

ASSEMBLY, No. 1417

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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SYNOPSIS

“Government Energy Reliability and Savings Public-Private Partnership Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/17/2015)

1 **AN ACT** concerning governmental energy public-private partnership
2 agreements and supplementing Title 52 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the
8 “Government Energy Reliability and Savings Public-Private
9 Partnership Act.”

10

11 2. a. The Legislature finds and declares that:

12 (1) It is the public policy of this State to assure that the State’s
13 energy infrastructure is developed and maintained in a manner that
14 assures, to the greatest extent possible, the adequate, reliable, and
15 continuing delivery of energy services to the State and, in
16 particular, to the critical governmental facilities that provide
17 necessary lifeline services to the State’s citizens and businesses;

18 (2) The increasing magnitude and frequency of weather events,
19 such as Hurricane Irene and Superstorm Sandy, and the devastation
20 they inflicted on the State, have revealed the vulnerability,
21 inadequacies, and obsolescence of the State’s energy infrastructure,
22 which has failed, sometimes for prolonged periods of time, to
23 provide adequate, reliable, and continuing service to the State and
24 its citizens and businesses;

25 (3) These weather events, and the current condition of the
26 State’s aging energy infrastructure, underscore the substantial and
27 immediate need for the State to improve the reliability of energy
28 services provided to critical State, county, and municipal facilities
29 to provide lifeline services, including medical facilities, police and
30 fire departments, water and wastewater treatment facilities, shelters,
31 colleges, universities, schools, and prisons in this State;

32 (4) The reliability and efficiency of the State’s energy
33 infrastructure will be improved if the State encourages the
34 development of the governmental energy-related projects
35 contemplated by P.L. , c. (C.) (pending before the
36 Legislature as this bill), which will enhance the production and
37 delivery of energy, improve the energy efficiency of governmental
38 facilities, reduce energy costs and greenhouse gas emissions, create
39 jobs, and promote economic development; and

40 (5) The need to upgrade the State’s energy infrastructure comes
41 at a time of fiscal austerity and budgetary restraint. The State
42 continues to be impacted by a global economic crisis that has
43 affected, and will continue to affect, all governmental entities in the
44 State. Governmental entities have witnessed dramatic reductions in
45 available revenues as a consequence of the economic recession and
46 weather-related catastrophes, among other things, and the scarcity
47 of revenues, and reduced private sector investment, which has

1 adversely affected, and will continue to adversely affect, the ability
2 of State, county, and municipal governmental entities to make
3 needed investments in energy infrastructure.

4 b. The Legislature therefore determines that:

5 (1) It shall be the public policy of this State to foster
6 governmental energy-related public-private partnerships to enable
7 governmental entities to partner with private entities to develop
8 needed state-of-the-art, energy-related projects that will obviate or
9 minimize the need for capital investments in these projects by
10 governmental entities;

11 (2) In order to foster the governmental energy-related projects
12 contemplated by P.L. , c. (C.) (pending before the
13 Legislature as this bill), it is necessary and appropriate for the
14 Legislature to allow public-private partnerships to be established in
15 order to leverage private sector financial resources and expertise
16 and to permit governmental and private entities to share the
17 responsibilities and benefits of such projects;

18 (3) Current economic conditions, together with the critical and
19 immediate need to improve the State's energy infrastructure,
20 compel the State to pursue the energy-related public-private
21 partnerships contemplated by P.L. , c. (C.) (pending before
22 the Legislature as this bill), which will enhance the reliability and
23 efficiency of the State's energy infrastructure by introducing state-
24 of-the-art energy technologies that will enhance fuel supply
25 diversity, increase energy efficiency, expand the use of renewable
26 energy resources, reduce energy costs and greenhouse gas
27 emissions, and promote economic development and local job
28 creation, thereby insuring a better and more prosperous future for
29 the State and its citizens; and

30 (4) The energy-related public-private partnerships contemplated
31 by P.L. , c. (C.) (pending before the Legislature as this bill)
32 will encourage private capital investment and leverage the
33 technical, financial, and management expertise of the private sector
34 to enable the governmental entities of this State, that might
35 otherwise lack the necessary resources or expertise, to design,
36 develop, own, manage, operate, and maintain state-of-the-art
37 energy-related projects in partnership with private entities.

38
39 3. As used in P.L. , c. (C.) (pending before the
40 Legislature as this bill);

41 "Board" means the Board of Public Utilities or any successor
42 agency.

43 "Energy P3 Unit" means the "Energy Public-Private Partnership
44 Unit" established pursuant to section 7 of P.L. , c. (C.)
45 (pending before the Legislature as this bill).

