

SENATE, No. 865

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Singleton and Cruz-Perez

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: 4/6/2018)

S865 SWEENEY, OROHO

2

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

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 f. (1) All projects proposed in accordance with this section
26 shall be submitted to the New Jersey Economic Development
27 Authority for the authority's review and approval. The projects are
28 encouraged, when practicable, to adhere to the green building
29 manual prepared by the Commissioner of Community Affairs
30 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

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

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

1 authority that reflect national building maintenance standards and
2 other appropriate building maintenance benchmarks.

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

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

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

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

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

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

1 in order to generate a short list of private entities requested to
2 submit a final proposal.

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

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

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

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

41 (6) Stipends may be used on public private partnership projects
42 when there is a substantial opportunity for innovation and the costs
43 for developing a proposal are significant. The local government unit
44 may elect to pay unsuccessful proposers for the work product they
45 submit with their proposal in response to a request for proposals.
46 The use by the local government unit of any design element
47 contained in an unsuccessful proposal shall be at the sole risk and
48 discretion of the local government unit and shall not confer liability

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

11

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

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

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

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

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

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

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

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

46 (2) A public-private partnership agreement may include an
47 agreement under which a school district and a private entity enter
48 into a lease of a revenue-producing public building, structure, or

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

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

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

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

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

43 (3) As the carrying out of any project described pursuant to this
44 section constitutes the performance of an essential public function,
45 all projects predominantly used in furtherance of the purposes of the
46 school district undertaken pursuant to this section, provided the
47 project is owned by or leased to a public entity, non-profit business
48 entity, foreign or domestic, or a business entity wholly owned by

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

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

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

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

1 the Department of Transportation, as appropriate, to perform work
2 on a public-private partnership project.

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

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

17 f. (1) All projects proposed in accordance with this section
18 shall be submitted to the New Jersey Economic Development
19 Authority for the authority's review and approval. The projects are
20 encouraged, when practicable, to adhere to the green building
21 manual prepared by the Commissioner of Community Affairs
22 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

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

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

42 (3) The authority shall review all completed applications, and
43 request additional information as is needed to make a complete
44 assessment of the project. No project shall commence the
45 procurement process until final approval has been granted by the
46 authority; provided, however, that the authority shall retain the right
47 to revoke approval if it determines that the project has deviated
48 from the plan submitted pursuant to paragraph (2) of this

1 subsection, and shall retain the right to cancel a procurement after a
2 short list of private entities is developed if deemed in the public
3 interest as specified under subsection j. of this section.

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

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

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

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

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

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

1 satisfy the same basic purpose and need. A copy of the notice shall
2 be mailed to each municipal and county local government body in
3 the geographic area affected by the proposal.

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

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

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

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

42

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

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

47 "Availability payment" means a periodic payment made by a
48 State government entity to a private entity in exchange for making

1 available the use of a public building, road, structure, infrastructure,
2 or facility at a predetermined level of service, operation, or
3 maintenance.

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

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

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

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

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

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

43 (2) A public-private partnership agreement may include an
44 agreement under which a State government entity and a private
45 entity enter into a lease of a revenue-producing public building or
46 highway in exchange for up-front or structured financing by the
47 private entity for the project. Under the lease agreement, the
48 private entity may be responsible for the management, operation,

1 and maintenance of the building or highway. The private entity
2 may receive some or all, as per the agreement, of the revenue
3 generated by the building or highway, and may operate the building
4 or highway in accordance with State government entity standards.
5 At the end of the lease term, subsequent revenue generated by the
6 building or highway, along with management, operation, and
7 maintenance responsibility, shall revert to the State government
8 entity.

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

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

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

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

42 (3) As the carrying out of any project described pursuant to this
43 section constitutes the performance of an essential public function,
44 all projects predominantly used in furtherance of the purposes of the
45 State government entity undertaken pursuant to this section,
46 provided the project is owned by or leased to a public entity, non-
47 profit business entity, foreign or domestic, or a business entity
48 wholly owned by such non-profit business entity, shall at all times

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

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

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

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

1 the Department of Transportation, as appropriate, to perform work
2 on a public-private partnership project.

