

# ASSEMBLY, No. 1753

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Assemblyman TROY SINGLETON**

**District 7 (Burlington)**

**Assemblyman DAVID P. RIBLE**

**District 30 (Monmouth and Ocean)**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Co-Sponsored by:**

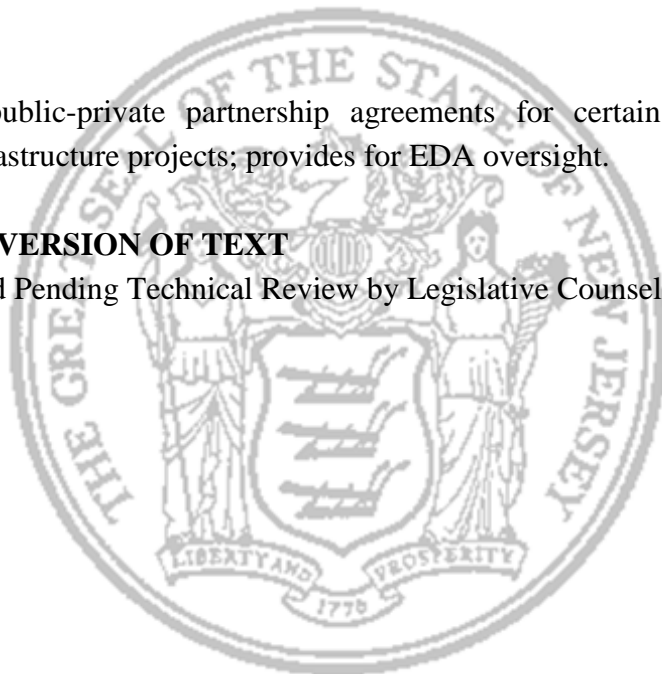
**Assemblywoman Handlin and Assemblyman Eustace**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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

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

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

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **【2015, or on August 2, 2016】** 2020, including in the case of an  
2 application submitted pursuant to paragraph (2) of subsection a. of  
3 this section, shall not be eligible for consideration.

4 (2) (a) In order for an application to be complete and  
5 considered by the authority, the application shall include, but not be  
6 limited to: (i) a full description of the proposed public-private  
7 partnership agreement between the State or county college and the  
8 private developer; (ii) a full description of the project, including a  
9 description of any agreement for the lease of a revenue-producing  
10 facility related to the project; (iii) the estimated costs and financial  
11 documentation for the project; (iv) a timetable for completion of the  
12 construction of the project extending no more than five years after  
13 consideration and approval; and (v) any other requirements that the  
14 authority deems appropriate or necessary.

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

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

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

42 **【Where no public fund has been established for the financing of**  
43 **a public improvement, the chief financial officer of the public**  
44 **owner shall require the private entity for whom the public**  
45 **improvement is being made to post, or cause to be posted, a bond**  
46 **guaranteeing prompt payment of moneys due to the contractor, his**  
47 **or her subcontractors and to all persons furnishing labor or**



1 materials to the contractor or his or her subcontractors in the  
2 prosecution of the work on the public improvement.】

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

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

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

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

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

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

1 publication, proposals meeting the standards of this section from  
2 other private entities for eligible projects that satisfy the same basic  
3 purpose and need. A copy of the notice shall be mailed to each  
4 municipal and county local government body in the geographic area  
5 affected by the proposal.

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

18 (4) The State or county college may require that the private  
19 entity assume responsibility for all costs incurred by the State or  
20 county college before execution of the public-private partnership  
21 agreement, including costs of retaining independent experts to  
22 review, analyze, and advise the State or county college with respect  
23 to the proposal.