46 "Energy-related project" or "project" means a project developed
47 for a new or existing facility or facilities, owned by a governmental

1 entity, that involves the use of energy efficiency, energy
2 conservation, energy optimization, renewable energy, or demand
3 side management measures including, but not limited to, the
4 installation of energy efficient appliances, lighting, motors, and
5 other energy or water conservation measures, and demand response;
6 cogeneration and combined heat and power plants, fuel cells,
7 district energy systems, and micro grids; Class I and Class II
8 renewable energy resources, as those terms are defined in section 3
9 of P.L.1999, c.23 (C.48:3-51), including solar photovoltaic
10 technologies, wind energy, geothermal energy, biomass, biogas,
11 waste-to-energy and waste water-to-energy technologies, resource
12 recovery, and hydroelectric power facilities. “Energy-related
13 project” shall not include a self-funded energy efficiency project
14 that is authorized pursuant to the provisions of P.L.2009, c.4
15 (C.18A:18A-4.6 et al.) or P.L.2012, c.55 (C.52:34-25.1 et al.).

16 “Governmental entity” means the State, its subdivisions, and the
17 departments, agencies, commissions, authorities, boards and
18 instrumentalities thereof, a county, a municipality, a board of
19 education, a State college or university, a county community
20 college, a regional or municipal utility or utility authority, and a
21 municipal corporation. “Governmental entity” may include a
22 combination of governmental entities as defined herein.
23 “Governmental entity” shall not mean a municipal electric utility
24 established pursuant to R.S.40:62-12.

25 “Private entity” means a person, a combination of persons, a
26 business entity, a combination of business entities, or a combination
27 of persons and business entities. “Private entity” shall not include a
28 public utility as defined in R.S.48:2-13.

29 “Public-private partnership agreement” or “agreement” means an
30 agreement entered into by a governmental entity and a private entity
31 pursuant to section 4 of P.L. , c. (C.) (pending before the
32 Legislature as this bill) for the purposes of undertaking an energy-
33 related project.

34
35 4. A governmental entity may enter into a public-private
36 partnership agreement with a private entity, pursuant to the
37 provisions of P.L. , c. (C.) (pending before the Legislature
38 as this bill) and subject to the approval of the Energy P3 Unit. A
39 public-private partnership agreement shall permit a private entity to
40 develop, design, build, operate, or maintain, one or more energy-
41 related projects, and to assume financial, operational, and
42 administrative responsibility for one or more energy-related
43 projects, in partnership with a governmental entity. Such energy-
44 related projects may involve the construction, reconstruction,
45 alteration, or improvement of one or more buildings, structures, or
46 facilities owned, or to be owned, by the governmental entity,
47 provided that the private entity is responsible for the performance of

1 each such energy-related project, as the case may be, and the
2 governmental entity retains full ownership of the land upon which
3 the energy-related project is developed. No particular method or
4 structure of project financing shall be required of a private entity,
5 unless such method or structure of project financing or, if
6 applicable, provision for ownership and title transfer to the
7 governmental entity at the end of the term of the agreement, is
8 clearly described by the governmental entity in any formal
9 authorized solicitation process for an energy-related project. A
10 governmental entity may solicit a proposal for an energy-related
11 project, or receive an unsolicited proposal for an energy-related
12 project, only from a private entity that has been duly qualified by
13 the Energy P3 Unit in accordance with sections 7 and 8 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill) and any
15 other applicable law.

16

17 5. a. An energy-related project may be proposed either by a
18 governmental entity or by a private entity. A public-private
19 partnership agreement may provide that, as part of the agreement,
20 an energy-related project may be proposed and selected individually
21 or as part of the construction, reconstruction, alteration, or
22 improvement of one or more buildings, structures, or facilities
23 owned, or to be owned, by a governmental entity. An energy-
24 related project shall be designed to enable a governmental entity to
25 more reliably, efficiently, and cost-effectively generate, transmit,
26 distribute, conserve, consume, and acquire energy; improve its
27 energy infrastructure; reduce greenhouse gas emissions; diversify
28 its sources of energy supply; create jobs; and foster economic
29 development. If practicable, energy-related projects are encouraged
30 to adhere to the provisions of the green building manual, as
31 prepared by the Commissioner of the Department of Community
32 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

33 b. If an unsolicited energy-related project is proposed by a
34 private entity to a governmental entity, the governmental entity to
35 which the energy-related project proposal is made shall determine
36 whether to accept, reject, or modify the proposal. If the energy-
37 related project proposal is accepted in its entirety, or with
38 modifications, by the governmental entity, and the governmental
39 entity elects to implement the energy-related project, the
40 governmental entity shall initiate and adhere to the competitive
41 solicitation procedure established pursuant to sections 8 and 9 of
42 P.L. , c. (C.) (pending before the Legislature as this bill). If
43 the unsolicited proposal is rejected by the governmental entity, the
44 governmental entity shall promptly return the unsolicited proposal,
45 and all copies thereof, to the private entity and shall treat the
46 unsolicited proposal, and all records of communications and
47 negotiations related thereto, as confidential and exempt from public

1 disclosure in accordance with the provisions of section 17 of
2 P.L. , c. (C.) (pending before the Legislature as this bill).

3
4 6. a. Notwithstanding the provisions of any law, or any rule,
5 regulation, or order to the contrary, a governmental entity for which
6 a private entity assumes financial, operational, or administrative
7 responsibility for an energy-related project pursuant to P.L. ,
8 c. (C.) (pending before the Legislature as this bill) under a
9 public-private partnership agreement, shall not be required to
10 advertise for public bid the energy-related project prior to the
11 private entity assuming responsibility for that project.

