage amount² shall not be disbursed

1 to the business until the successful completion of the project as
2 certified by the public entity ²["except that this provision"]. The
3 requirements of this subsection² shall not apply if the financial
4 assistance is provided pursuant to a statute, or subject to a rule or
5 regulation, requiring that ²["expenditure by the business on the
6 project"] the public entity² shall ²retain or² place ²into an escrow
7 account² more than 10 percent of ⁴["those funds"] the amount of that
8 financial assistance⁴ ²["in such an account"] for disbursement only
9 upon completion of the project²;

10 c. ²["a provision that the"] The² public entity shall review, at any
11 time during the term of the contract, the qualifications of any
12 subcontractor hired to perform work on the project or projects; and

13 d. ²["a provision that the"] The² business shall submit payment of
14 a performance bond which shall be ²["of"] in² an amount equal to
15 110 percent of the total ²["contract"]² price ²of the publicly funded
16 improvements under the project² and otherwise comply with all
17 applicable State laws, including, but not limited to the ³["business"]
18 business's³ submission of a surety disclosure statement and
19 certification which complies with the requirements of N.J.S.2A:44-
20 143, except that this provision shall not apply if the financial
21 assistance is provided pursuant to a statute, or subject to a rule or
22 regulation, requiring that ³["expenditure by"]³ the business ³obtain
23 for the performance of work³ on the project ³a bond that³ shall
24 ²["place"] amount to² more than 110 percent of the total ²["contract"]²
25 price ²of those publicly funded improvements².

26

27 3. a. Notwithstanding any law, rule, regulation¹,¹ or order to the
28 contrary, any business ²["receiving"] to which there is disbursed, by
29 or through that or any other public entity,² any ¹["compensation,"]¹
30 ⁴["grant, loan",¹ or other type of]⁴ financial assistance in an
31 aggregate amount totaling ²["\$25"] \$50² million or more, for the cost
32 of undertaking any redevelopment project, project involving
33 remediation, or environmental infrastructure project pursuant to one
34 or more contracts with any public entity ⁴["awarded otherwise than
35 through a fair and open process as defined by section 6 of P.L.2004,
36 c.19 (C.19:44A-20.7)"]⁴, shall file with the public entity and with
37 the State Treasurer, ²["by the first day of the 18th month following
38 the awarding of the contract"] not later than the 30th day following
39 such disbursement², and annually thereafter for the duration of such
40 contract or contracts, audited financial statements and reports
41 concerning the activities of the project or projects and of such
42 business, including any parent or holding company of the business,
43 as prepared by an independent certified public accountant. Such
44 financial statements shall include, but not be limited to, a balance
45 sheet, statement of income or loss, and statement of changes in

1 financial position. If the financial statements are not received by
2 the public entity by the deadlines established hereinabove, the
3 public entity shall increase the amount of the percentage of funds
4 ²[in the escrow account] retained or placed into an escrow account
5 in accordance with the provisions of subsection b. of section 2 of
6 this act² by:

7 (1) five percent for any statement 120 or fewer days past the
8 deadline;

9 (2) ten percent for any statement more than 120 but less than
10 181 days past the deadline; and

11 (3) 15 percent for any statement 181 or more days past the
12 deadline.

13 b. The provisions of this section shall not apply to any business
14 that is required to file such financial statements under federal law or
15 other State law.

16 c. Each business reporting under this section shall disclose to the
17 public entity on a rapid and current basis such additional
18 information concerning material changes in the financial condition
19 or operations of the business as the public entity determines is
20 necessary or useful for the protection of the public interest. This
21 information shall be expressed in plain English and, if the public
22 entity so requires, shall include trend and qualitative information
23 and graphic presentations.

24
25 4. If any State governmental entity enters into a contract or
26 contracts with a business to which the provisions of section 2 of this
27 act apply, the State governmental entity shall notify the State
28 Treasurer of such contract and shall include the name of the project,
29 the nature of the project-related activity for which the financial
30 assistance is to be given, and any other information necessary for
31 the implementation of the provisions of this act. The State
32 Treasurer shall ²monitor the notifications received pursuant to the
33 provisions of this section with respect to each project and, ³[upon
34 determining that] when³ the aggregate amount of financial
35 assistance disbursed to a business with respect to a project shall
36 equal or exceed \$50 million ³or at any other time the State
37 Treasurer deems it necessary³, shall² designate ²[an employee of a
38 single State governmental entity] the public entity that, as of the
39 date of such designation, shall have disbursed the greatest amount
40 of financial assistance to the business with respect to the project
41 under those contracts³,³ as the lead public agency² to serve as the
42 sole point of contact between the business and every State
43 governmental entity having any manner or degree of oversight of or
44 involvement in the project to which that contract or contracts
45 relates. The ²[employee] lead public agency² shall document all
46 State governmental entity activities associated with the project.

1 ²The lead public agency shall, upon designation, perform or
2 cause to be performed an assessment of the degree of risk that the
3 business will be financially unable to complete the project and,
4 based upon the results of that assessment, require that, before
5 further disbursements of funds from a public entity under any such
6 contract in connection with the project, the business shall make an
7 investment of ³its own³ funds in the project, which investment shall
8 not be less than 10 percent of total project costs.²
9

10 5. In addition to the powers and responsibilities of the State
11 Comptroller, prescribed in P.L.2007, c.52 (C.52:15C-1 et seq.),
12 ²upon the designation, with respect to the undertaking by any
13 business of a project, of a lead public agency pursuant to section 4
14 of this act,² the State Comptroller is authorized to audit²: a.² the
15 uses of ¹[those]¹ ²all² ⁴[funds] financial assistance⁴ ¹[provided
16 to] ²that shall have been or shall thereafter be² received ²in
17 connection with the project² by¹ a business from a public entity
18 pursuant to any contract ¹[and require that funds provided by a
19 public entity are spent in accordance with the terms of the contract]
20 to which the provisions of section 2 of this act apply¹ ²; and b. the
21 expenditure by the business, in connection with the project, of funds
22 from sources other than a public entity, as required under the
23 provisions of subsection a. of that section². The audit shall include,
24 but not be limited to, the amount of ⁴financial assistance⁴ funds that
25 were provided by the public entity to the business and how such
26 funds were spent by the business.
27

28 ¹6. ²[The] Upon the designation, with respect to the
29 undertaking of a project by any business, of a lead public agency
30 pursuant to section 4 of this act, the² State Comptroller shall require
31 that ²[the expenditure by a business of] any² ⁴[funds] financial
32 assistance⁴ received ²by the business ⁴from a public entity⁴ in
33 connection with the project² ⁴[from a public entity]⁴ pursuant to
34 any contract to which the provisions of section 2 of this act apply
35 shall be spent in accordance with the terms of the contract.¹
36

37 ¹[6.] 7.¹ Each business filing a financial statement under
38 section 3 of this act shall attach thereto a certification that:

39 a. the business officer signing the financial statement has
40 reviewed the statement;

41 b. based on the officer's knowledge, the financial statement does
42 not contain any untrue statement of a material fact or omit the
43 statement of a material fact necessary in order to ensure that the
44 statements made, in light of the circumstances under which such
45 statements were made, were not misleading;

1 c. based on such officer's knowledge, the financial statements,
2 and other financial information included in the report, fairly present
3 in all material respects the financial condition and results of
4 operations of the business as of, and for, the periods presented in
5 the report; and

6 d. the signing officer:

7 (1) is responsible for establishing and maintaining internal
8 controls;

9 (2) has designed such internal controls to ensure that material
10 information relating to the business and its consolidated subsidiaries
11 is made known to such business officers by others within those
12 entities, particularly during the period in which the reports are being
13 prepared;

14 (3) has evaluated the effectiveness of the business' internal
15 controls as of a date within 90 days prior to the financial statement;

16 (4) has presented in the financial statement the officer's
17 conclusions about the effectiveness of the business' internal
18 controls based on the evaluation as of that date;

19 (5) has disclosed to the business' auditors and the audit
20 committee of the board of directors or those persons fulfilling the
21 equivalent function:

22 (a) all significant deficiencies in the design or operation of
23 internal controls which could adversely affect the business' ability
24 to record, process, summarize, and report financial data and have
25 identified for the business' auditors any material weaknesses in
26 internal controls; and

27 (b) any fraud, whether or not material, that involves management
28 or other employees who have a significant role in the business'
29 internal controls; and

30 (6) has indicated in the financial statement whether or not there
31 were significant changes in internal controls or in other factors that
32 could significantly affect internal controls subsequent to the date of
33 their evaluation, including any corrective actions with regard to
34 significant deficiencies and material weaknesses.