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

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

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

- 1       6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read  
2 as follows:
- 3       5. The authority shall have the following powers:
- 4       a. To adopt bylaws for the regulation of its affairs and the  
5 conduct of its business;
- 6       b. To adopt and have a seal and to alter the same at pleasure;
- 7       c. To sue and be sued;
- 8       d. To acquire in the name of the authority by purchase or  
9 otherwise, on such terms and conditions and such manner as it may  
10 deem proper, or by the exercise of the power of eminent domain in  
11 the manner provided by the "Eminent Domain Act of 1971,"  
12 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or  
13 other property which it may determine is reasonably necessary for  
14 any project; provided, however, that the authority in connection  
15 with any project shall not take by exercise of the power of eminent  
16 domain any real property except upon consent thereto given by  
17 resolution of the governing body of the municipality in which such  
18 real property is located; and provided further that the authority shall  
19 be limited in its exercise of the power of eminent domain in  
20 connection with any project in qualifying municipalities as defined  
21 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to  
22 municipalities which had a population, according to the latest  
23 federal decennial census, in excess of 10,000;
- 24       e. To enter into contracts with a person upon such terms and  
25 conditions as the authority shall determine to be reasonable,  
26 including, but not limited to, reimbursement for the planning,  
27 designing, financing, construction, reconstruction, improvement,  
28 equipping, furnishing, operation and maintenance of the project and  
29 to pay or compromise any claims arising therefrom;
- 30       f. To establish and maintain reserve and insurance funds with  
31 respect to the financing of the project or the school facilities project  
32 and any project financed pursuant to the "Municipal Rehabilitation  
33 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-  
34 1 et al.);
- 35       g. To sell, convey or lease to any person all or any portion of a  
36 project for such consideration and upon such terms as the authority  
37 may determine to be reasonable;
- 38       h. To mortgage, pledge or assign or otherwise encumber all or  
39 any portion of a project, or revenues, whenever it shall find such  
40 action to be in furtherance of the purposes of this act, P.L.2000,  
41 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
42 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
43 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
44 P.L.2009, c.90 (C.52:27D-489c et al.);
- 45       i. To grant options to purchase or renew a lease for any of its  
46 projects on such terms as the authority may determine to be  
47 reasonable;

1 j. To contract for and to accept any gifts or grants or loans of  
2 funds or property or financial or other aid in any form from the  
3 United States of America or any agency or instrumentality thereof,  
4 or from the State or any agency, instrumentality or political  
5 subdivision thereof, or from any other source and to comply,  
6 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),  
7 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,  
8 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
9 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
10 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and  
11 conditions thereof;

12 k. In connection with any action undertaken by the authority in  
13 the performance of its duties and any application for assistance or  
14 commitments therefor and modifications thereof, to require and  
15 collect such fees and charges as the authority shall determine to be  
16 reasonable, including but not limited to fees and charges for the  
17 authority's administrative, organizational, insurance, operating,  
18 legal, and other expenses;

19 l. To adopt, amend and repeal regulations to carry out the  
20 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of  
21 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),  
22 the "Municipal Rehabilitation and Economic Recovery Act,"  
23 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,  
24 c.137 (C.52:18A-235 et al.);

25 m. To acquire, purchase, manage and operate, hold and dispose  
26 of real and personal property or interests therein, take assignments  
27 of rentals and leases and make and enter into all contracts, leases,  
28 agreements and arrangements necessary or incidental to the  
29 performance of its duties;

30 n. To purchase, acquire and take assignments of notes,  
31 mortgages and other forms of security and evidences of  
32 indebtedness;

33 o. To purchase, acquire, attach, seize, accept or take title to any  
34 project or school facilities project by conveyance or by foreclosure,  
35 and sell, lease, manage or operate any project or school facilities  
36 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1  
37 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"  
38 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-  
39 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-  
40 489c et al.);

41 p. To borrow money and to issue bonds of the authority and to  
42 provide for the rights of the holders thereof, as provided in  
43 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,  
44 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the  
45 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,  
46 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
47 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

1 q. To extend credit or make loans to any person for the  
2 planning, designing, acquiring, constructing, reconstructing,  
3 improving, equipping and furnishing of a project or school facilities  
4 project, which credits or loans may be secured by loan and security  
5 agreements, mortgages, leases and any other instruments, upon such  
6 terms and conditions as the authority shall deem reasonable,  
7 including provision for the establishment and maintenance of  
8 reserve and insurance funds, and to require the inclusion in any  
9 mortgage, lease, contract, loan and security agreement or other  
10 instrument, of such provisions for the construction, use, operation  
11 and maintenance and financing of a project or school facilities  
12 project as the authority may deem necessary or desirable;