12 b. A governmental entity shall be authorized to enter into one
13 or more public-private partnership agreements with a private entity,
14 its affiliates, and approved subcontractors without being subject to
15 the requirement of advertisement for public bid otherwise
16 applicable to the governmental entity, provided that the private
17 entity has been selected by the governmental entity pursuant to a
18 solicitation process conducted pursuant to section 8 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill).

20 c. Except as specifically set forth in P.L. , c. (C.)
21 (pending before the Legislature as this bill) with regard to the non-
22 requirement of advertisement for public bid, all solicitations for
23 proposals conducted pursuant to section 8 of P.L. , c. (C.)
24 (pending before the Legislature as this bill) shall be subject to the
25 procurement laws and procedures otherwise applicable to the
26 governmental entity.

27 d. For the purposes of this section, a governmental entity shall
28 include the New Jersey Economic Development Authority, and any
29 energy-related project undertaken pursuant to P.L. , c. (C.)
30 (pending before the Legislature as this bill) of which the New
31 Jersey Economic Development Authority becomes an owner or
32 lessee, or which is situated on land of which the New Jersey
33 Economic Development Authority becomes the lessee, shall be
34 deemed a project as that term is defined in section 3 of P.L.1974,
35 c.80 (C.34:1B-3).

36
37 7. a. (1) There is hereby established in the Board of Public
38 Utilities an Energy Public-Private Partnership Unit. The Energy P3
39 Unit shall be responsible for the formulation and execution of a
40 comprehensive Statewide policy for public-private partnership
41 agreements that facilitate the development of energy-related
42 projects and shall be responsible for the development, promotion,
43 coordination, oversight, and approval of public-private partnership
44 agreements pursuant to P.L. , c. (C.) (pending before the
45 Legislature as this bill). In doing so, the Energy P3 Unit shall
46 consult and coordinate with representatives of other State
47 departments, agencies, boards, and authorities, including, but not

1 limited to, the New Jersey Economic Development Authority, the
2 Department of the Treasury, the Department of Environmental
3 Protection, and the Department of Community Affairs, as shall be
4 deemed necessary and appropriate, to accomplish the goals of
5 P.L. , c. (C.) (pending before the Legislature as this bill) to
6 facilitate public-private partnership agreements.

7 (2) Within 180 days of the effective date of P.L. , c. (C.)
8 (pending before the Legislature as this bill), the Energy P3 Unit
9 shall: (a) establish policies and procedures that encourage private
10 entity participation and investment in governmental energy-related
11 projects as necessary and appropriate to implement the provisions
12 of P.L. , c. (C.) (pending before the Legislature as this bill);
13 (b) provide technical advice, guidance, and assistance to
14 governmental entities to ensure the availability of the necessary
15 expertise and capacity to develop and evaluate the merits of
16 proposed energy-related projects; (c) review and approve proposed
17 energy-related projects; (d) promote informed and timely decision-
18 making with regard to the procurement of energy-related projects;
19 (e) establish appropriate qualification criteria for private entities,
20 including the qualification and ranking of private entities to develop
21 particular energy-related projects; and (f) monitor and enforce the
22 procurement policies and procedures established pursuant to P.L. ,
23 c. (C.) (pending before the Legislature as this bill). The
24 policies may also include provision for potential revenue sharing
25 opportunities between a governmental entity and a private entity in
26 certain defined or agreed circumstances, including energy-related
27 projects that achieve profits that exceed a negotiated rate of return
28 established for a private entity in a public-private partnership
29 agreement.

30 b. The Energy P3 Unit shall identify the resources and
31 personnel of the board and other participating agencies,
32 departments, boards, and authorities that are deemed necessary and
33 appropriate to staff and support the Energy P3 Unit. The Energy P3
34 Unit shall have the authority to retain one or more qualified private
35 consultants with expertise to provide the technical assistance and
36 resources deemed necessary and appropriate to assist the Energy P3
37 Unit.

38 c. Sufficient funding shall be made available to the Energy P3
39 Unit to enable the Energy P3 Unit to adequately and properly
40 perform the duties and responsibilities established by P.L. ,
41 c. (C.) (pending before the Legislature as this bill) and to
42 compensate one or more private consultants retained to assist the
43 Energy P3 Unit pursuant to this section. The Energy P3 Unit may
44 charge a private entity a fee as compensation for the services
45 rendered by the Energy P3 Unit and, if applicable, by one or more
46 retained private consultants in connection with a completed energy-
47 related project. The fee shall be assessed on a flat fee or percentage

1 basis, based upon the total costs of a completed energy-related
2 project. If a percentage fee is utilized, the percentage fee shall not
3 exceed three percent of the total costs of a completed energy-related
4 project.

5 d. The Energy P3 Unit may promulgate rules and regulations,
6 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
7 (C.52:14B-1 et seq.), as are necessary to implement the provisions
8 of P.L. , c. (C.) (pending before the Legislature as this bill).