35
36 '【7.】 8.' For any audit report for which a financial statement
37 shall have been filed under section 3 of this act, an independent
38 certified public accountant shall:

39 a. prepare, and retain for a period of not less than seven years,
40 audit work papers, and other information related to the audit report,
41 in sufficient detail to support the conclusions reached in the report;

42 b. provide a concurring or second partner review and approval
43 of the audit report and other related information, and concurring
44 approval in its issuance, by a qualified person associated with the
45 public accounting firm, other than the person in charge of the audit,
46 or by an independent reviewer;

- 1 c. describe in the audit report the scope of the auditor's testing
- 2 of the internal control structure and procedures of the business, and
- 3 present in such report or in a separate report:
 - 4 (1) the findings of the auditor from such testing;
 - 5 (2) an evaluation of whether such internal control structure and
 - 6 procedures:
 - 7 (a) include maintenance of records that in reasonable detail
 - 8 accurately and fairly reflect the transactions and dispositions of the
 - 9 assets of the business;
 - 10 (b) provide reasonable assurance that transactions are recorded
 - 11 as necessary to permit preparation of financial statements in
 - 12 accordance with generally accepted accounting principles, and that
 - 13 receipts and expenditures of the business are being made only in
 - 14 accordance with authorizations of management and directors of the
 - 15 business; and
 - 16 (3) a description, at a minimum, of material weaknesses in such
 - 17 internal controls, and of any material noncompliance found on the
 - 18 basis of such testing;
- 19 d. provide a statement to the public entity that,
- 20 contemporaneously with the audit:
 - 21 (1) the auditor has not provided the business any non-audit
 - 22 service, including any bookkeeping or other services related to the
 - 23 accounting records or financial statements of the business;
 - 24 (2) the lead or coordinating audit partner having primary
 - 25 responsibility for the audit, or the audit partner responsible for
 - 26 reviewing the audit, has not performed audit services for that
 - 27 business in each of the five previous fiscal years of that business;
 - 28 (3) the auditor has provided a timely report to the audit
 - 29 committee of the business stating that:
 - 30 (a) all critical accounting policies and practices were used;
 - 31 (b) all alternative treatments of financial information within
 - 32 generally accepted accounting principles have been discussed with
 - 33 management officials of the business, the ramifications of the use of
 - 34 such alternative disclosures and treatments, and the treatment
 - 35 preferred by the registered public accounting firm;
 - 36 (c) other material written communications between the registered
 - 37 public accounting firm and the management of the business, such as
 - 38 any management letter or schedule of unadjusted differences, were
 - 39 reported to the business; and
 - 40 (d) concerning any audit service conducted under this section,
 - 41 whether a chief executive officer, controller, chief financial officer,
 - 42 chief accounting officer, or any person serving in an equivalent
 - 43 position for the business, was employed by that registered
 - 44 independent public accounting firm and participated in any capacity
 - 45 in the audit of that business during the one-year period preceding
 - 46 the date of the initiation of the audit; and
- 47 e. present the financial information included in any such
- 48 financial statement in a manner that:

1 (1) does not contain an untrue statement of a material fact or
2 omit a material fact necessary in order to make the pro forma
3 financial information, in light of the circumstances under which it is
4 presented, not misleading; and

5 (2) reconciles it with the financial condition and results of
6 operations of the business under generally accepted accounting
7 principles.

8

9 '[8.] 9.' a. Each audited financial statement prepared pursuant
10 to the provisions of section 3 of this act shall contain an internal
11 control report, which shall:

12 (1) state the responsibility of management for establishing and
13 maintaining an adequate internal control structure and procedures
14 for financial reporting; and

15 (2) contain an assessment, as of the end of the most recent fiscal
16 year of the business, of the effectiveness of the internal control
17 structure and procedures of the business for financial reporting.

18 b. With respect to the internal control assessment required by
19 subsection a. of this section, each registered public accounting firm
20 that prepares or issues the audit report for the business shall attest
21 to, and report on, the assessment made by the management of the
22 business. Any such attestation shall not be the subject of a separate
23 engagement.

24

25 '[9.] 10.' a. Any business¹,¹ receiving financial assistance
26 from a public entity '[pursuant] under a contract' to 'which' the
27 provisions of section 2 of this act 'apply,' that knowingly fails to
28 submit a financial statement or report, or that makes a material
29 misrepresentation in any application, report¹,¹ or other disclosure¹,¹
30 that the recipient business is required to make pursuant to this act
31 shall refund the amount of financial assistance to the granting
32 public entity or entities. The granting public entity or entities shall
33 include provisions for the refund as part of an agreement to provide
34 financial assistance and may pursue an action to collect the amount
35 of the refund plus any attorney fees and other costs of the action.

36 b. Whoever knowingly alters, destroys, mutilates, conceals,
37 covers up, falsifies, or makes a false entry in any record, document,
38 or tangible object with the intent to impede, obstruct, or influence
39 the investigation or proper administration of any matter within the
40 jurisdiction of any public entity in relation to any provision of this
41 act, shall be subject to the provisions of subsection a. of this
42 section.

43

44 ²11. The State Comptroller shall, pursuant to the provisions of
45 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
46 et seq.), adopt such rules and regulations as shall be necessary to
47 implement the provisions of this act in accordance with the

1 purposes thereof, including, but not limited to, the establishment of
2 guidelines for determining the scope of a project.²

3

4 ¹~~10.~~ ²~~11.1~~ 12.² This act shall take effect immediately
5 except that ¹~~the provisions of sections~~ section¹ 5 ¹~~and 9~~¹ shall
6 apply to any contract awarded during calendar year 2004 and
7 thereafter.

1 or tangible object with the intent to impede, obstruct, or influence
2 the investigation or proper administration of any matter within the
3 jurisdiction of any public entity in relation to any provision of this
4 act, shall be subject to the provisions of subsection a. of this
5 section.

6
7 10. This act shall take effect immediately except that the
8 provisions of sections 5 and 9 shall apply to any contract awarded
9 during calendar year 2004 and thereafter.

10
11

12 SPONSOR'S STATEMENT

13

14 This bill requires any business receiving any compensation,
15 grant, loan or other type of financial assistance in an aggregate
16 amount totaling \$25 million or more, for the cost of undertaking
17 any redevelopment project, project involving remediation, or
18 environmental infrastructure project pursuant to any contract or
19 contracts with any "public entity" as that term is defined in the bill,
20 to file annually with the public entity and with the State Treasurer,
21 by the first day of the 18th month following the awarding of the
22 contract, and annually thereafter for the duration of such contract or
23 contracts audited financial statements concerning the activities of
24 the project or projects and of such business including any parent or
25 holding company of the business, as prepared by an independent
26 certified public accountant. Such financial statements are to
27 include, but not be limited to, a balance sheet, statement of income
28 or loss, and statement of changes in financial position. If the
29 financial statements are not received by the public entity by the
30 deadlines established hereinabove, the public entity shall increase
31 the amount of the percentage of funds in the escrow account as
32 provided in the bill. The financial statement filing requirement
33 shall not apply to any business that is required to file such financial
34 statements under federal law or other State law.

35 The bill provides that if a "State governmental entity" as that
36 term is defined in the bill, enters into a contract or contracts with a
37 business to which the financial reporting requirements of the bill
38 apply, the State governmental entity shall notify the State Treasurer
39 of such contract and shall include the name of the project, the
40 nature of the project-related activity for which the financial
41 assistance is to be given, and any other information necessary for
42 the implementation of the provisions of this act. The State
43 Treasurer is to designate an employee of a single State
44 governmental entity to serve as the sole point of contact between
45 the business and every State governmental entity having any
46 manner or degree of oversight of, or involvement in, the project or
47 projects. The employee shall document all State governmental
48 entity activities associated with the project

1 The bill allows the Office of the State Comptroller to audit
2 private companies who receive public dollars, at least in terms of
3 auditing the use of the public funding, and require that funds
4 provided by a public entity are spent in accordance with the terms
5 of the contract.

6 The bill requires in any such contract that: 1) the business shall
7 spend a minimum of \$1 for every \$5 received from public funds on
8 any project cited in the contract; 2) the public entity shall place 10
9 percent of the total amount of funds provided for in the contract in
10 an escrow account, which shall not be disbursed to the business
11 until the successful completion of the project as certified by the
12 public entity; 3) the public entity shall review, at any time during
13 the term of the contract, the qualifications of any subcontractor
14 hired to perform work on the project or projects; and 4) the business
15 shall submit payment of a performance bond which shall be of an
16 amount equal to 110 percent of the total contract price.

17 The bill requires the business and its auditor to comply with
18 certain financial reporting and business auditor provisions, such as
19 business financial information disclosure within the financial
20 statements, business auditor independence, auditor conflicts of
21 interest, and accounting quality control standards. Similar
22 provisions are required under the "Sarbanes-Oxley Act of 2002,"
23 Pub.L. 107-204 (15 U.S.C. s.7201 et al.).

24 The bill provides that any recipient business that knowingly fails
25 to submit a financial statement or report, or that makes a material
26 misrepresentation in any application, report or other disclosure that
27 the recipient business is required to make pursuant to the bill shall
28 refund the amount of financial assistance to the granting public
29 entity or entities. The granting public entity or entities shall include
30 provisions for the refund as part of an agreement to provide
31 financial assistance and may pursue an action to collect the amount
32 of the refund plus any attorney fees and other costs of the action.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 2008

The Assembly State Government Committee reports favorably and with committee amendments Assembly Bill No. 2650.