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

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

17 f. (1) All projects proposed in accordance with this section
18 shall be submitted to the New Jersey Economic Development
19 Authority for the authority's review and approval. The projects are
20 encouraged, when practicable, to adhere to the green building
21 manual prepared by the Commissioner of Community Affairs
22 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

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

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

43 (3) The authority shall review all completed applications, and
44 request additional information as is needed to make a complete
45 assessment of the project. No project shall commence the
46 procurement process until final approval has been granted by the
47 authority; provided, however, that the authority shall retain the right
48 to revoke approval if it determines that the project has deviated

1 from the plan submitted pursuant to paragraph (2) of this
2 subsection, and shall retain the right to cancel a procurement after a
3 short list of private entities is developed if deemed in the public
4 interest as specified under subsection j. of this section.
5 Notwithstanding any provision of this section to the contrary, all
6 roadway or highway projects shall be subject to review and
7 approval by the State Treasurer, and the authority shall not approve
8 any roadway or highway project disapproved by the State Treasurer.

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

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

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

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

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

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

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

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

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

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

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

1 proposer of any part of the work product contained in the proposal
2 shall be at the sole risk of the unsuccessful proposer and shall not
3 confer liability on the State government entity.
4

5 4. (New section) Notwithstanding the provisions of section 43
6 of P.L.2009, c.90 (C.18A:64-85) to the contrary, the New Jersey
7 Institute of Technology may enter into a public-private partnership
8 agreement in accordance with the provisions of that section.
9

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

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

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

43 (3) A public-private partnership agreement may include the use
44 of availability payments if deemed to be in the best interest of the
45 public and the State or county college, provided the private entity
46 shall operate the building, structure, infrastructure or facility in
47 accordance with State or county college standards. Bundling of

1 projects shall be prohibited. As used in this paragraph, “availability
2 payment” means a periodic payment made by a State or county
3 college to a private entity in exchange for making available the use
4 of a public building, structure, infrastructure, or facility at a
5 predetermined level of service, operation, or maintenance.
6 “Bundling” means the use of a solicitation for multiple projects in
7 one single contract, through a public-private partnership project
8 delivery method, the result of which restricts competition.

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

39 (2) As the carrying out of any project described pursuant to this
40 section constitutes the performance of an essential public function,
41 all projects **【predominantly used in furtherance of the】** having the
42 primary stated purpose of furthering the educational purposes of the
43 institution undertaken pursuant to this section, provided it is owned
44 by or leased to a public entity, any State or county college or public
45 research university, non-profit business entity, foreign or domestic,
46 or a business entity wholly owned by such non-profit business
47 entity, shall at all times be exempt from property taxation and
48 special assessments of the State, or any municipality, or other

1 political subdivision of the State and, notwithstanding the
2 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2
3 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the
4 contrary, shall not be required to make payments in lieu of taxes.
5 The land upon which the project is located shall also at all times be
6 exempt from property taxation. Further, the project and land upon
7 which the project is located shall not be subject to the provisions of
8 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax
9 liability of private parties conducting for profit activities on tax
10 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding
11 the taxation of leasehold interests in exempt property that are held
12 by nonexempt parties.

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

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

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

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

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

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

30 f. (1) **【On or before August 1, 2015, all】** All projects proposed
31 in accordance with this section shall be submitted to the New Jersey
32 Economic Development Authority for the authority's review and
33 approval **【;** except that in the case of projects proposed in
34 accordance with paragraph (2) of subsection a. of this section, all
35 projects shall be submitted on or before August 1, 2016**】**. The
36 projects are encouraged, when practicable, to adhere to the green
37 building manual prepared by the Commissioner of Community
38 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).
39 **【Any application that is deemed to be incomplete on August 2,**
40 **2015, or on August 2, 2016 in the case of an application submitted**
41 **pursuant to paragraph (2) of subsection a. of this section, shall not**
42 **be eligible for consideration.】**

43 (2) (a) In order for an application to be complete and
44 considered by the authority, the application shall include, but not be
45 limited to: (i) a full description of the proposed public-private
46 partnership agreement between the State or county college and the
47 private developer; (ii) a full description of the project, including a

1 description of any agreement for the lease of a revenue-producing
2 facility related to the project; (iii) the estimated costs and financial
3 documentation for the project; (iv) a timetable for completion of the
4 construction of the project extending no more than five years after
5 consideration and approval; and (v) any other requirements that the
6 authority deems appropriate or necessary.

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

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

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

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

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

46 h. A project with an expenditure of under \$50 million
47 developed under a public-private partnership agreement shall

1 include a requirement that precludes contractors from engaging in
2 the project if the contractor has contributed to the private entity's
3 financing of the project in an amount of more than 10% of the
4 project's financing costs.