13 r. To guarantee up to 90% of the amount of a loan to a person,  
14 if the proceeds of the loan are to be applied to the purchase and  
15 installation, in a building devoted to industrial or commercial  
16 purposes, or in an office building, of an energy improvement  
17 system;

18 s. To employ consulting engineers, architects, attorneys, real  
19 estate counselors, appraisers, and such other consultants and  
20 employees as may be required in the judgment of the redevelopment  
21 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-  
22 1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,  
23 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
24 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
25 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
26 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their  
27 compensation from funds available to the redevelopment utility  
28 therefor, all without regard to the provisions of Title 11A of the  
29 New Jersey Statutes;

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

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

41 v. To do any and all things necessary or convenient to carry out  
42 its purposes and exercise the powers given and granted in P.L.1974,  
43 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-  
44 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal  
45 Rehabilitation and Economic Recovery Act," P.L.2002,  
46 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
47 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

1 w. To construct, reconstruct, rehabilitate, improve, alter, equip,  
2 maintain or repair or provide for the construction, reconstruction,  
3 improvement, alteration, equipping or maintenance or repair of any  
4 development property and lot, award and enter into construction  
5 contracts, purchase orders and other contracts with respect thereto,  
6 upon such terms and conditions as the authority shall determine to  
7 be reasonable, including, but not limited to, reimbursement for the  
8 planning, designing, financing, construction, reconstruction,  
9 improvement, equipping, furnishing, operation and maintenance of  
10 any such development property and the settlement of any claims  
11 arising therefrom and the establishment and maintenance of reserve  
12 funds with respect to the financing of such development property;

13 x. When authorized by the governing body of a municipality  
14 exercising jurisdiction over an urban growth zone, to construct,  
15 cause to be constructed or to provide financial assistance to projects  
16 in an urban growth zone which shall be exempt from the terms and  
17 requirements of the land use ordinances and regulations, including,  
18 but not limited to, the master plan and zoning ordinances, of such  
19 municipality;

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

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

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

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

42 cc. Subject to any agreement with holders of its bonds issued to  
43 finance a project or school facilities project, obtain as security or to  
44 provide liquidity for payment of all or any part of the principal of  
45 and interest and premium on the bonds of the authority or for the  
46 purchase upon tender or otherwise of the bonds, lines of credit,  
47 letters of credit, reimbursement agreements, interest rate exchange  
48 agreements, currency exchange agreements, interest rate floors or

1 caps, options, puts or calls to hedge payment, currency, rate, spread  
2 or similar exposure or similar agreements, float agreements,  
3 forward agreements, insurance contract, surety bond, commitment  
4 to purchase or sell bonds, purchase or sale agreement, or  
5 commitments or other contracts or agreements, and other security  
6 agreements or instruments in any amounts and upon any terms as  
7 the authority may determine and pay any fees and expenses required  
8 in connection therewith;

9 dd. To charge to and collect from local units, the State and any  
10 other person, any fees and charges in connection with the  
11 authority's actions undertaken with respect to school facilities  
12 projects, including, but not limited to, fees and charges for the  
13 authority's administrative, organization, insurance, operating and  
14 other expenses incident to the financing of school facilities projects;