As amended, this bill requires any business receiving any grant, loan or other type of financial assistance in an aggregate amount totaling \$25 million or more, for the cost of undertaking any redevelopment project, project involving remediation, or environmental infrastructure project pursuant to any contract or contracts with any "public entity" as that term is defined in the bill, to file annually with the public entity and with the State Treasurer, by the first day of the 18th month following the awarding of the contract, and annually thereafter for the duration of such contract or contracts audited financial statements concerning the activities of the project or projects and of such business including any parent or holding company of the business, as prepared by an independent certified public accountant. The financial statements are to include a balance sheet, statement of income or loss, and statement of changes in financial position. If the financial statements are not received by the public entity by the deadlines, the public entity will increase the amount of the percentage of funds in the escrow account as provided in the bill. The financial statement filing requirement will not apply to any business that is required to file such financial statements under federal law or other State law.

The bill provides that if a "State governmental entity" as that term is defined in the bill, enters into a contract or contracts with a business to which the financial reporting requirements of the bill apply, the State governmental entity will notify the State Treasurer of such contract and will include the name of the project, the nature of the project-related activity for which the financial assistance is to be given, and any other information necessary for the implementation of the provisions of the bill. The State Treasurer is to designate an employee of a single State governmental entity to serve as the sole point of contact between the business and every State governmental entity having any manner or degree of oversight of, or involvement in, the project or projects. The employee will document all State governmental entity activities associated with the project.

The bill allows the Office of the State Comptroller to audit private companies with regard to the public funds to which the provisions of the bill apply and to require that such funds are spent in accordance with the terms of the contract.

The bill requires in any such contract that (1) the business will spend a minimum of \$1 for every \$5 received from public funds on any project cited in the contract; (2) the public entity will place 10 percent of the total amount of funds provided for in the contract in an escrow account, which will not be disbursed to the business until the successful completion of the project as certified by the public entity; (3) the public entity will review, at any time during the term of the contract, the qualifications of any subcontractor hired to perform work on the project or projects; and (4) the business will submit payment of a performance bond in an amount equal to 110 percent of the total contract price.

The bill requires the business and its auditor to comply with certain financial reporting and business auditor provisions, such as business financial information disclosure within the financial statements, business auditor independence, auditor conflicts of interest, and accounting quality control standards. Similar provisions are required under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15 U.S.C. s.7201 et al.).

The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make pursuant to the bill will refund the amount of financial assistance to the granting public entity or entities. The granting public entity or entities will include provisions for the refund as part of an agreement to provide financial assistance and may pursue an action to collect the amount of the refund plus any attorney fees and other costs of the action.

COMMITTEE AMENDMENTS

The committee amended the bill to (1) exclude the Judicial Branch from the bill's definitions of public entity and State governmental entity; (2) remove the term "compensation" as a form of financial assistance, receipt of which in a large enough amount could subject a business to the requirements of the bill; (3) correct a fractional reference to a ratio; (4) clarify that the State Comptroller will audit only funds covered by the bill; (5) place the State Comptroller's authority to require compliance with any financial assistance contract covered by the bill in a separate section to exclude it from the retroactivity applicable to audits; and (6) provide that only the State Comptroller's audit function has retroactive application.

MINORITY STATEMENT

By Assemblyman Webber and Assemblywoman Casagrande

This bill is a commendable effort to protect taxpayers from costly and outrageous public contracting debacles of the type that has, unfortunately, been allowed to occur in recent years. We congratulate the sponsor for addressing this issue, and we strongly support his goal of increasing scrutiny and accountability in the public contracting process.

However, in its current form as reported by this committee, the bill may cause unintended negative consequences for some programs and incentives needed to sustain and improve New Jersey's economic climate. Specifically, we are concerned about the possible impact on the recently enacted Urban Transit Hub Tax Credit Act, which is intended to increase capital investment and employment in certain transit hub areas, and which we believe should be expanded to additional geographic areas.

We are similarly concerned about the bill's potential impact on future long-term tax abatements, which could reach the bill's monetary threshold over a long period of time, as 20-year abatements are not uncommon. While such abatements should be subject to proper scrutiny, the bill does not currently distinguish them from other types of agreements that are more fittingly subject to the measures contained in the bill, including the flat \$25 million threshold.

Likewise, the bill rightly seeks to require an equity stake for contractors in such agreements, so that any inadequate performance on their part will have repercussions for them and not only for the taxpayers. However, the 16.7% equity requirement as presently constituted in the bill may not be appropriate in all circumstances.

There is no question that additional measures, such as those proposed in this bill, are necessary to reform the contracting process and improve the government's stewardship of the public's money. We believe the bill requires further review and amendment in order to ensure that it is consistent with the goal of improved economic development. We look forward to working with the sponsor to achieve our mutual goals.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2650 (1R), with committee amendments.

The bill, as amended, provides for the application of various matching, disclosure, performance assurance, monitoring, and other requirements whenever a business receives \$50 million in financial assistance from one or more New Jersey public entities to fund the cost of a redevelopment project (other than a facility for a qualified jobs relocation or retention program), remediation project, or environmental infrastructure project. "Public entities" under the bill include the State (other than the Judicial branch of State government); any county, municipality, district, or other political subdivision of the State; and any agency, authority, or instrumentality of any of the foregoing, including any county improvement authority and any economic development agency, authority, or other entity.

The requirements include the following:

(1) Of the business's total spending on project costs, at least \$1 would have to come from other sources for every \$5 derived from the public entities;

(2) A public entity would be required to retain up to 10 percent of the amount of its assistance pending completion of the project, subject to any statutory or regulatory requirement for its retention or escrow of a greater amount;

(3) The public entity would have to review the qualifications of project subcontractors;

(4) The business would have to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(5) If any of the public funding were provided under a contract awarded otherwise than through fair and open procurement, the business would annually have to file audited financial statements for the project and for the business itself. The business, together with its auditor, would have to comply with various financial reporting and business auditor requirements (including financial information disclosure, business auditor independence standards and conflict of

interest rules, and accounting quality control standards) similar to those imposed under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15 U.S.C. s.7201 et al.);

(6) The State Treasurer would designate a "lead public agency" to serve as the sole point of contact between the business and every State governmental entity that oversees or is otherwise involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project would have to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation; and

(7) The Office of the State Comptroller would be authorized to audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation must refund the amount of financial assistance to the granting public entity or entities. In any action for the refund, the public entity or entities could also collect attorney fees and other costs of the action.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this bill. The OLS estimates, however, that the bill will effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill will regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity will receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduces the incidence of contractor nonperformance

COMMITTEE AMENDMENTS

The amendments: (1) increase from \$25 million to \$50 million the threshold amount of public assistance that a business would have to receive before the various requirements prescribed under the bill would apply; (2) incorporate the exclusion of premises for jobs relocation and retention programs from projects, public funding of which could be subject to those requirements; (3) exclude, from the category of businesses covered under the legislation, private colleges and universities that finance capital facilities through New Jersey

Educational Facilities Authority bonds that are secured by private assets; (4) add the exemption, from the financial statement filing requirement, for businesses receiving project funding awarded exclusively through a fair and open process; (5) specify that the amount of the performance bond is to be measured in terms of the cost of publicly funded improvements under the project; (6) clarify that disbursement of the threshold amount, rather than the award of a contract, is the event upon which the financial statement filing requirement becomes applicable; (7) provide explicitly that the State Treasurer shall monitor State entity funding of projects prior to disbursement of sums in excess of the threshold level; (8) provide for designation of a “lead public agency,” rather than a State employee, to be the contact for business-government communication in connection with project funding that has reached the threshold level; (9) correct a reference to the required ratio of “public entity” funding to other funding of covered projects; and (10) make other minor clarifying and editorial changes.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2009

The Senate State Government Committee reports favorably and with committee amendments Assembly, No. 2650 (2R).

This bill, as amended, provides for the application of various matching, disclosure, performance assurance, monitoring, and other requirements whenever a business receives substantial public funding to support the cost of a redevelopment project, remediation project, or environmental infrastructure project, excluding in each case any facility for a qualified jobs relocation or retention program. "Public entities" under the bill include the State (other than the Judicial branch of State government); any county, municipality, district, or other political subdivision of the State; and any agency, authority, or instrumentality of any of the foregoing, including any county improvement authority and any economic development agency, authority, or other entity.

Upon disbursement to the business by one or more New Jersey public entities of project assistance aggregating \$50 million or more, the following rules and requirements would apply:

(1) Of the business's total spending on project costs, at least \$1 would have to come from other sources for every \$5 derived from the public entities;

(2) A public entity would be required to retain up to 10 percent of the amount of its assistance pending completion of the project, subject to any statutory or regulatory requirement for its retention or escrow of a greater amount;

(3) The public entity would have to review the qualifications of project subcontractors;

(4) The business would have to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(5) If any of the public funding were provided under a contract awarded otherwise than through fair and open procurement, the business would annually have to file audited financial statements for the project and for the business itself. The business, together with its

auditor, would have to comply with various financial reporting and business auditor requirements (including financial information disclosure, business auditor independence standards and conflict of interest rules, and accounting quality control standards) similar to those imposed under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15U.S.C. s.7201 et al.); and

(6) The Office of the State Comptroller would be authorized to audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

In addition, the State Treasurer is directed, when the amount of assistance disbursed reaches \$50 million or at any other time that the Treasurer deems it necessary, to designate a "lead public agency" to serve as the sole point of contact between the business and every State governmental entity that oversees or is otherwise involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project would have to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation.