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

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

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

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

46 (3) After the proposal or proposals have been received, and any
47 public notification period has expired, the State or county college
48 shall rank the proposals in order of preference. In ranking the

1 proposals, the State or county college may consider factors that
2 include, but may not be limited to, professional qualifications,
3 general business terms, innovative engineering, architectural
4 services, or cost-reduction terms, finance plans, and the need for
5 State or county college funds to deliver the project and discharge
6 the agreement. If only one proposal is received, the State or county
7 college shall negotiate in good faith and, if not satisfied with the
8 results of the negotiations, the State or county college may, at its
9 sole discretion, terminate negotiations.

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

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

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

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

40

41 6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
42 as follows:

43 5. The authority shall have the following powers:

44 a. To adopt bylaws for the regulation of its affairs and the
45 conduct of its business;

46 b. To adopt and have a seal and to alter the same at pleasure;

47 c. To sue and be sued;

1 d. To acquire in the name of the authority by purchase or
2 otherwise, on such terms and conditions and such manner as it may
3 deem proper, or by the exercise of the power of eminent domain in
4 the manner provided by the "Eminent Domain Act of 1971,"
5 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
6 other property which it may determine is reasonably necessary for
7 any project; provided, however, that the authority in connection
8 with any project shall not take by exercise of the power of eminent
9 domain any real property except upon consent thereto given by
10 resolution of the governing body of the municipality in which such
11 real property is located; and provided further that the authority shall
12 be limited in its exercise of the power of eminent domain in
13 connection with any project in qualifying municipalities as defined
14 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
15 municipalities which had a population, according to the latest
16 federal decennial census, in excess of 10,000;

17 e. To enter into contracts with a person upon such terms and
18 conditions as the authority shall determine to be reasonable,
19 including, but not limited to, reimbursement for the planning,
20 designing, financing, construction, reconstruction, improvement,
21 equipping, furnishing, operation and maintenance of the project and
22 to pay or compromise any claims arising therefrom;

23 f. To establish and maintain reserve and insurance funds with
24 respect to the financing of the project or the school facilities project
25 and any project financed pursuant to the "Municipal Rehabilitation
26 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
27 al.);

28 g. To sell, convey or lease to any person all or any portion of a
29 project for such consideration and upon such terms as the authority
30 may determine to be reasonable;

31 h. To mortgage, pledge or assign or otherwise encumber all or
32 any portion of a project, or revenues, whenever it shall find such
33 action to be in furtherance of the purposes of this act, P.L.2000,
34 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
35 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
36 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
37 P.L.2009, c.90 (C.52:27D-489c et al.);

38 i. To grant options to purchase or renew a lease for any of its
39 projects on such terms as the authority may determine to be
40 reasonable;

41 j. To contract for and to accept any gifts or grants or loans of
42 funds or property or financial or other aid in any form from the
43 United States of America or any agency or instrumentality thereof,
44 or from the State or any agency, instrumentality or political
45 subdivision thereof, or from any other source and to comply,
46 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
47 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
48 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and

- 1 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
2 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
3 conditions thereof;
- 4 k. In connection with any action undertaken by the authority in
5 the performance of its duties and any application for assistance or
6 commitments therefor and modifications thereof, to require and
7 collect such fees and charges as the authority shall determine to be
8 reasonable, including but not limited to fees and charges for the
9 authority's administrative, organizational, insurance, operating,
10 legal, and other expenses;
- 11 l. To adopt, amend and repeal regulations to carry out the
12 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
13 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
14 the "Municipal Rehabilitation and Economic Recovery Act,"
15 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,
16 c.137 (C.52:18A-235 et al.);
- 17 m. To acquire, purchase, manage and operate, hold and dispose
18 of real and personal property or interests therein, take assignments
19 of rentals and leases and make and enter into all contracts, leases,
20 agreements and arrangements necessary or incidental to the
21 performance of its duties;
- 22 n. To purchase, acquire and take assignments of notes,
23 mortgages and other forms of security and evidences of
24 indebtedness;
- 25 o. To purchase, acquire, attach, seize, accept or take title to any
26 project or school facilities project by conveyance or by foreclosure,
27 and sell, lease, manage or operate any project or school facilities
28 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
29 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
30 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-
31 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-
32 489c et al.);
- 33 p. To borrow money and to issue bonds of the authority and to
34 provide for the rights of the holders thereof, as provided in
35 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
36 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
37 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
38 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
39 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 40 q. To extend credit or make loans to any person for the
41 planning, designing, acquiring, constructing, reconstructing,
42 improving, equipping and furnishing of a project or school facilities
43 project, which credits or loans may be secured by loan and security
44 agreements, mortgages, leases and any other instruments, upon such
45 terms and conditions as the authority shall deem reasonable,
46 including provision for the establishment and maintenance of
47 reserve and insurance funds, and to require the inclusion in any
48 mortgage, lease, contract, loan and security agreement or other