9 e. The board shall, within 90 days of the effective date of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 undertake a study of the staffing and other resources deemed
12 necessary to enable the Energy P3 Unit to perform the duties and
13 responsibilities established for the Energy P3 Unit by P.L. , c.
14 (C.) (pending before the Legislature as this bill). The board
15 shall prepare a report of its study, and shall provide a copy thereof
16 to the Governor and, pursuant to section 2 of P.L.1991, c.164
17 (C.52:14-19.1), to the Legislature, recommending any further action
18 and implementation.

19

20 8. a. The Energy P3 Unit shall require each private entity that
21 seeks to submit a solicited or unsolicited energy-related project
22 proposal to a governmental entity pursuant to P.L. , c. (C.)
23 (pending before the Legislature as this bill) to provide a notarized
24 statement in response to a questionnaire that is standardized for like
25 classes of energy-related projects and private entities. The
26 questionnaire shall be designed to fully develop the prior
27 experience and qualifications, financial strength, adequacy of
28 equipment and plant, and organization and personnel of the private
29 entity, and such other pertinent and material facts deemed necessary
30 by the Energy P3 Unit, in order to enable the Energy P3 Unit to
31 qualify a private entity for the type, cost, or other applicable metric,
32 of an energy-related project that the private entity shall be deemed
33 qualified to develop, design, construct, or operate. The
34 qualification criteria established by the Energy P3 Unit shall be
35 competitively neutral, designed to maximize participation by
36 qualified private entities, and shall not include classifications or
37 requirements that would create preferences or advantages of any
38 nature to particular classes of private entities including, but not
39 limited to, private entities that are residents of the State, equipment
40 manufacturers, or incumbent providers of energy-related products
41 or services, including operational and maintenance services, to
42 governmental entities.

43 b. The Energy P3 Unit shall determine the qualification of each
44 private entity that seeks to be qualified to develop an energy-related
45 project. The private entity classifications established pursuant to
46 this section shall be tiered to coincide with the level of experience
47 and qualifications, financial strength, adequacy of equipment and

1 plant of the energy-related projects or classifications that are
2 included within each tier. A finding by the Energy P3 Unit that a
3 private entity is qualified to develop energy-related projects
4 included within a particular tier shall be predicated upon the
5 demonstrated ability of a private entity to develop, design, build,
6 finance, own, operate, or maintain energy-related projects having
7 the same or similar experience, sophistication, complexity, and
8 capital investment established for projects within the tier. The
9 Energy P3 Unit shall classify each private entity within 30 business
10 days after receipt of statements from the private entity that are
11 deemed to be administratively complete and fully responsive to the
12 questionnaire described in this section. Notice of the classification
13 shall be forwarded to the private entity by registered mail within
14 five business days after such classification is made. Each such
15 classification shall be subject to expiration and renewal upon such
16 terms as shall be established by the Energy P3 Unit in accordance
17 with this section.

18 c. A private entity that is dissatisfied with its classification may
19 request, in writing, a hearing before the Energy P3 Unit or its
20 designee, and may present such evidence with respect to the
21 financial responsibility, organization, plant and equipment,
22 personnel or experience of the private entity as might justify a
23 different classification. After presentation of the evidence, the
24 Energy P3 Unit or its designee may retain or modify the
25 classification of the private entity.

26 d. A current list of each qualified private entity, arranged by
27 tier of energy-related project or projects for which the private entity
28 has been qualified, shall be maintained by the Energy P3 Unit. The
29 list shall be provided to each governmental entity that seeks to
30 develop an energy-related project pursuant to P.L. , c. (C.)
31 (pending before the Legislature as this bill). Each such
32 governmental entity shall be provided with a complete list of each
33 private entity that has been qualified by the Energy P3 Unit for the
34 type of energy-related project proposed by the governmental entity.
35 The list shall be posted on the website maintained by the Energy P3
36 Unit and shall be updated monthly.

37
38 9. a. For each proposed energy-related project, a governmental
39 entity shall solicit proposals from private entities set forth on the
40 list of private entities, maintained by the Energy P3 Unit, as
41 required pursuant to section 8 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) that have been qualified for
43 inclusion in the tier established for the energy-related project
44 contemplated by the governmental entity. The solicitation by the
45 governmental entity shall invite each private entity qualified within
46 the applicable tier to submit a proposal to the governmental entity
47 for the proposed energy-related project. The proposal shall detail

1 how the private entity would design, develop, finance, build,
2 operate, or maintain the energy-related project, as the case may be,
3 and summarize the private entity's experience with comparable
4 energy-related projects. The governmental entity or its designee
5 shall review the proposal received from each private entity in
6 response to the solicitation and shall select, pursuant to the criteria
7 set forth in section 8 of P.L. , c. (C.) (pending before the
8 Legislature as this bill), no more than three private entities deemed
9 to be the most qualified to develop the energy-related project. The
10 governmental entity may select fewer than three private entities if
11 fewer than three private entities respond to the solicitation.