The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation must refund the amount of financial assistance to the granting public entity or entities. In any action for the refund, the public entity or entities could also collect attorney fees and other costs of the action.

The provisions this bill, as amended, are identical to those of Senate Bill No. 1769 Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS

The committee amended the bill to: (1) authorize the designation of a "lead public agency" as the point of contact between the business and State agencies involved in project oversight to be made at any time the Treasurer deems it necessary, rather than only when assistance disbursements reach the threshold \$50 million level; and (2) make minor clarifying changes to language providing an exemption to the bill's performance bond requirement if a more stringent requirement is applicable under other law or rule.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

ASSEMBLY, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2009

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2650 (3R), with committee amendments.

This bill, as amended, provides for the application of various matching, disclosure, performance assurance, monitoring, and other requirements whenever a business receives substantial financial assistance from a New Jersey public entity to support the cost of a redevelopment project, remediation project, or environmental infrastructure project, excluding in each case any facility for a qualified jobs relocation or retention program. "Public entities" under the bill include the State (other than the Judicial branch of State government); any county, municipality, district, or other political subdivision of the State; and any agency, authority, or instrumentality of any of the foregoing, including any county improvement authority and any economic development agency, authority, or other entity.

Upon disbursement to the business by one or more New Jersey public entities of project assistance aggregating \$50 million or more, the following rules and requirements would apply:

(1) Of the business's total spending on project costs, at least \$1 would have to come from other sources for every \$5 derived from the public entities;

(2) A public entity would be required to retain up to 10 percent of the amount of its assistance pending completion of the project, subject to any statutory or regulatory requirement for its retention or escrow of a greater amount;

(3) The public entity would have to review the qualifications of project subcontractors;

(4) The business would have to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(5) The business would annually have to file audited financial statements for the project and for the business itself. The business, together with its auditor, would have to comply with various financial reporting and business auditor requirements (including financial information disclosure, business auditor independence standards and

conflict of interest rules, and accounting quality control standards) similar to those imposed under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15 U.S.C. s.7201 et al.); and

(6) The Office of the State Comptroller would be authorized to audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

In addition, the State Treasurer is directed, when the amount of assistance disbursed reaches \$50 million or at any other time that the Treasurer deems it necessary, to designate a "lead public agency" to serve as the sole point of contact between the business and every State governmental entity that oversees or is otherwise involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project would have to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation.

The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation must refund the amount of financial assistance to the granting public entity or entities. In any action for the refund, the public entity or entities could also collect attorney fees and other costs of the action.

The provisions of this bill, as amended, are identical to those of Senate Bill No. 1769 (1R) Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS:

Committee amendments to the bill: (1) add public colleges and universities to the group of higher education institutions excluded from the class of "businesses" covered under the bill; (2) limit the type of public funding covered by the bill to "financial assistance," defined under the amendments as grants and loans of funds, including funds derived from proceeds of tax exempt bonds issued by the public entity making the grant or loan; (3) add the "urban transit hub tax credit" program to the list of employment incentive programs, support from which would qualify a facility for exemption from coverage under the bill as a publicly subsidized project; and (4) delete a provision that exempts funding provided under contracts awarded through a "fair and open process" from being considered "financial assistance" to be counted in determining attainment of the \$50 million threshold for application of the bill's financial reporting requirement under section 3.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this bill. The OLS estimates, however, that the bill will effectively function as an insurance policy for governmental entities

that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill will regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity will receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduces the incidence of contractor nonperformance.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2650 STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JULY 8, 2008

SUMMARY

- Synopsis:** Establishes requirements concerning certain public contracts with private firms.
- Type of Impact:** Increased recurring expenditures by State and local governments and reduced risk of financial loss.
- Agencies Affected:** Department of the Treasury;
Public entities providing certain types of financial assistance to businesses in support of redevelopment, remediation or environmental infrastructure projects.

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
State Cost	Indeterminate — See comments below.		
Local Cost	Indeterminate — See comments below.		

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$25 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

BILL DESCRIPTION

Assembly Bill No. 2650 (1R) of 2008 imposes new financial reporting requirements on businesses receiving \$25 million or more in public financial assistance for undertaking a redevelopment, remediation or environmental infrastructure project. A concerned business must file annually with the contracting public entity and the State Treasurer for the duration of the

contract audited financial statements concerning the activities of the project and of the business. The financial statements and their preparation must comply with financial reporting and business auditor standards established by the bill. If a business knowingly fails to submit a statement or makes a material misrepresentation in any filing, it will refund the assistance. The Office of the State Comptroller may also audit the business' use of the assistance.

In addition, the bill requires a business receiving public assistance to submit a performance bond equal to 110 percent of the assistance. Moreover, the granting public entity must place ten percent of the assistance in an escrow account, which amount will not be disbursed to the business until the project's successful completion. The public entity will increase the escrow amount if it does not receive the required financial statements by the deadlines.

The bill also provides that a State governmental entity has to notify the State Treasurer upon entering into a contract to which the bill's provisions apply. The State Treasurer then designates a single employee as the sole point of contact between the business and every State governmental entity involved in the project.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$25 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

Administrative Expenses: The legislation would affect governments' administration of contracts falling under the bill's purview threefold. The OLS, however, projects that only two impacts would increase administrative expenses, while the third impact would likely be cost-neutral.

First, the Department of the Treasury would incur additional costs as it would become the central repository for all required documents, which it might also review. In addition, the bill charges the Treasury with coordinating the administration of contracts signed by State governmental entities.

Second, the bill would also increase the contracting public entity's cost of administering the contract, as the public entity would have to review additional documents.

Third, the bill authorizes the Office of the State Comptroller to audit contractors with regard to the use of the public assistance. The OLS does not anticipate, however, that this authority would result in additional costs as these audits would be optional. Even if the State Comptroller opted to conduct such an audit, the State Comptroller's limited resources would necessitate a resource reallocation away from audits that would have been otherwise pursued.

Amount of Public Assistance: The OLS expects the bill to push up the amount of public assistance governments would have to provide for concerned capital projects. One part of the increase would stem from the increased expenses the bill would impose on contractors by means of several new requirements. Contractors would probably pass the additional expenses on to contracting public agencies. But the requirements could also function as a barrier to entry most notably for companies that are not publicly traded, which reduction in the number of potential contractors would increase the pricing power of interested businesses.

The bill would add to the cost of every contractor in requiring the posting of a performance bond equal to 110 percent of the public assistance provided. Performance bond premiums vary from less than one percent of the bond size to 20 percent. The bill would also require public entities to hold at least ten percent of the amount of the public assistance in an escrow account until the project's successful completion. This delay would adversely affect contractors, for they could not earn interest on the amounts held in escrow and might experience a temporary cash-flow problem necessitating the temporary borrowing of funds in the financial market. In addition, contractors may also price the risk into the contract of having to refund the financial assistance if the public entity determines that it knowingly failed to submit a required financial statement or made a material misrepresentation of fact in any filing.

The bill also imposes new financial reporting and auditing requirements, which resemble those imposed under the federal "Sarbanes-Oxley Act of 2002". Since that act applies exclusively to publicly traded companies, these companies would not be affected by the bill's new reporting and auditing requirements. They would, however, produce a financial effect on private companies. According to an August 2007 study by Foley & Lardner LLP, "The Cost of Being Public in the Era of Sarbanes-Oxley", the act increased the average cost of public companies with annual revenue under \$1 billion by \$2.4 million at its peak (from \$1.0 million before the reform in fiscal year 2001 to \$3.4 million in fiscal year 2004). Due to efficiencies the annual cost increase over fiscal year 2001 was only \$1.8 million in fiscal year 2006 to a total cost of \$2.8 million. While the study overestimates the impact of Sarbanes-Oxley, it nonetheless appears that the act has increased public companies' auditing expenditures substantially. (The study overestimates the impact by assuming that the entire increase in the cost of being a public company from fiscal year 2001 to 2006 was due to Sarbanes-Oxley, but inflation would have affected the cost of auditing and related services even absent the act; the study fails to adjust its Sarbanes-Oxley estimate downward for the inflation factor.)

All these new requirements could erect a barrier to entry for potential competitors, especially for businesses that are not publicly traded. Instead of complying with the new standards, firms may decide to avoid the additional expense by not seeking to undertake a project. Fewer contracting options would hence exist for public entities. Having acquired more pricing power, the remaining competitor(s) could angle for a more significant markup by demanding more public assistance as a condition of undertaking a project.

Reduced Risk of Financial Loss: The legislation would curb the risk of financial loss to governments engaging in contracts subject to the provisions of this bill. Specifically, governments would realize a benefit if one of the following scenarios materialized: a business fails to meet its contractual obligations or the new requirements decrease the incidence of contractor nonperformance. While the benefits of reduced financial exposure would offset the bill's cost at least in part, it is unclear whether it would do so fully. This uncertainty persists because public entities would incur the bill's cost on every contract. The gains, on the other hand, would accrue only under the above scenarios. Accordingly, the net impact of the legislation would critically hinge on the rate of contractor nonperformance and the degree to

which the bill would lower that rate, but the OLS can determine neither the incidence of such nonperformance nor the changes the bill would bring to bear on it.