- 1 instrument, of such provisions for the construction, use, operation
2 and maintenance and financing of a project or school facilities
3 project as the authority may deem necessary or desirable;
- 4 r. To guarantee up to 90% of the amount of a loan to a person,
5 if the proceeds of the loan are to be applied to the purchase and
6 installation, in a building devoted to industrial or commercial
7 purposes, or in an office building, of an energy improvement
8 system;
- 9 s. To employ consulting engineers, architects, attorneys, real
10 estate counselors, appraisers, and such other consultants and
11 employees as may be required in the judgment of the redevelopment
12 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
13 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
14 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
15 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
16 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
17 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their
18 compensation from funds available to the redevelopment utility
19 therefor, all without regard to the provisions of Title 11A of the
20 New Jersey Statutes;
- 21 t. To do and perform any acts and things authorized by
22 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,
23 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the
24 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,
25 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
26 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.),
27 under, through or by means of its own officers, agents and
28 employees, or by contract with any person;
- 29 u. To procure insurance against any losses in connection with
30 its property, operations or assets in such amounts and from such
31 insurers as it deems desirable;
- 32 v. To do any and all things necessary or convenient to carry out
33 its purposes and exercise the powers given and granted in P.L.1974,
34 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
35 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
36 Rehabilitation and Economic Recovery Act," P.L.2002,
37 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),
38 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 39 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
40 maintain or repair or provide for the construction, reconstruction,
41 improvement, alteration, equipping or maintenance or repair of any
42 development property and lot, award and enter into construction
43 contracts, purchase orders and other contracts with respect thereto,
44 upon such terms and conditions as the authority shall determine to
45 be reasonable, including, but not limited to, reimbursement for the
46 planning, designing, financing, construction, reconstruction,
47 improvement, equipping, furnishing, operation and maintenance of
48 any such development property and the settlement of any claims

- 1 arising therefrom and the establishment and maintenance of reserve
2 funds with respect to the financing of such development property;
- 3 x. When authorized by the governing body of a municipality
4 exercising jurisdiction over an urban growth zone, to construct,
5 cause to be constructed or to provide financial assistance to projects
6 in an urban growth zone which shall be exempt from the terms and
7 requirements of the land use ordinances and regulations, including,
8 but not limited to, the master plan and zoning ordinances, of such
9 municipality;
- 10 y. To enter into business employment incentive agreements as
11 provided in the "Business Employment Incentive Program Act,"
12 P.L.1996, c.26 (C.34:1B-124 et al.);
- 13 z. To enter into agreements or contracts, execute instruments,
14 and do and perform all acts or things necessary, convenient or
15 desirable for the purposes of the redevelopment utility to carry out
16 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
17 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
18 c.137 (C.52:18A-235 et al.), including, but not limited to, entering
19 into contracts with the State Treasurer, the Commissioner of
20 Education, districts, the New Jersey Schools Development
21 Authority, and any other entity which may be required in order to
22 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),
23 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
24 P.L.2009, c.90 (C.52:27D-489c et al.);
- 25 aa. (Deleted by amendment, P.L.2007, c.137);
- 26 bb. To make and contract to make loans to local units to finance
27 the cost of school facilities projects and to acquire and contract to
28 acquire bonds, notes or other obligations issued or to be issued by
29 local units to evidence the loans, all in accordance with the
30 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
31 c.137 (C.52:18A-235 et al.);
- 32 cc. Subject to any agreement with holders of its bonds issued to
33 finance a project or school facilities project, obtain as security or to
34 provide liquidity for payment of all or any part of the principal of
35 and interest and premium on the bonds of the authority or for the
36 purchase upon tender or otherwise of the bonds, lines of credit,
37 letters of credit, reimbursement agreements, interest rate exchange
38 agreements, currency exchange agreements, interest rate floors or
39 caps, options, puts or calls to hedge payment, currency, rate, spread
40 or similar exposure or similar agreements, float agreements,
41 forward agreements, insurance contract, surety bond, commitment
42 to purchase or sell bonds, purchase or sale agreement, or
43 commitments or other contracts or agreements, and other security
44 agreements or instruments in any amounts and upon any terms as
45 the authority may determine and pay any fees and expenses required
46 in connection therewith;
- 47 dd. To charge to and collect from local units, the State and any
48 other person, any fees and charges in connection with the

