ASSEMBLY, No. 1753

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:
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District 6 (Burlington and Camden)
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Assemblyman JOSEPH A. LAGANA
District 38 (Bergen and Passaic)
Assemblyman EDWARD H. THOMSON
District 30 (Monmouth and Ocean)

Co-Sponsored by:
Assemblywoman Handlin and Assemblyman Eustace

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

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 1/9/2018)
AN ACT concerning public-private partnerships for certain building and highway infrastructure projects, and amending and supplementing various parts of the statutory law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. (1) A school district may enter into a contract with a private entity, subject to subsection f. of this section, to be referred to as a public-private partnership agreement, that permits the private entity to assume financial and administrative responsibility for a project of, or for the benefit of, the school district, provided that the project is financed in whole or in part by the private entity.
A public-private partnership agreement may include an agreement under which a school district and a private entity enter into a lease of a revenue-producing public building, structure, or facility in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity may be responsible for the management, operation, and maintenance of the building, structure, or facility. The private entity may receive some or all, as per the agreement, of the revenue generated by the building, structure, or facility, and may operate the building, structure, or facility in accordance with school district standards. At the end of the lease term, subsequent revenue generated by the building, structure, or facility, along with management, operation, and maintenance responsibility, shall revert to the school district.

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

Bundling of projects shall be prohibited under this section.

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

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

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

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

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

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

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

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

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

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

(b) As part of the estimated costs and financial documentation
for the project, the application shall contain a long-range
maintenance plan and a long-range maintenance bond and shall
specify the expenditures that qualify as an appropriate investment in
maintenance. The long-range maintenance plan shall be approved
by the authority pursuant to regulations promulgated by the
authority that reflect national building maintenance standards and
other appropriate building maintenance benchmarks.
(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. No project shall commence the procurement process until final approval has been granted by the authority; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has deviated from the plan submitted pursuant to paragraph (2) of this subsection, and shall retain the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest as specified under subsection j. of this section.

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

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

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

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

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

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

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

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

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

(6) Stipends may be used on public private partnership projects
when there is a substantial opportunity for innovation and the costs
for developing a proposal are significant. The school district may
elect to pay unsuccessful proposers for the work product they
submit with their proposal in response to a request for proposals.
The use by the school district of any design element contained in an
unsuccessful proposal shall be at the sole risk and discretion of the
school district and shall not confer liability on the recipient of the
stipulated stipend amount. After payment of the stipulated stipend
amount, the school district and the unsuccessful proposer shall
jointly own the rights to, and may make use of any work product
contained in the proposal, including the technologies, techniques,
methods, processes, ideas, and information contained in the
proposal, project design, and project financial plan. The use by the
unsuccessful proposer of any part of the work product contained in
the proposal shall be at the sole risk of the unsuccessful proposer
and shall not confer liability on the school district.
3. (New section) a. As used in this section:

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

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

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

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

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

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

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

b. (1) A State government entity may enter into a contract with a private entity, subject to subsection f. of this section, to be referred to as a public-private partnership agreement, that permits the private entity to assume financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a building or highway of, or for the benefit of, the State government entity, provided that the building or highway project is financed in whole or in part by the private entity.
A public-private partnership agreement may include an agreement under which a State government entity and a private entity enter into a lease of a revenue-producing public building or highway in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity may be responsible for the management, operation, and maintenance of the building or highway. The private entity may receive some or all, as per the agreement, of the revenue generated by the building or highway, and may operate the building or highway in accordance with State government entity standards. At the end of the lease term, subsequent revenue generated by the building or highway, along with management, operation, and maintenance responsibility, shall revert to the State government entity.

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

Bundling of projects shall be prohibited under this section.

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

(2) For the purposes of facilitating the financing of a project pursuant to this section, a public entity may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a building or highway to which the State government entity holds title and, notwithstanding any provision of law to the contrary, shall be empowered to enter into contracts with a private entity and its affiliates without being subject to the procurement and contracting requirements, unless otherwise set forth herein, of any statute applicable to the public entity provided that the private entity has been selected by the public entity pursuant to a solicitation of proposals or qualifications from at least two private entities. For the purposes of this subsection, a public entity shall include the New Jersey Department of Transportation, New Jersey Turnpike Authority, South Jersey Transportation Authority, New Jersey Transit, and the New Jersey Economic Development Authority, and any project undertaken pursuant to this section of which the public entity becomes the owner or lessee, or which is situated on land of which the public entity becomes the lessee, shall be deemed a "project" under the "New Jersey Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).
(3) As the carrying out of any project described pursuant to this section constitutes the performance of an essential public function, all projects predominantly used in furtherance of the purposes of the State government entity undertaken pursuant to this section, provided the project is owned by or leased to a public entity, non-profit business entity, foreign or domestic, or a business entity wholly owned by such non-profit business entity, shall at all times be exempt from property taxation and special assessments of the State, or any municipality, or other political subdivision of the State and, notwithstanding the provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the contrary, shall not be required to make payments in lieu of taxes. The land upon which the project is located shall also at all times be exempt from property taxation. The project and land upon which the project is located shall not be subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax liability of private parties conducting for profit activities on tax exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt property that are held by nonexempt parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a performance bond to ensure completion of the project and a payment bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