Under the bill, contracting public entities would be compensated for duff contractor performance by collecting surety payments from the newly required performance bonds equal to 110 percent of the financial assistance provided. In addition, contracting public entities would keep the amounts held in the escrow account (at least equal ten percent of the assistance provided). Under current law, the public entities are not reimbursed for their financial assistance if a subsidized project fails.

The bill may also lower the likelihood of a project collapse. Its new requirements would probably not substantially motivate otherwise feckless contractors to clean up their act, given that the surety would pay compensation to the contracting public entities in case of complications. But the bill could conceivably reduce the incidence of contractor nonperformance if the new requirements eliminated businesses from the contractor pool that are less likely to meet contract terms and conditions. The bill might also improve contractor performance since the increased oversight and project monitoring would allow public entities to initiate corrective actions when problems first emerge and can still be redressed.

Section: Revenue, Finance and Appropriations
Analyst: Thomas Koenig
Associate Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2650

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: DECEMBER 18, 2008

SUMMARY

- Synopsis:** Establishes requirements concerning certain public contracts with private firms.
- Type of Impact:** Increased recurring expenditures by State and local governments and reduced risk of financial loss.
- Agencies Affected:** Department of the Treasury;
Public entities providing certain types of financial assistance to businesses in support of redevelopment, remediation or environmental infrastructure projects.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Cost	Indeterminate - See comments below		
Local Cost	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

BILL DESCRIPTION

Assembly Bill No. 2650 (2R) of 2008 imposes new requirements on businesses receiving \$50 million or more in public financial assistance for undertaking a redevelopment, remediation or environmental infrastructure project:

(1) The business must spend at least \$1 of nonpublic moneys on the project for every \$5 derived from public entities;

(2) A public entity has to retain up to 10 percent of the amount of its assistance pending completion of the project;

(3) The business has to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(4) The public entity has to review the qualifications of project subcontractors;

(5) If any of the public funding is provided under a contract awarded otherwise than through fair and open procurement, a business must file annually with the contracting public entity and the State Treasurer for the duration of the contract audited financial statements concerning the activities of the project and of the business. The financial statements and their preparation must comply with financial reporting and business auditor standards established by the bill;

(6) The State Treasurer designates a public agency to serve as the sole point of contact between the business and every State governmental entity that is involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project has to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation; and

(7) The Office of the State Comptroller may audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

The bill also provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any required disclosure must refund the financial assistance to the granting public entity.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

Administrative Expenses: The legislation would affect governments' administration of contracts falling under the bill's purview threefold. The OLS, however, projects that only two impacts would increase administrative expenses, while the third impact would likely be cost-neutral.

First, the Department of the Treasury would incur additional costs as it would become the central repository for all required documents, which it might also review. In addition, the bill charges the Treasury with coordinating the administration of contracts signed by State governmental entities.

Second, the bill would also increase the contracting public entity's cost of administering the contract, as the public entity would have to review additional documents.

Third, the bill authorizes the Office of the State Comptroller to audit contractors with regard to the use of the public assistance. The OLS does not anticipate, however, that this authority would result in additional costs as these audits would be optional. Even if the State Comptroller opted to conduct such an audit, the State Comptroller's limited resources would necessitate a resource reallocation away from audits that would have been otherwise pursued.

Amount of Public Assistance: The OLS expects the bill to push up the amount of public assistance governments would have to provide for concerned capital projects. One part of the increase would stem from the increased expenses the bill would impose on contractors by means of several new requirements. Contractors would probably pass the additional expenses on to contracting public agencies. But the requirements could also function as a barrier to entry most notably for companies that are not publicly traded, which reduction in the number of potential contractors would increase the pricing power of interested businesses.

The bill would add to the cost of every contractor in requiring the posting of a performance bond equal to 110 percent of the public assistance provided. Performance bond premiums vary from less than one percent of the bond size to 20 percent. The bill would also require public entities to hold at least ten percent of the amount of the public assistance in an escrow account until the project's successful completion. This delay would adversely affect contractors, for they could not earn interest on the amounts held in escrow and might experience a temporary cash-flow problem necessitating the temporary borrowing of funds in the financial market. In addition, contractors may also price the risk into the contract of having to refund the financial assistance if the public entity determines that it knowingly failed to submit a required financial statement or made a material misrepresentation of fact in any filing.

The bill would also impose new financial reporting and auditing requirements similar to those imposed under the federal "Sarbanes-Oxley Act of 2002" if public funding were provided under a contract awarded otherwise than through fair and open procurement. Since that federal act applies exclusively to publicly traded companies, these companies would not be affected by the bill's new reporting and auditing requirements. They would, however, produce a financial effect on private companies. According to an August 2007 study by Foley & Lardner LLP, "The Cost of Being Public in the Era of Sarbanes-Oxley", the act increased the average cost of public companies with annual revenue under \$1 billion by \$2.4 million at its peak (from \$1.0 million before the reform in fiscal year 2001 to \$3.4 million in fiscal year 2004). Due to efficiencies the annual cost increase over fiscal year 2001 was only \$1.8 million in fiscal year 2006 to a total cost of \$2.8 million. While the study overestimates the impact of Sarbanes-Oxley, it nonetheless appears that the act has increased public companies' auditing expenditures substantially. (The study overestimates the impact by assuming that the entire increase in the cost of being a public company from fiscal year 2001 to 2006 was due to Sarbanes-Oxley, but inflation would have affected the cost of auditing and related services even absent the act; the study fails to adjust its Sarbanes-Oxley estimate downward for the inflation factor.)

All these new requirements could erect a barrier to entry for potential competitors, especially for businesses that are not publicly traded. Instead of complying with the new standards, firms may decide to avoid the additional expense by not seeking to undertake a project. Fewer contracting options would hence exist for public entities. Having acquired more pricing power, the remaining competitor(s) could angle for a more significant markup by demanding more public assistance as a condition of undertaking a project.

Reduced Risk of Financial Loss: The legislation would curb the risk of financial loss to governments engaging in contracts subject to the provisions of this bill. Specifically, governments would realize a benefit if one of the following scenarios materialized: a business fails to meet its contractual obligations or the new requirements decrease the incidence of contractor nonperformance. While the benefits of reduced financial exposure would offset the bill's cost at least in part, it is unclear whether it would do so fully. This uncertainty persists because public entities would incur the bill's cost on every contract. The gains, on the other hand, would accrue only under the above scenarios. Accordingly, the net impact of the legislation would critically hinge on the rate of contractor nonperformance and the degree to which the bill would lower that rate, but the OLS can determine neither the incidence of such nonperformance nor the changes the bill would bring to bear on it.

Under the bill, contracting public entities would be compensated for duff contractor performance by collecting surety payments from the newly required performance bonds equal to 110 percent of the financial assistance provided. In addition, contracting public entities would keep the amounts held in the escrow account (at least equal to ten percent of the assistance provided). Under current law, the public entities are not reimbursed for their financial assistance if a subsidized project fails.

The bill may also lower the likelihood of a project collapse. Its new requirements would probably not substantially motivate otherwise feckless contractors to clean up their act, given that the surety would pay compensation to the contracting public entities in case of complications. But the bill could conceivably reduce the incidence of contractor nonperformance if the new requirements eliminated businesses from the contractor pool that are less likely to meet contract terms and conditions. The bill might also improve contractor performance since the increased oversight and project monitoring would allow public entities to initiate corrective actions when problems first emerge and can still be redressed.

Section: Revenue, Finance and Appropriations
Analyst: Thomas Koenig
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Fourth Reprint]

ASSEMBLY, No. 2650

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JUNE 30, 2009

SUMMARY

- Synopsis:** Establishes requirements concerning certain public contracts with private firms.
- Type of Impact:** Increased recurring expenditures by State and local governments and reduced risk of financial loss.
- Agencies Affected:** Department of the Treasury;
Public entities providing certain types of financial assistance to businesses in support of redevelopment, remediation or environmental infrastructure projects.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>
State Cost		Indeterminate - See comments below	
Local Cost		Indeterminate - See comments below	

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

BILL DESCRIPTION

Assembly Bill No. 2650 (4R) of 2008 imposes new requirements on businesses receiving \$50 million or more in public financial assistance for undertaking a redevelopment, remediation or environmental infrastructure project:

(1) The business must spend at least \$1 of nonpublic moneys on the project for every \$5 derived from public entities;

(2) A public entity has to retain up to 10 percent of the amount of its assistance pending completion of the project;

(3) The business has to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(4) The public entity has to review the qualifications of project subcontractors;

(5) The business must file annually with the contracting public entity and the State Treasurer for the duration of the contract audited financial statements concerning the activities of the project and of the business. The financial statements and their preparation must comply with financial reporting and business auditor standards established by the bill;

(6) The State Treasurer designates a public agency to serve as the sole point of contact between the business and every State governmental entity that is involved in the project. The State Treasurer may designate a sole point of contact even if the public assistance is less than \$50 million if the State Treasurer deems it necessary. Any State governmental entity contracting with a business to provide financial assistance on a project has to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation; and

(7) The Office of the State Comptroller may audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

The bill also provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any required disclosure must refund the financial assistance to the granting public entity.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

Administrative Expenses: The legislation would affect governments' administration of contracts falling under the bill's purview threefold. The OLS, however, projects that only two impacts would increase administrative expenses, while the third impact would likely be cost-neutral.