1 authority's actions undertaken with respect to school facilities
2 projects, including, but not limited to, fees and charges for the
3 authority's administrative, organization, insurance, operating and
4 other expenses incident to the financing of school facilities projects;
5 ee. To make loans to refinance solid waste facility bonds
6 through the issuance of bonds or other obligations and the execution
7 of any agreements with counties or public authorities to effect the
8 refunding or rescheduling of solid waste facility bonds, or otherwise
9 provide for the payment of all or a portion of any series of solid
10 waste facility bonds. Any county or public authority refunding or
11 rescheduling its solid waste facility bonds pursuant to this
12 subsection shall provide for the payment of not less than fifty
13 percent of the aggregate debt service for the refunded or
14 rescheduled debt of the particular county or public authority for the
15 duration of the loan; except that, whenever the solid waste facility
16 bonds to be refinanced were issued by a public authority and the
17 county solid waste facility was utilized as a regional county solid
18 waste facility, as designated in the respective adopted district solid
19 waste management plans of the participating counties as approved
20 by the department prior to November 10, 1997, and the utilization
21 of the facility was established pursuant to tonnage obligations set
22 forth in their respective interdistrict agreements, the public
23 authority refunding or rescheduling its solid waste facility bonds
24 pursuant to this subsection shall provide for the payment of a
25 percentage of the aggregate debt service for the refunded or
26 rescheduled debt of the public authority not to exceed the
27 percentage of the specified tonnage obligation of the host county for
28 the duration of the loan. Whenever the solid waste facility bonds are
29 the obligation of a public authority, the relevant county shall
30 execute a deficiency agreement with the authority, which shall
31 provide that the county pledges to cover any shortfall and to pay
32 deficiencies in scheduled repayment obligations of the public
33 authority. All costs associated with the issuance of bonds pursuant
34 to this subsection may be paid by the authority from the proceeds of
35 these bonds. Any county or public authority is hereby authorized to
36 enter into any agreement with the authority necessary, desirable or
37 convenient to effectuate the provisions of this subsection.

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

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

47 gg. To finance projects approved by the board, provide staff
48 support to the board, oversee and monitor progress on the part of

1 the board in carrying out the revitalization, economic development
 2 and restoration projects authorized pursuant to the "Municipal
 3 Rehabilitation and Economic Recovery Act," P.L.2002,
 4 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
 5 responsibilities pursuant thereto;

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

9 ii. To finance or develop private or public parking facilities or
 10 structures, which may include the use of solar photovoltaic
 11 equipment, in municipalities qualified to receive State aid pursuant
 12 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
 13 municipalities that contain areas designated pursuant to P.L.1985,
 14 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
 15 Planning Area 2 (Suburban), or a town center, and to provide
 16 appropriate assistance, including but not limited to, extensions of
 17 credit, loans, and guarantees, to municipalities qualified to receive
 18 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
 19 178 et seq.) and municipalities that contain areas designated
 20 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
 21 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
 22 center, and their agencies and instrumentalities or to private entities
 23 whose projects are located in those municipalities, in order to
 24 facilitate the financing and development of parking facilities or
 25 structures in such municipalities. The authority may serve as the
 26 issuing agent of bonds to finance the undertaking of a project for
 27 the purposes of this subsection; and

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

41

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

1 8. This act shall take effect immediately.

2

3

4

STATEMENT

5

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

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

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

27 The bill requires that workers employed in the construction,
28 rehabilitation, or building maintenance services of a project by a
29 private entity that has entered into an agreement with a government
30 entity be subject to the applicable provisions of the "New Jersey
31 Prevailing Wage Act;" that building construction projects
32 undertaken pursuant to an agreement contain a project labor
33 agreement; and that the general contractor, construction manager,
34 design-build team, or subcontractor for a project is registered and
35 classified by the State to perform work on a project.

36 Under the bill, a public-private partnership project may be
37 structured using availability payments as a financing method.
38 However, the bundling of multiple projects would be prohibited. In
39 addition, roadway or highway projects must include an expenditure
40 of at least \$10 million in public funds or any expenditure in private
41 funds. A private entity would be required to establish a construction
42 account to fully capitalize and fund the project, while the general
43 contractor, construction manager, or design-build team would be
44 required to post performance and payment bonds, instead of the
45 chief financial officer of the public entity. A contractor would be
46 precluded from engaging in a project having an expenditure of
47 under \$50 million if the contractor contributed more than 10% of

1 the project's financing. All projects would be required to undergo a
2 procurement process established under the bill.

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