12 b. Once the three private entities have been selected, each
13 private entity shall be requested to make a formal proposal to the
14 governmental entity regarding the energy-related project. The
15 proposal shall include, but not be limited to, a preliminary project
16 scope of work, identification of proposed equipment and measures,
17 projected project costs and, if applicable, anticipated savings. If the
18 governmental entity so elects, it may request supplemental
19 information or revised proposals from the private entities and may
20 require the private entities to make an oral presentation and to
21 respond to questions regarding the private entities' proposals. The
22 governmental entity shall afford each private entity a reasonable
23 opportunity to present supplemental information with regard to the
24 private entity's proposal and to respond to questions regarding the
25 private entity's proposal or qualification to develop the energy-
26 related project. Each private entity shall be afforded an opportunity
27 to supplement its proposal to respond to any proposed changes to
28 the scope or specifications of the energy-related project by the
29 governmental entity after review of the private entities' written
30 proposals.

31 c. The governmental entity shall award the energy-related
32 project to the private entity whose proposal is determined to be the
33 most advantageous to the governmental entity. The criteria upon
34 which the determination shall be based shall include, but not be
35 limited to: (1) the general reputation, industry experience, technical
36 capability, and expertise of the private entity; (2) the cost of the
37 proposed energy-related project; (3) the responsiveness, creativity,
38 innovativeness, and comprehensiveness of the private entity's
39 proposal; (4) if applicable, the ability of the private entity to arrange
40 financing on terms favorable to the governmental entity; (5) the
41 proposed allocation of risks and performance guarantees; (6) the
42 incorporation of innovative terms and conditions that would not
43 otherwise be available to, or would not be available upon a
44 comparable basis to the governmental entity; (7) any cost savings, if
45 applicable given the nature of the energy-related project; (8) the
46 public benefits of the energy-related project, including economic
47 development, job creation, and reduced environmental impacts; and

1 (9) the experience and capability of the private entity in
2 implementing comparable energy-related projects outside of the
3 State.

4 d. The governmental entity shall negotiate a public-private
5 partnership agreement for the energy-related project with the
6 private entity selected as most qualified in accordance with the
7 qualification criteria set forth pursuant to this section. If the
8 governmental entity is unable to negotiate a public-private
9 partnership agreement with the selected private entity on terms that
10 the governmental entity determines to be fair and reasonable,
11 negotiations with the selected private entity shall be terminated.
12 The governmental entity shall then commence negotiations with the
13 private entity deemed to be the second most qualified for the
14 energy-related project in accordance with the qualification criteria
15 established pursuant to this section. If the governmental entity is
16 unable to negotiate a public-private partnership agreement with the
17 second most qualified private entity, the governmental entity shall
18 terminate such negotiations and commence negotiations with the
19 private entity deemed to be the third most qualified. If the
20 governmental entity is unable to negotiate a public-private
21 partnership agreement with the third most qualified private entity,
22 the governmental entity shall continue to negotiate with the next
23 additional qualified private entities in the applicable tier as are
24 necessary in order to enable the governmental entity to conclude a
25 public-private partnership agreement with a qualified private entity.
26 If the governmental entity fails to conclude a satisfactory public-
27 private partnership agreement with a qualified private entity, the
28 governmental entity may cease further negotiations and terminate
29 the energy-related project or commence a new proposal procedure
30 in accordance with the provisions of P.L. , c. (C.) (pending
31 before the Legislature as this bill).

32
33 10. Prior to, or in connection with, the negotiation and execution
34 of a public-private partnership agreement, a governmental entity
35 may negotiate and execute a preliminary agreement with the private
36 entity selected for the energy-related project. The preliminary
37 agreement may, among other things:

38 a. authorize the private entity to commence certain preliminary
39 activities for which it may be compensated including, but not
40 limited to, project planning, design and engineering, performance of
41 initial and supplemental energy audits and environmental studies,
42 securing project financing, and acquisition of equipment;

43 b. establish the terms and conditions and procedures for the
44 negotiation of the public-private partnership agreement;

45 c. define the nature and extent of the expenditures that may be
46 made pursuant to the preliminary agreement; and

47 d. establish other terms and conditions that the governmental

1 entity and private entity deem necessary and appropriate to foster
2 the development of the energy-related project.

3
4 11. a. A governmental entity and a private entity shall cooperate
5 to leverage, to the greatest extent possible, available private sector
6 financial resources and expertise and to enhance the ability of the
7 energy-related project to obtain and maximize federal, State, local
8 or other funds, grants or incentives, tax advantages, or financial and
9 other benefits to finance, secure, guarantee, service or reduce
10 project debt, or to minimize, repay, or accelerate the repayment of
11 project costs, or provide other financial or other advantages.