First, the Department of the Treasury would incur additional costs as it would become the central repository for all required documents, which it might also review. In addition, the bill

charges the Treasury with coordinating the administration of contracts signed by State governmental entities.

Second, the bill would also increase the contracting public entity's cost of administering the contract, as the public entity would have to review additional documents.

Third, the bill authorizes the Office of the State Comptroller to audit contractors with regard to the use of the public assistance. The OLS does not anticipate, however, that this authority would result in additional costs as these audits would be optional. Even if the State Comptroller opted to conduct such an audit, the State Comptroller's limited resources would necessitate a resource reallocation away from audits that would have been otherwise pursued.

Amount of Public Assistance: The OLS expects the bill to push up the amount of public assistance governments would have to provide for concerned capital projects. One part of the increase would stem from the increased expenses the bill would impose on contractors by means of several new requirements. Contractors would probably pass the additional expenses on to contracting public agencies. But the requirements could also function as a barrier to entry most notably for companies that are not publicly traded, which reduction in the number of potential contractors would increase the pricing power of interested businesses.

The bill would add to the cost of every contractor in requiring the posting of a performance bond equal to 110 percent of the public assistance provided. Performance bond premiums vary from less than one percent of the bond size to 20 percent. The bill would also require public entities to hold at least ten percent of the amount of the public assistance in an escrow account until the project's successful completion. This delay would adversely affect contractors, for they could not earn interest on the amounts held in escrow and might experience a temporary cash-flow problem necessitating the temporary borrowing of funds in the financial market. In addition, contractors may also price the risk into the contract of having to refund the financial assistance if the public entity determines that it knowingly failed to submit a required financial statement or made a material misrepresentation of fact in any filing.

The bill would also impose new financial reporting and auditing requirements similar to those imposed under the federal "Sarbanes-Oxley Act of 2002" if public funding were provided under a contract awarded otherwise than through fair and open procurement. Since that federal act applies exclusively to publicly traded companies, these companies would not be affected by the bill's new reporting and auditing requirements. They would, however, produce a financial effect on private companies. According to an August 2007 study by Foley & Lardner LLP, "The Cost of Being Public in the Era of Sarbanes-Oxley", the act increased the average cost of public companies with annual revenue under \$1 billion by \$2.4 million at its peak (from \$1.0 million before the reform in fiscal year 2001 to \$3.4 million in fiscal year 2004). Due to efficiencies the annual cost increase over fiscal year 2001 was only \$1.8 million in fiscal year 2006 to a total cost of \$2.8 million. While the study overestimates the impact of Sarbanes-Oxley, it nonetheless appears that the act has increased public companies' auditing expenditures substantially. (The study overestimates the impact by assuming that the entire increase in the cost of being a public company from fiscal year 2001 to 2006 was due to Sarbanes-Oxley, but inflation would have affected the cost of auditing and related services even absent the act; the study fails to adjust its Sarbanes-Oxley estimate downward for the inflation factor.)

All these new requirements could erect a barrier to entry for potential competitors, especially for businesses that are not publicly traded. Instead of complying with the new standards, firms may decide to avoid the additional expense by not seeking to undertake a project. Fewer contracting options would hence exist for public entities. Having acquired more pricing power, the remaining competitor(s) could angle for a more significant markup by demanding more public assistance as a condition of undertaking a project.

Reduced Risk of Financial Loss: The legislation would curb the risk of financial loss to governments engaging in contracts subject to the provisions of this bill. Specifically, governments would realize a benefit if one of the following scenarios materialized: a business fails to meet its contractual obligations or the new requirements decrease the incidence of contractor nonperformance. While the benefits of reduced financial exposure would offset the bill's cost at least in part, it is unclear whether it would do so fully. This uncertainty persists because public entities would incur the bill's cost on every contract. The gains, on the other hand, would accrue only under the above scenarios. Accordingly, the net impact of the legislation would critically hinge on the rate of contractor nonperformance and the degree to which the bill would lower that rate, but the OLS can determine neither the incidence of such nonperformance nor the changes the bill would bring to bear on it.

Under the bill, contracting public entities would be compensated for duff contractor performance by collecting surety payments from the newly required performance bonds equal to 110 percent of the financial assistance provided. In addition, contracting public entities would keep the amounts held in the escrow account (at least equal ten percent of the assistance provided). Under current law, the public entities are not reimbursed for their financial assistance if a subsidized project fails.

The bill may also lower the likelihood of a project collapse. Its new requirements would probably not substantially motivate otherwise feckless contractors to clean up their act, given that the surety would pay compensation to the contracting public entities in case of complications. But the bill could conceivably reduce the incidence of contractor nonperformance if the new requirements eliminated businesses from the contractor pool that are less likely to meet contract terms and conditions. The bill might also improve contractor performance since the increased oversight and project monitoring would allow public entities to initiate corrective actions when problems first emerge and can still be redressed.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

1 or tangible object with the intent to impede, obstruct, or influence
2 the investigation or proper administration of any matter within the
3 jurisdiction of any public entity in relation to any provision of this
4 act, shall be subject to the provisions of subsection a. of this
5 section.

6

7

10. This act shall take effect immediately except that the
8 provisions of sections 5 and 9 shall apply to any contract awarded
9 during calendar year 2004 and thereafter.

10

11

12

SPONSOR'S STATEMENT

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

This bill requires any business receiving any compensation,
grant, loan or other type of financial assistance in an aggregate
amount totaling \$25 million or more, for the cost of undertaking
any redevelopment project, project involving remediation, or
environmental infrastructure project pursuant to any contract or
contracts with any "public entity" as that term is defined in the bill,
to file annually with the public entity and with the State Treasurer,
by the first day of the 18th month following the awarding of the
contract, and annually thereafter for the duration of such contract or
contracts audited financial statements concerning the activities of
the project or projects and of such business including any parent or
holding company of the business, as prepared by an independent
certified public accountant. Such financial statements are to
include, but not be limited to, a balance sheet, statement of income
or loss, and statement of changes in financial position. If the
financial statements are not received by the public entity by the
deadlines established hereinabove, the public entity shall increase
the amount of the percentage of funds in the escrow account as
provided in the bill. The financial statement filing requirement
shall not apply to any business that is required to file such financial
statements under federal law or other State law.

35

36

37

38

39

40

41

42

43

44

45

46

47

48

The bill provides that if a "State governmental entity" as that
term is defined in the bill, enters into a contract or contracts with a
business to which the financial reporting requirements of the bill
apply, the State governmental entity shall notify the State Treasurer
of such contract and shall include the name of the project, the
nature of the project-related activity for which the financial
assistance is to be given, and any other information necessary for
the implementation of the provisions of this act. The State
Treasurer is to designate an employee of a single State
governmental entity to serve as the sole point of contact between
the business and every State governmental entity having any
manner or degree of oversight of, or involvement in, the project or
projects. The employee shall document all State governmental
entity activities associated with the project

1 The bill allows the Office of the State Comptroller to audit
2 private companies who receive public dollars, at least in terms of
3 auditing the use of the public funding, and require that funds
4 provided by a public entity are spent in accordance with the terms
5 of the contract.

6 The bill requires in any such contract that: 1) the business shall
7 spend a minimum of \$1 for every \$5 received from public funds on
8 any project cited in the contract; 2) the public entity shall place 10
9 percent of the total amount of funds provided for in the contract in
10 an escrow account, which shall not be disbursed to the business
11 until the successful completion of the project as certified by the
12 public entity; 3) the public entity shall review, at any time during
13 the term of the contract, the qualifications of any subcontractor
14 hired to perform work on the project or projects; and 4) the business
15 shall submit payment of a performance bond which shall be of an
16 amount equal to 110 percent of the total contract price.

17 The bill requires the business and its auditor to comply with
18 certain financial reporting and business auditor provisions, such as
19 business financial information disclosure within the financial
20 statements, business auditor independence, auditor conflicts of
21 interest, and accounting quality control standards. Similar
22 provisions are required under the "Sarbanes-Oxley Act of 2002,"
23 Pub.L. 107-204 (15 U.S.C. s.7201 et al.).

24 The bill provides that any recipient business that knowingly fails
25 to submit a financial statement or report, or that makes a material
26 misrepresentation in any application, report or other disclosure that
27 the recipient business is required to make pursuant to the bill shall
28 refund the amount of financial assistance to the granting public
29 entity or entities. The granting public entity or entities shall include
30 provisions for the refund as part of an agreement to provide
31 financial assistance and may pursue an action to collect the amount
32 of the refund plus any attorney fees and other costs of the action.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1769

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2009

The Senate State Government Committee reports favorably and with committee amendments Senate, No. 1769.

This bill, as amended, provides for the application of various matching, disclosure, performance assurance, monitoring, and other requirements whenever a business receives substantial public funding to support the cost of a redevelopment project, remediation project, or environmental infrastructure project, excluding in each case any facility for a qualified jobs relocation or retention program. "Public entities" under the bill include the State (other than the Judicial branch of State government); any county, municipality, district, or other political subdivision of the State; and any agency, authority, or instrumentality of any of the foregoing, including any county improvement authority and any economic development agency, authority, or other entity.

