

ASSEMBLY, No. 1753

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 19 (Middlesex)

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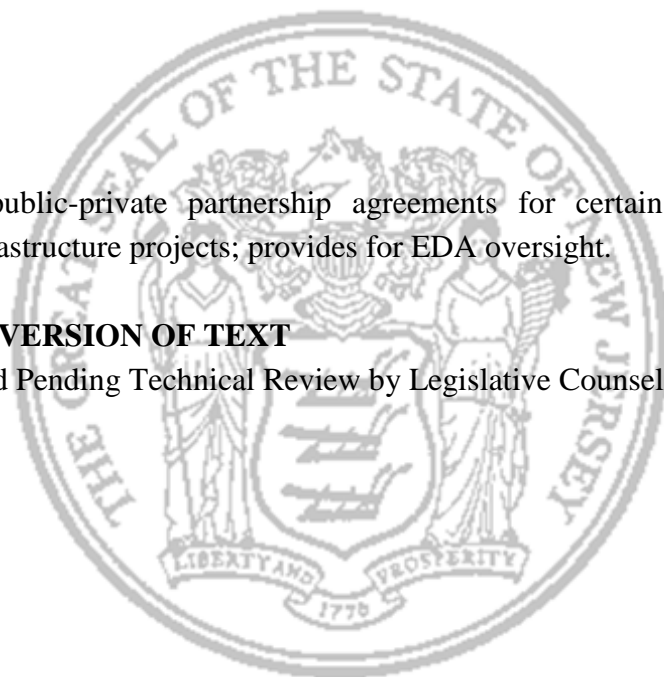
Assemblywoman Handlin and Assemblyman Eustace

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.



(Sponsorship Updated As Of: 1/9/2018)

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

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 The authority shall not issue bonds or other obligations to effect
2 the refunding or rescheduling of solid waste facility bonds after
3 December 31, 2002. The authority may refund its own bonds issued
4 for the purposes herein at any time;
- 5 ff. To pool loans for any local government units that are
6 refunding bonds and do and perform any and all acts or things
7 necessary, convenient or desirable for the purpose of the authority
8 to achieve more favorable interest rates and terms for those local
9 governmental units;
- 10 gg. To finance projects approved by the board, provide staff
11 support to the board, oversee and monitor progress on the part of
12 the board in carrying out the revitalization, economic development
13 and restoration projects authorized pursuant to the "Municipal
14 Rehabilitation and Economic Recovery Act," P.L.2002,
15 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
16 responsibilities pursuant thereto;
- 17 hh. To offer financial assistance to qualified film production
18 companies as provided in the "New Jersey Film Production
19 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[and]**
- 20 ii. To finance or develop private or public parking facilities or
21 structures, which may include the use of solar photovoltaic
22 equipment, in municipalities qualified to receive State aid pursuant
23 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
24 municipalities that contain areas designated pursuant to P.L.1985,
25 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
26 Planning Area 2 (Suburban), or a town center, and to provide
27 appropriate assistance, including but not limited to, extensions of
28 credit, loans, and guarantees, to municipalities qualified to receive
29 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
30 178 et seq.) and municipalities that contain areas designated
31 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
32 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
33 center, and their agencies and instrumentalities or to private entities
34 whose projects are located in those municipalities, in order to
35 facilitate the financing and development of parking facilities or
36 structures in such municipalities. The authority may serve as the
37 issuing agent of bonds to finance the undertaking of a project for
38 the purposes of this subsection; and
- 39 jj. To consider, review, amend, and approve public-private
40 partnership agreements for certain building or highway
41 infrastructure development projects entered into by a private entity
42 and a local government unit, a school district, a State government
43 entity, or the New Jersey Institute of Technology pursuant to
44 sections 1 through 4 of P.L. , c. (C. through C.) (pending
45 before the Legislature as this bill) or by a private entity and a State
46 or county college pursuant to section 43 of P.L.2009, c.90
47 (C.18A:64-85), for the purposes set forth therein, and provide to a
48 private entity that is a party to an agreement any tax-exempt private

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

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

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

16 STATEMENT
17

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

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

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

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

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

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