12 b. In order to facilitate the financing, development, and
13 delivery of, or to minimize the costs associated with, an energy-
14 related project, a governmental entity may: (1) become the owner or
15 lessee of the energy-related project, or lessee of the land, or both;
16 (2) issue indebtedness in accordance with the governmental entity's
17 enabling legislation provided that, at a minimum, the private entity
18 guarantees the performance of the energy-related project to the
19 governmental entity; (3) dedicate any property interest, including
20 land, improvements, fixtures, and tangible personal property that
21 the governmental entity has for public use; and (4) exercise all
22 powers conferred on the governmental entity by law including, but
23 not limited to, lease or grant rights of way, easements, and access,
24 exercise the power of eminent domain, grant development rights,
25 issue and accelerate permits and other authorizations, and grant
26 licenses, franchises, contractual, and real property rights. A public-
27 private partnership agreement may also provide for the sale, long-
28 term lease, or lease-purchase of, or grant of concessions for, the
29 existing and new assets and facilities of a governmental entity to a
30 private entity, and revenue sharing opportunities between the
31 governmental entity and private entity in agreed circumstances. If
32 the public-private partnership agreement provides for ownership of
33 the energy-related project, or a portion thereof, by the private entity
34 during the term of the agreement, the agreement may provide for
35 the transfer of the project by the private entity to the governmental
36 entity at no charge upon the expiration of the term of the agreement
37 or any extension thereof.

38
39 12. The development of an energy-related project pursuant to
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 shall be deemed to constitute the performance of an essential public
42 function. All energy-related projects predominantly used by, or
43 developed in furtherance of the purposes of a governmental entity
44 pursuant to P.L. , c. (C.) (pending before the Legislature as
45 this bill) that are owned by or leased to a governmental entity, non-
46 profit business entity, foreign or domestic, or business entity wholly
47 owned by such non-profit business entity, shall be exempt from

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

19
20 13. If no public fund has been established for the financing of an
21 energy-related project developed pursuant to P.L. , c. (C.)
22 (pending before the Legislature as this bill), the chief financial
23 officer of the governmental entity may require the private entity
24 responsible for the development of the energy-related project to
25 post, or to cause to be posted, a bond guaranteeing prompt payment
26 of funds due to the contractor, its subcontractors, and to all persons
27 furnishing labor or materials to the contractor or its subcontractors
28 in the conduct of the work on the energy-related project.

29
30 14. a. All workers employed in the performance of any
31 construction undertaken in connection with an energy-related
32 project for which a public-private partnership agreement has been
33 negotiated pursuant to P.L. , c. (C.) (pending before the
34 Legislature as this bill), including all workers for subcontractors
35 employed in the performance of any construction undertaken in
36 connection with such an energy-related project, shall be paid not
37 less than the prevailing wage rate for the worker's craft or trade as
38 determined by the Commissioner of Labor and Workforce
39 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
40 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

41 b. All energy-related projects developed pursuant to a public-
42 private partnership agreement negotiated pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill) may
44 contain a project labor agreement. The project labor agreement
45 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
46 seq.) and shall be structured in a manner that to the greatest extent
47 possible enhances employment opportunities for individuals

1 residing in the county in which the energy-related project will be
2 located. The general contractor, construction manager, design-build
3 team, and subcontractor for an energy-related project developed
4 pursuant to P.L. , c. (C.) (pending before the Legislature as
5 this bill) shall be classified by the Energy P3 Unit to perform work
6 on an energy-related project.

7
8 15. Each general contractor, construction manager, design-build
9 team, and subcontractor that performs work in connection with an
10 energy-related project pursuant to P.L. , c. (C.) (pending
11 before the Legislature as this bill) shall be classified by the Energy
12 P3 Unit in accordance with the provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill), in consultation with the
14 Division of Property Management and Construction in the
15 Department of the Treasury.

16
17 16. a. All energy-related projects proposed by a governmental
18 entity, upon receiving a solicited or unsolicited energy-related
19 project proposal pursuant to section 8 of P.L. , c. (C.)
20 (pending before the Legislature as this bill), shall be submitted to
21 the Energy P3 Unit for project review and approval. Only an
22 application deemed to be complete by the Energy P3 Unit shall be
23 considered. In order for an application to be deemed complete, the
24 application shall include, at a minimum: (1) a public-private
25 partnership agreement between a governmental entity and a private
26 entity and, if applicable, a preliminary agreement; (2) a copy of any
27 land lease or land agreement between the governmental entity and
28 the private entity; (3) a project narrative that includes a full
29 description of the background and experience of the private entity,
30 and the nature and scope of the energy-related project and its
31 anticipated benefits; (4) financial information, including the
32 estimated cost of the energy-related project, a sources and uses
33 statement, an operating pro forma, evidence of legally binding
34 financial commitments, evidence of the private entity's bonding
35 capacity for the development and operation of the energy-related
36 project and, if applicable, a long term maintenance plan; (5) a
37 detailed project schedule, including a timetable for completion of
38 all predevelopment, development, and placed-in-service tasks and
39 milestones, which must demonstrate that the energy-related project
40 will be constructed within five years of the date of approval by the
41 Energy P3 Unit; (6) proof of receipt or anticipated date of receipt of
42 required approvals; (7) proof that the private entity will obtain a
43 project labor agreement, if any, and pay the applicable prevailing
44 wage to all workers employed in the performance of any
45 construction undertaken in connection with the energy-related
46 project; (8) if appropriate, a narrative that addresses how the
47 energy-related project will attempt to incorporate the applicable

1 provisions of the green building manual prepared by the
2 Commissioner of Community Affairs pursuant to section 1 of
3 P.L.2007, c.132 (C.52:27D-130.6) and standards of the Leadership
4 in Energy and Environmental Design Green Building Rating System
5 as adopted by the United States Green Building Council; (9) if
6 appropriate, a demonstration of projected energy cost savings; and
7 (10) any other requirements that the Energy P3 Unit may reasonably
8 deem necessary or appropriate for the energy-related project.