Upon disbursement to the business by one or more New Jersey public entities of project assistance aggregating \$50 million or more, the following rules and requirements would apply:

(1) Of the business's total spending on project costs, at least \$1 would have to come from other sources for every \$5 derived from the public entities;

(2) A public entity would be required to retain up to 10 percent of the amount of its assistance pending completion of the project, subject to any statutory or regulatory requirement for its retention or escrow of a greater amount;

(3) The public entity would have to review the qualifications of project subcontractors;

(4) The business would have to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(5) If any of the public funding were provided under a contract awarded otherwise than through fair and open procurement, the business would annually have to file audited financial statements for the project and for the business itself. The business, together with its auditor, would have to comply with various financial reporting and business auditor requirements (including financial information

disclosure, business auditor independence standards and conflict of interest rules, and accounting quality control standards) similar to those imposed under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15 U.S.C. s.7201 et al.); and

(6) The Office of the State Comptroller would be authorized to audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

In addition, the State Treasurer is directed, when the amount of assistance disbursed reaches \$50 million or at any other time that the Treasurer deems it necessary, to designate a "lead public agency" to serve as the sole point of contact between the business and every State governmental entity that oversees or is otherwise involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project would have to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation; The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation must refund the amount of financial assistance to the granting public entity or entities. In any action for the refund, the public entity or entities could also collect attorney fees and other costs of the action.

The provisions this bill, as amended, are identical to those of Assembly Bill No. 2650 (2R) Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS

The committee amended the bill to: (1) increase from \$25 million to \$50 million the threshold amount of public assistance that a business would have to receive before the various requirements prescribed under the bill would apply; (2) incorporate the exclusion of premises for jobs relocation and retention programs from projects, public funding of which could be subject to those requirements; (3) exclude, from the category of businesses covered under the legislation, private colleges and universities that finance capital facilities through New Jersey Educational Facilities Authority bonds that are secured by private assets; (4) add the exemption, from the financial statement filing requirement, for businesses receiving project funding awarded exclusively through a fair and open process; (5) specify that the amount of the performance bond is to be measured in terms of the cost of publicly funded improvements under the project; (6) clarify that disbursement of the threshold amount, rather than the award of a contract, is the event upon which the financial statement filing requirement becomes applicable; (7) provide explicitly that the State Treasurer shall monitor State entity funding of projects prior to

disbursement of sums in excess of the \$50 million threshold level; (8) provide that the Treasurer's designee as the "sole point of contact" between the business and State agencies on project-related matters shall be the "lead public agency," rather than a State employee; (9) authorize the designation to be made at any time the Treasurer deems it necessary, rather than only when assistance disbursements reach the threshold level; and (10) make other minor clarifying and editorial changes.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1769

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2009

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1769 (1R), with committee amendments.

This bill, as amended, provides for the application of various matching, disclosure, performance assurance, monitoring, and other requirements whenever a business receives substantial financial assistance from a New Jersey public entity to support the cost of a redevelopment project, remediation project, or environmental infrastructure project, excluding in each case any facility for a qualified jobs relocation or retention program. "Public entities" under the bill include the State (other than the Judicial branch of State government); any county, municipality, district, or other political subdivision of the State; and any agency, authority, or instrumentality of any of the foregoing, including any county improvement authority and any economic development agency, authority, or other entity.

Upon disbursement to the business by one or more New Jersey public entities of project assistance aggregating \$50 million or more, the following rules and requirements would apply:

(1) Of the business's total spending on project costs, at least \$1 would have to come from other sources for every \$5 derived from the public entities;

(2) A public entity would be required to retain up to 10 percent of the amount of its assistance pending completion of the project, subject to any statutory or regulatory requirement for its retention or escrow of a greater amount;

(3) The public entity would have to review the qualifications of project subcontractors;

(4) The business would have to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(5) The business would annually have to file audited financial statements for the project and for the business itself. The business, together with its auditor, would have to comply with various financial reporting and business auditor requirements (including financial

information disclosure, business auditor independence standards and conflict of interest rules, and accounting quality control standards) similar to those imposed under the federal "Sarbanes-Oxley Act of 2002," Pub.L. 107-204 (15 U.S.C. s.7201 et al.); and

(6) The Office of the State Comptroller would be authorized to audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

In addition, the State Treasurer is directed, when the amount of assistance disbursed reaches \$50 million or at any other time that the Treasurer deems it necessary, to designate a "lead public agency" to serve as the sole point of contact between the business and every State governmental entity that oversees or is otherwise involved in the project. Any State governmental entity contracting with a business to provide financial assistance on a project would have to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation.

The bill provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation must refund the amount of financial assistance to the granting public entity or entities. In any action for the refund, the public entity or entities could also collect attorney fees and other costs of the action.

The provisions of this bill, as amended, are identical to those of Assembly Bill No. 2650 (3R) Sca, which the committee also reports this day.

COMMITTEE AMENDMENTS:

Committee amendments to the bill: (1) add public colleges and universities to the group of higher education institutions excluded from the class of "businesses" covered under the bill; (2) limit the type of public funding covered by the bill to "financial assistance," defined under the amendments as grants and loans of funds, including funds derived from proceeds of tax exempt bonds issued by the public entity making the grant or loan; (3) add the "urban transit hub tax credit" program to the list of employment incentive programs, support from which would qualify a facility for exemption from coverage under the bill as a publicly subsidized project; and (4) delete a provision that exempts funding provided under contracts awarded through a "fair and open process" from being considered "financial assistance" to be counted in determining attainment of the \$50 million threshold for application of the bill's financial reporting requirement under section 3.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this bill. The OLS estimates, however, that the bill will effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill will regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity will receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduces the incidence of contractor nonperformance.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 1769

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JUNE 30, 2009

SUMMARY

- Synopsis:** Establishes requirements concerning certain public contracts with private firms.
- Type of Impact:** Increased recurring expenditures by State and local governments and reduced risk of financial loss.
- Agencies Affected:** Department of the Treasury;
Public entities providing certain types of financial assistance to businesses in support of redevelopment, remediation or environmental infrastructure projects.

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012
State Cost	Indeterminate - See comments below		
Local Cost	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

BILL DESCRIPTION

Senate Bill No. 1769 (2R) of 2008 imposes new requirements on businesses receiving \$50 million or more in public financial assistance for undertaking a redevelopment, remediation or

environmental infrastructure project:

(1) The business must spend at least \$1 of nonpublic moneys on the project for every \$5 derived from public entities;

(2) A public entity has to retain up to 10 percent of the amount of its assistance pending completion of the project;

(3) The business has to post a performance bond equal to at least 110 percent of the cost of publicly funded improvements under the project;

(4) The public entity has to review the qualifications of project subcontractors;

(5) The business must file annually with the contracting public entity and the State Treasurer for the duration of the contract audited financial statements concerning the activities of the project and of the business. The financial statements and their preparation must comply with financial reporting and business auditor standards established by the bill;

(6) The State Treasurer designates a public agency to serve as the sole point of contact between the business and every State governmental entity that is involved in the project. The State Treasurer may designate a sole point of contact even if the public assistance is less than \$50 million if the State Treasurer deems it necessary. Any State governmental entity contracting with a business to provide financial assistance on a project has to notify the Treasurer of the contract and provide information necessary to monitor disbursements of assistance and otherwise carry out the provisions of the legislation; and

(7) The Office of the State Comptroller may audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

The bill also provides that any recipient business that knowingly fails to submit a financial statement or report, or that makes a material misrepresentation in any required disclosure must refund the financial assistance to the granting public entity.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this legislation. It estimates, however, that the bill would effectively function as an insurance policy for governmental entities that provide at least \$50 million in public financial assistance to businesses undertaking redevelopment, remediation or environmental infrastructure projects. The bill would regularly increase the cost to State and local governments of undertaking such projects, as the size of the assistance to contractors would rise along with the governments' cost of administering the contracts. But if a contractor failed to perform the services pursuant to the terms and conditions of the contract, the governmental entity would receive surety payments that would offset in full or in part the cost of complying with the bill. Additional benefits would be realized if the bill reduced the incidence of contractor nonperformance.

Administrative Expenses: The legislation would affect governments' administration of contracts falling under the bill's purview threefold. The OLS, however, projects that only two impacts would increase administrative expenses, while the third impact would likely be cost-neutral.

First, the Department of the Treasury would incur additional costs as it would become the central repository for all required documents, which it might also review. In addition, the bill charges the Treasury with coordinating the administration of contracts signed by State governmental entities.

Second, the bill would also increase the contracting public entity's cost of administering the contract, as the public entity would have to review additional documents.

Third, the bill authorizes the Office of the State Comptroller to audit contractors with regard to the use of the public assistance. The OLS does not anticipate, however, that this authority would result in additional costs as these audits would be optional. Even if the State Comptroller opted to conduct such an audit, the State Comptroller's limited resources would necessitate a resource reallocation away from audits that would have been otherwise pursued.