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

f. (1) On or before August 1, 2015, the projects proposed in accordance with this section shall be submitted to the New Jersey Economic Development Authority for the authority's review and approval; except that in the case of projects proposed in accordance with paragraph (2) of subsection a. of this section, all projects shall be submitted on or before August 1, 2016. The projects are encouraged, when practicable, to adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

Any application that is deemed to be incomplete on August 2,
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[2015, or on August 2, 2016] 2020, including in the case of an application submitted pursuant to paragraph (2) of subsection a. of this section, shall not be eligible for consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.2013, c.161, s.26)
6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

5. The authority shall have the following powers:
a. To adopt bylaws for the regulation of its affairs and the conduct of its business;
b. To adopt and have a seal and to alter the same at pleasure;
c. To sue and be sued;
d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project in qualifying municipalities as defined under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;
e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project and to pay or compromise any claims arising therefrom;
f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);
g. To sell, convey or lease to any person all or any portion of a project for such consideration and upon such terms as the authority may determine to be reasonable;
h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
i. To grant options to purchase or renew a lease for any of its projects on such terms as the authority may determine to be reasonable;
j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and conditions thereof;

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


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

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


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

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

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


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

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

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

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

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

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

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

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

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

e. To make loans to refinance solid waste facility bonds
through the issuance of bonds or other obligations and the execution
of any agreements with counties or public authorities to effect the
refunding or rescheduling of solid waste facility bonds, or otherwise
provide for the payment of all or a portion of any series of solid
waste facility bonds. Any county or public authority refunding or
rescheduling its solid waste facility bonds pursuant to this
subsection shall provide for the payment of not less than fifty
percent of the aggregate debt service for the refunded or
rescheduled debt of the particular county or public authority for the
duration of the loan; except that, whenever the solid waste facility
bonds to be refinanced were issued by a public authority and the
county solid waste facility was utilized as a regional county solid
waste facility, as designated in the respective adopted district solid
waste management plans of the participating counties as approved
by the department prior to November 10, 1997, and the utilization
of the facility was established pursuant to tonnage obligations set
forth in their respective interdistrict agreements, the public
authority refunding or rescheduling its solid waste facility bonds
pursuant to this subsection shall provide for the payment of a
percentage of the aggregate debt service for the refunded or
rescheduled debt of the public authority not to exceed the
percentage of the specified tonnage obligation of the host county for
the duration of the loan. Whenever the solid waste facility bonds are
the obligation of a public authority, the relevant county shall
execute a deficiency agreement with the authority, which shall
provide that the county pledges to cover any shortfall and to pay
deficiencies in scheduled repayment obligations of the public
authority. All costs associated with the issuance of bonds pursuant
to this subsection may be paid by the authority from the proceeds of
these bonds. Any county or public authority is hereby authorized to
enter into any agreement with the authority necessary, desirable or
convenient to effectuate the provisions of this subsection.
The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time;

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

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

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

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

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

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

8. This act shall take effect immediately.

STATEMENT

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

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

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

The bill requires that workers employed in the construction,
rehabilitation, or building maintenance services of a project by a
private entity that has entered into an agreement with a government
entity be subject to the applicable provisions of the "New Jersey
Prevailing Wage Act;" that building construction projects undertaken
pursuant to an agreement contain a project labor agreement; and that
the general contractor, construction manager, design-build team, or
subcontractor for a project is registered and classified by the State to
perform work on a project.
Under the bill a public-private partnership project may be structured using availability payments as a financing method. However, the bundling of multiple projects would be prohibited. In addition, roadway or highway projects must include an expenditure of at least $10 million in public funds or any expenditure in private funds. A private entity would be required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team would be required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor would be precluded from engaging in a project having an expenditure of under $50 million if the contractor contributed more than 10% of the project’s financing. All projects would be required to undergo a procurement process established under the bill.

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