9 b. As part of the estimated costs and financial documentation
10 for an energy-related project, the application of the private entity
11 shall contain a long-range operation and maintenance plan and shall
12 separately state and clearly set forth the expenditures associated
13 with such plan. The long-range operation and maintenance plan
14 shall be approved by the Energy P3 Unit pursuant to regulations
15 promulgated by the Energy P3 Unit that reflect national building
16 maintenance standards and other appropriate building maintenance
17 benchmarks. Contracts to implement a long-range operation and
18 maintenance plan pursuant to this subsection may contain a project
19 labor agreement. Any such project labor agreement shall be subject
20 to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be
21 established in a manner that enhances, to the greatest extent
22 possible, employment opportunities for individuals residing in the
23 county in which the energy-related project is located.

24 c. The Energy P3 Unit shall review all applications for
25 completeness in accordance with this section, and may request
26 additional information as may be required to make a complete
27 assessment of the energy-related project. The Energy P3 Unit shall
28 perform a substantive review of the application, which shall include
29 an assessment of the feasibility and design of the project, the
30 experience and qualification of the private entity, the soundness of
31 the financial plan, the adequacy of the public-private partnership
32 agreement, preliminary agreement, land lease, and other
33 agreements, and the adequacy of the long range operation and
34 maintenance plan. The Energy P3 Unit shall have the right to
35 obtain additional information from a private entity if required to
36 complete the review, including the right to issue notices of
37 deficiency to the private entity and require that the record be
38 supplemented until it is deemed complete.

39 d. An energy-related project shall not proceed until the
40 application has met the conditions established pursuant to the
41 provisions of this section and has received the approval by the
42 Energy P3 Unit. The Energy P3 Unit shall be permitted to revoke
43 an approval if it determines that an energy-related project materially
44 deviates from the application submitted pursuant to this section or
45 has not received all required approvals, including a certificate of
46 occupancy. An energy-related project that has been approved by
47 the Energy P3 Unit shall be completed within five years after the

1 date of approval by the Energy P3 Unit. The decision of the Energy
2 P3 Unit regarding an energy-related project shall be appealable to
3 the Appellate Division of the Superior Court.
4

5 17. a. Notwithstanding the provisions of any law, or any rule,
6 regulation, or order to the contrary, a private entity that submits a
7 proposal in response to a solicitation for an energy-related project
8 may identify those portions of the proposal that the private entity
9 deems to be confidential, competitively sensitive bid-related
10 information, including, but not limited to, pricing and financing
11 terms, and proprietary or trade secret information. The private
12 entity shall provide justification as to why the materials identified
13 as confidential should not, upon request, be produced to others by
14 the governmental entity. Information determined by the
15 governmental entity to be confidential, competitively sensitive bid-
16 related information shall not be subject to disclosure or considered a
17 public or government record under P.L.1963, c.73 (C.47:1A-1 et
18 seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), or otherwise, prior to
19 the selection of the winning proposal. Disclosure of confidential,
20 competitively sensitive bid-related information shall occur, upon
21 request, after the selection of the winning proposal, but prior to the
22 execution of the final public-private partnership agreement by the
23 governmental entity and the private entity. Information determined
24 to be proprietary or trade secret information shall not be subject to
25 production at any time by the governmental entity pursuant to
26 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
27 al.), or otherwise.

28 b. Notwithstanding the provisions of any law, or any rule,
29 regulation, or order to the contrary, a private entity that submits an
30 unsolicited proposal for an energy-related project that is accepted
31 by a governmental entity and made the basis for a solicitation for an
32 energy-related project pursuant to P.L. , c. (C.) (pending
33 before the Legislature as this bill), may identify those portions of
34 the unsolicited proposal that the private entity deems to be
35 confidential, competitively sensitive bid-related information,
36 including, but not limited to, pricing, financing terms, and
37 proprietary or trade secret information. The private entity shall
38 provide justification as to why the materials identified as
39 confidential should not, upon request, be produced to others by the
40 governmental entity. Information determined by the governmental
41 entity to be confidential, competitively sensitive bid-related
42 information shall not be subject to disclosure or considered a public
43 or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) or
44 P.L.2001, c.404 (C.47:1A-5 et al.) or otherwise, prior to the
45 selection of the winning proposal. Disclosure of confidential,
46 competitively sensitive bid-related information shall occur, upon
47 request, after the selection of the winning proposal, but prior to the

1 execution of the final public-private partnership agreement by the
2 governmental entity and the private entity. Information determined
3 to be proprietary or trade secret information shall not be subject to
4 production at any time by the governmental entity pursuant to
5 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
6 al.), or otherwise.