15 ee. To make loans to refinance solid waste facility bonds  
16 through the issuance of bonds or other obligations and the execution  
17 of any agreements with counties or public authorities to effect the  
18 refunding or rescheduling of solid waste facility bonds, or otherwise  
19 provide for the payment of all or a portion of any series of solid  
20 waste facility bonds. Any county or public authority refunding or  
21 rescheduling its solid waste facility bonds pursuant to this  
22 subsection shall provide for the payment of not less than fifty  
23 percent of the aggregate debt service for the refunded or  
24 rescheduled debt of the particular county or public authority for the  
25 duration of the loan; except that, whenever the solid waste facility  
26 bonds to be refinanced were issued by a public authority and the  
27 county solid waste facility was utilized as a regional county solid  
28 waste facility, as designated in the respective adopted district solid  
29 waste management plans of the participating counties as approved  
30 by the department prior to November 10, 1997, and the utilization  
31 of the facility was established pursuant to tonnage obligations set  
32 forth in their respective interdistrict agreements, the public  
33 authority refunding or rescheduling its solid waste facility bonds  
34 pursuant to this subsection shall provide for the payment of a  
35 percentage of the aggregate debt service for the refunded or  
36 rescheduled debt of the public authority not to exceed the  
37 percentage of the specified tonnage obligation of the host county for  
38 the duration of the loan. Whenever the solid waste facility bonds are  
39 the obligation of a public authority, the relevant county shall  
40 execute a deficiency agreement with the authority, which shall  
41 provide that the county pledges to cover any shortfall and to pay  
42 deficiencies in scheduled repayment obligations of the public  
43 authority. All costs associated with the issuance of bonds pursuant  
44 to this subsection may be paid by the authority from the proceeds of  
45 these bonds. Any county or public authority is hereby authorized to  
46 enter into any agreement with the authority necessary, desirable or  
47 convenient to effectuate the provisions of this subsection.

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

5 ff. To pool loans for any local government units that are  
6 refunding bonds and do and perform any and all acts or things  
7 necessary, convenient or desirable for the purpose of the authority  
8 to achieve more favorable interest rates and terms for those local  
9 governmental units;

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

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

20 ii. To finance or develop private or public parking facilities or  
21 structures, which may include the use of solar photovoltaic  
22 equipment, in municipalities qualified to receive State aid pursuant  
23 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and  
24 municipalities that contain areas designated pursuant to P.L.1985,  
25 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),  
26 Planning Area 2 (Suburban), or a town center, and to provide  
27 appropriate assistance, including but not limited to, extensions of  
28 credit, loans, and guarantees, to municipalities qualified to receive  
29 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-  
30 178 et seq.) and municipalities that contain areas designated  
31 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning  
32 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town  
33 center, and their agencies and instrumentalities or to private entities  
34 whose projects are located in those municipalities, in order to  
35 facilitate the financing and development of parking facilities or  
36 structures in such municipalities. The authority may serve as the  
37 issuing agent of bonds to finance the undertaking of a project for  
38 the purposes of this subsection; and

39 jj. To consider, review, amend, and approve public-private  
40 partnership agreements for certain building or highway  
41 infrastructure development projects entered into by a private entity  
42 and a local government unit, a school district, a State government  
43 entity, or the New Jersey Institute of Technology pursuant to  
44 sections 1 through 4 of P.L. , c. (C. through C. ) (pending  
45 before the Legislature as this bill) or by a private entity and a State  
46 or county college pursuant to section 43 of P.L.2009, c.90  
47 (C.18A:64-85), for the purposes set forth therein, and provide to a  
48 private entity that is a party to an agreement any tax-exempt private



1 activity bond financing under terms and conditions established by  
2 the authority and as otherwise authorized under State or federal law.  
3 (cf: P.L.2010, c.28, s.3)  
4

5 7. (New section) The New Jersey Economic Development  
6 Authority shall post on its official website the status of each public-  
7 private partnership agreement subject to its consideration, review,  
8 amendment, or approval under subsection jj. of section 5 of  
9 P.L.1974, c.80 (C.34:1B-5), indicating the status of each agreement  
10 by designating it as a proposed, under review, or active public-  
11 private partnership project.  
12

13 8. This act shall take effect immediately.  
14  
15

16 STATEMENT  
17

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

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

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

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

1 Under the bill a public-private partnership project may be  
2 structured using availability payments as a financing method.  
3 However, the bundling of multiple projects would be prohibited. In  
4 addition, roadway or highway projects must include an expenditure of  
5 at least \$10 million in public funds or any expenditure in private funds.  
6 A private entity would be required to establish a construction account  
7 to fully capitalize and fund the project, while the general contractor,  
8 construction manager, or design-build team would be required to post  
9 performance and payment bonds, instead of the chief financial officer  
10 of the public entity. A contractor would be precluded from engaging  
11 in a project having an expenditure of under \$50 million if the  
12 contractor contributed more than 10% of the project's financing. All  
13 projects would be required to undergo a procurement process  
14 established under the bill.

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