Amount of Public Assistance: The OLS expects the bill to push up the amount of public assistance governments would have to provide for concerned capital projects. One part of the increase would stem from the increased expenses the bill would impose on contractors by means of several new requirements. Contractors would probably pass the additional expenses on to contracting public agencies. But the requirements could also function as a barrier to entry most notably for companies that are not publicly traded, which reduction in the number of potential contractors would increase the pricing power of interested businesses.

The bill would add to the cost of every contractor in requiring the posting of a performance bond equal to 110 percent of the public assistance provided. Performance bond premiums vary from less than one percent of the bond size to 20 percent. The bill would also require public entities to hold at least ten percent of the amount of the public assistance in an escrow account until the project's successful completion. This delay would adversely affect contractors, for they could not earn interest on the amounts held in escrow and might experience a temporary cash-flow problem necessitating the temporary borrowing of funds in the financial market. In addition, contractors may also price the risk into the contract of having to refund the financial assistance if the public entity determines that it knowingly failed to submit a required financial statement or made a material misrepresentation of fact in any filing.

The bill would also impose new financial reporting and auditing requirements similar to those imposed under the federal "Sarbanes-Oxley Act of 2002" if public funding were provided under a contract awarded otherwise than through fair and open procurement. Since that federal act applies exclusively to publicly traded companies, these companies would not be affected by the bill's new reporting and auditing requirements. They would, however, produce a financial effect on private companies. According to an August 2007 study by Foley & Lardner LLP, "The Cost of Being Public in the Era of Sarbanes-Oxley", the act increased the average cost of public companies with annual revenue under \$1 billion by \$2.4 million at its peak (from \$1.0 million before the reform in fiscal year 2001 to \$3.4 million in fiscal year 2004). Due to efficiencies the annual cost increase over fiscal year 2001 was only \$1.8 million in fiscal year 2006 to a total cost of \$2.8 million. While the study overestimates the impact of Sarbanes-Oxley, it nonetheless appears that the act has increased public companies' auditing expenditures substantially. (The study overestimates the impact by assuming that the entire increase in the cost of being a public company from fiscal year 2001 to 2006 was due to Sarbanes-Oxley, but inflation would have affected the cost of auditing and related services even absent the act; the study fails to adjust its Sarbanes-Oxley estimate downward for the inflation factor.)

All these new requirements could erect a barrier to entry for potential competitors, especially for businesses that are not publicly traded. Instead of complying with the new standards, firms may decide to avoid the additional expense by not seeking to undertake a project. Fewer contracting options would hence exist for public entities. Having acquired more pricing power,

the remaining competitor(s) could angle for a more significant markup by demanding more public assistance as a condition of undertaking a project.

Reduced Risk of Financial Loss: The legislation would curb the risk of financial loss to governments engaging in contracts subject to the provisions of this bill. Specifically, governments would realize a benefit if one of the following scenarios materialized: a business fails to meet its contractual obligations or the new requirements decrease the incidence of contractor nonperformance. While the benefits of reduced financial exposure would offset the bill's cost at least in part, it is unclear whether it would do so fully. This uncertainty persists because public entities would incur the bill's cost on every contract. The gains, on the other hand, would accrue only under the above scenarios. Accordingly, the net impact of the legislation would critically hinge on the rate of contractor nonperformance and the degree to which the bill would lower that rate, but the OLS can determine neither the incidence of such nonperformance nor the changes the bill would bring to bear on it.

Under the bill, contracting public entities would be compensated for duff contractor performance by collecting surety payments from the newly required performance bonds equal to 110 percent of the financial assistance provided. In addition, contracting public entities would keep the amounts held in the escrow account (at least equal ten percent of the assistance provided). Under current law, the public entities are not reimbursed for their financial assistance if a subsidized project fails.

The bill may also lower the likelihood of a project collapse. Its new requirements would probably not substantially motivate otherwise feckless contractors to clean up their act, given that the surety would pay compensation to the contracting public entities in case of complications. But the bill could conceivably reduce the incidence of contractor nonperformance if the new requirements eliminated businesses from the contractor pool that are less likely to meet contract terms and conditions. The bill might also improve contractor performance since the increased oversight and project monitoring would allow public entities to initiate corrective actions when problems first emerge and can still be redressed.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

Governor
HomeMeet the
GovernorGovernor's Office
Executive Staff

Cabinet

Newsroom

Boards, Commissions
and Authorities

Photo Blog

For Kids

Event Photos

Features

Press Releases

Featured Videos

Audio Clips

Newsletters

Speeches

Executive Orders

RSS Feeds

[Home](#) > [Newsroom](#) > [Press Releases](#) > [2009](#) > Oct-12-09 Governor Corzine Signs EnCap Reform LegislationJON S. CORZINE
Governor**For Immediate Release:**
Date: October 12, 2009**For More Information:**
Robert Corrales**Phone:** 609-777-2600

Governor Corzine Signs EnCap Reform Legislation

NORTH ARLINGTON - Further strengthening oversight and safeguarding public investment in private sector redevelopment remediation projects, Governor Jon S. Corzine today signed A-2650/ S-1769. Known as the EnCap Reform bill, the legislation requires businesses receiving any combination of financial assistance totaling more than \$50 million to file annual, independently audited financial statements with the State Treasurer as well as each entity from which financing was secured.

"Today, we are putting in place aggressive reforms that will ensure a similar situation is not repeated in the Garden State," said Governor Corzine. "Had these safeguards been in effect prior to EnCap, the project would have been shut down at the first sign of trouble. As stewards of public resources, we must remain vigilant in our efforts to maintain public trust through accountability and transparency. This bill accomplishes that goal."

For any qualifying contract, the bill specifies that 1) the private business spend a minimum of \$1 for every \$5 received in public funds; 2) the public entity reserve 10 percent of the total funds approved to be disbursed upon the successful completion of the project; and 3) the private business submit payment of a performance bond, the amount of which would be tied to the project costs attributable to the publicly funded improvements.

"Quite simply, the public cannot afford to finance another EnCap-style debacle," said Assemblyman Gary Schaer (D-Passaic/Bergen/Essex). "Putting these protections in place will help ensure that the mistakes made with EnCap cannot and will not be repeated. EnCap's failure highlighted the need for more oversight in the way the state provides public money for private redevelopment. The breakdown of checks and balances that precipitated EnCap's collapse must not happen again."

Through Governor Corzine's commitment and leadership, AIG is now honoring its obligation to fund the cleanup of the Meadowlands site. That cleanup is currently underway.

"Bergen County learned an expensive lesson that it cannot rely on an honor system of handshakes, winks and nods when it comes to multi-million dollar redevelopment deals," said Assemblyman Fred Scalera (D-Essex/Bergen/Passaic). "This boondoggle could have been stopped at the very first sign of trouble had these reforms been in place sooner. We can never again allow the public's trust to be undermined in such a way. We must make certain that part of the EnCap project's legacy includes the preventative measure and proactive protections that will secure future public-private redevelopment partnerships."

Failure to comply with the financial statement reporting deadlines now required by the legislation would result in an increase in the amount of public money kept in escrow. Any business that knowingly fails to submit a financial statement or purposefully misrepresents the businesses finances would be required to refund the full amount of the public financial assistance.

"Public-private partnerships represent a necessary tool for economic growth, but the taxpaying public in New Jersey deserves some guarantees for its investment," said Senator Gordon, (D-Bergen). "As we saw with EnCap, a lack of financing and transparency standards for private redevelopers allowed an unscrupulous organization to dupe public entities at all levels of government to the tune of millions of dollars. This law will ensure more honest fiscal reporting and increased private investment in publicly-financed projects, or funds would have to be returned to the public agencies involved."

In addition, State Comptroller may audit the business's use of any public funds to which the legislation applies and its expenditure of other funds on the project.

"In the race for ratables and sustained economic growth, many public entities become blinded by the proposed benefits, and fail to do their due diligence

in applying scrutiny to private redevelopers," said Senator Loretta Weinberg (D-Bergen). "While this new law will act as a disincentive for the sort of EnCap-style financing and fraud which has cost New Jerseyans so dearly, public officials have a responsibility to act as whistleblowers whenever corruption, waste and abuse rear their ugly heads. This law gives us the tools to reclaim public funds spent through hoaxes perpetrated by private redevelopment and remediation firms, but as stewards of the public trust, we have to do a better job to root out the wasting of taxpayer funds in whatever form it may take."

###

Get our press releases via RSS at: <feed://nj.gov/governor/news/news/2009/approved/rss.xml>

Photos from Governor Corzine's public events are available at www.nj.gov/governor/news

Video from the Governor's Office is available at www.nj.gov/governor/news/video and www.youtube.com/user/jonscorzine

[Contact Us](#) | [Privacy Notice](#) | [Legal Statement](#) | [Accessibility Statement](#)



Statewide: [NJ Home](#) | [Services A to Z](#) | [Departments/Agencies](#) | [FAQs](#)
Office of the Governor: [Governor Home](#) | [Meet the Governor](#) | [Executive Staff](#) | [Cabinet](#) | [Newsroom](#) | [Boards, Commissions and Authorities](#) | [Photo Blog](#) | [For Kids](#)

Copyright © State of New Jersey, 1996-2009
Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000