7 c. Notwithstanding the provisions of any law, or any rule,
8 regulation, or order to the contrary, a private entity that submits an
9 unsolicited proposal for an energy-related project that is rejected by
10 a governmental entity and not made the basis of a solicitation for an
11 energy-related project pursuant to P.L. , c. (C.) (pending
12 before the Legislature as this bill), may request the governmental
13 entity to return the entire unsolicited proposal to the private entity,
14 and the governmental entity shall promptly comply with any such
15 request. An unsolicited proposal for a governmental entity energy-
16 related project that is rejected by a governmental entity and not
17 made the basis of a solicitation for an energy-related project shall
18 not be subject to disclosure or considered a public or government
19 record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404
20 (C.47:1A-5 et al.), or otherwise, and no disclosure of the unsolicited
21 proposal, any portion thereof, or records of any communications
22 relating thereto, shall be made to the public pursuant to P.L.1963,
23 c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), or
24 otherwise.

25
26 18. The provisions of P.L.2009, c.136 (C.52:18-42 et seq.) shall
27 not apply to any energy-related project carried out pursuant to
28 P.L. , c. (C.) (pending before the Legislature as this bill).

29
30 19. Nothing in P.L. c. (C.) (pending before the
31 Legislature as this bill) shall limit the powers of the Office of the
32 State Comptroller pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

33
34 20. This act shall take effect immediately.

35 36 37 STATEMENT

38
39 The bill, the “Governmental Energy Reliability and Savings
40 Public-Private Partnership Act,” permits private entities to propose
41 to governmental entities certain energy-related projects at
42 governmental facilities through a public-private partnership
43 agreement.

44 The bill leverages the expertise and financial resources of the
45 private sector to foster the development of a broad array of energy-
46 related projects, including cogeneration facilities, that might not
47 otherwise be pursued due to budgetary constraints. The bill

1 provides that private entities are responsible for designing, building,
2 financing, operating, or maintaining energy-related projects for
3 governmental entity facilities in a manner similar to the approach
4 authorized by the “Economic Stimulus Act of 2009,” which, in part,
5 authorized State colleges and universities to offer certain financial
6 and other incentives to prospective private sector developers.

7 The bill creates an “Energy P3 Unit” situated within the Board of
8 Public Utilities that is responsible for the formulation and execution
9 of a comprehensive Statewide policy for public-private partnership
10 agreements that will facilitate the development of energy-related
11 projects and for the development, promotion, coordination,
12 oversight, and approval of public-private partnership agreements.
13 In doing so, the bill provides that the Energy P3 Unit is to consult
14 and coordinate with representatives of other State departments,
15 agencies, boards, and authorities, including, but not limited to, the
16 New Jersey Economic Development Authority, the Department of
17 the Treasury, the Department of Environmental Protection, and the
18 Department of Community Affairs, to accomplish the goals of the
19 bill and facilitate public-private partnership agreements. The bill
20 authorizes the Energy P3 Unit to retain professional advisers and to
21 charge certain fees to fund positions in the Energy P3 Unit and
22 retained professional advisers.

23 The bill provides criteria by which a governmental entity is to
24 award an energy-related project public-private partnership
25 agreement to a private entity whose proposal is determined to be the
26 most advantageous to the governmental entity. This determination
27 includes, but is not limited to:

- 28 --the general reputation, industry experience, technical
29 capability, and expertise of the private entity;
- 30 --the cost of the proposed energy-related project;
- 31 --the responsiveness, creativity, innovativeness, and
32 comprehensiveness of the private entity’s proposal;
- 33 --if applicable, the ability of the private entity to arrange
34 financing on terms favorable to the governmental entity;
- 35 --the proposed allocation of risks and performance guarantees;
- 36 --the incorporation of innovative terms and conditions that would
37 not otherwise be available to, or would not be available upon a
38 comparable basis to the governmental entity;
- 39 --any cost savings, if applicable given the nature of the energy-
40 related project;
- 41 -- the public benefits of the energy-related project, including
42 economic development, job creation, and reduced environmental
43 impacts; and
- 44 --the experience and capability of the private entity in
45 implementing comparable energy-related projects outside of the
46 State.

1 The bill prescribes competitive contracting procedures to govern
2 energy-related project public-private partnership agreements,
3 including procurements and prevailing wage requirements for
4 workers engaged in construction activities and other worker
5 protections, and provides necessary oversight authority to the
6 Energy P3 Unit to protect the interests of participating
7 governmental entities.

8 The purpose of the bill is to enable governmental entities to
9 develop needed energy-related projects that will improve the
10 reliability, efficiency, and cost of the energy service provided to
11 critical governmental facilities, including medical facilities, police
12 and fire departments, colleges and universities, and water and
13 wastewater treatment facilities, and to prevent the occurrence of
14 power outages during extreme weather events. The bill encourages
15 the development of a state-of-the-art energy infrastructure for
16 governmental entities and improvement of the reliability,
17 efficiency, and cost of energy service to the State's critical
18 facilities.