

[First Reprint]

**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:**

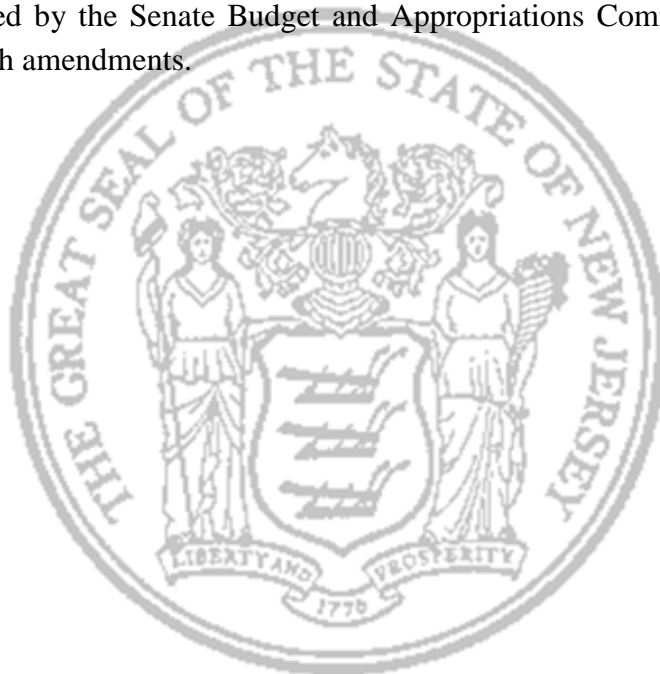
**Senators Singleton, Cruz-Perez and Ruiz**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on June 11, 2018, with amendments.



**(Sponsorship Updated As Of: 6/22/2018)**

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

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

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

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

12 <sup>1</sup>“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.”<sup>1</sup>

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.) <sup>1</sup>, including a housing  
 24 authority or redevelopment agency created or continued under the  
 25 “Local Redevelopment and Housing Law,” P.L.1992, c.79  
 26 (C.40A:12A-1 et seq.). A local government unit shall not include a  
 27 public entity that has entered into a contract with a private firm or a  
 28 public authority pursuant to the “New Jersey Wastewater Treatment  
 29 Public-Private Contracting Act,” P.L.1995, c.216 (C.58:27-19 et  
 30 al.), for the provision of wastewater treatment services<sup>1</sup>.

31 “Project” means the development, construction, reconstruction,  
 32 repair, alteration, improvement, extension, operation, and  
 33 maintenance of any building, road, structure, infrastructure, or  
 34 facility constructed or acquired by a local government unit to house  
 35 local government functions, including any infrastructure or facility  
 36 used or to be used by the public or in support of a public purpose or  
 37 activity; provided that, with respect to a roadway or highway  
 38 project, a qualifying project shall include an expenditure of at least  
 39 \$10 million in public funds, or any expenditure in solely private  
 40 funds.

41 “Public-private partnership agreement” means an agreement  
 42 entered into by a local government unit and a private entity  
 43 pursuant to this section for the purpose of permitting a private entity  
 44 to assume financial and administrative responsibility for the

**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

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted June 11, 2018.

1 development, construction, reconstruction, repair, alteration,  
2 improvement, extension, operation, and maintenance of a project of,  
3 or for the benefit of, the local government unit.

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

10 (2) A public-private partnership agreement may include an  
11 agreement under which a local government unit and a private entity  
12 enter into a lease of a public building, road, structure, infrastructure,  
13 or facility in exchange for up-front or structured financing by the  
14 private entity for the project. Under the lease agreement, the  
15 private entity may be responsible for the management, operation,  
16 and maintenance of the building, road, structure, infrastructure, or  
17 facility. The private entity may receive some or all, as per the  
18 agreement, of the revenue generated by the building, road, structure,  
19 infrastructure, or facility, and may operate the building, road  
20 structure, infrastructure, or facility in accordance with local  
21 government unit standards. At the end of the lease term, subsequent  
22 revenue generated by the building, road, structure, infrastructure, or  
23 facility, along with management, operation, and maintenance  
24 responsibility, shall revert to the local government unit. <sup>1</sup>A lease  
25 agreement entered into pursuant to this section shall be limited in  
26 duration to a term of not more than 30 years. A lease agreement  
27 shall be subject to all applicable provisions of current law  
28 governing leases by a local government unit not inconsistent with  
29 the provisions of this section.<sup>1</sup>

30 (3) <sup>1</sup>**[**A public-private partnership agreement may include the  
31 use of availability payments if deemed to be in the best interest of  
32 the public and the local government unit, provided the private entity  
33 shall operate the building, road, structure, infrastructure or facility  
34 in accordance with local government unit standards.

35 (4) <sup>1</sup>**]** Bundling of projects shall be prohibited under this section.

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

43 (2) For the purposes of facilitating the financing of a project  
44 pursuant to this section, a public entity may become the owner or  
45 lessee of the project or the lessee of the land, or both, may become  
46 the lessee of a revenue-producing building, structure, or facility to  
47 which the local government unit holds title, may issue indebtedness  
48 in accordance with the public entity's enabling legislation and,  
49 notwithstanding any provision of law to the contrary, shall be

1 empowered to enter into contracts with a private entity and its  
2 affiliates without being subject to the procurement and contracting  
3 requirements of any statute applicable to the public entity provided  
4 that the private entity has been selected by the local government  
5 unit pursuant to a solicitation of proposals or qualifications from at  
6 least two private entities. For the purposes of this subsection, a  
7 public entity shall include the New Jersey Economic Development  
8 Authority, and any project undertaken pursuant to this section of  
9 which the authority becomes the owner or lessee, or which is  
10 situated on land of which the authority becomes the lessee, shall be  
11 deemed a "project" under the "The New Jersey Economic  
12 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

13 (3) As the carrying out of any project described pursuant to this  
14 section constitutes the performance of an essential public function,  
15 all projects used in furtherance of the purposes of the local  
16 government unit undertaken pursuant to this section, provided the  
17 project is owned by or leased to a public entity, non-profit business  
18 entity, foreign or domestic, or a business entity wholly owned by  
19 such non-profit business entity, shall at all times be exempt from  
20 property taxation and special assessments of the State, or any  
21 municipality, or other political subdivision of the State and,  
22 notwithstanding the provisions of section 15 of P.L.1974,  
23 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or  
24 any other section of law to the contrary, shall not be required to  
25 make payments in lieu of taxes. The land upon which the project is  
26 located shall also at all times be exempt from property taxation.  
27 The project and land upon which the project is located shall not be  
28 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-  
29 1.10) regarding the tax liability of private parties conducting for  
30 profit activities on tax exempt land, or section 1 of P.L.1949,  
31 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in  
32 exempt property that are held by nonexempt parties.

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

47 d. Each worker employed in the construction, rehabilitation, or  
48 building maintenance services of facilities by a private entity that  
49 has entered into a public-private partnership agreement with a local

1 government unit pursuant to this section shall be paid not less than  
2 the prevailing wage rate for the worker's craft or trade as  
3 determined by the Commissioner of Labor and Workforce  
4 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
5 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

21 (2) All projects proposed in accordance with this section shall  
22 be submitted to the New Jersey Economic Development Authority  
23 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
24 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
25 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
26 are encouraged to adhere to the Leadership in Energy and  
27 Environmental Design Green Building Rating System as adopted by  
28 the United States Green Building Council, the Green Globes  
29 Program adopted by the Green Building Initiative, or a comparable  
30 nationally recognized, accepted, and appropriate sustainable  
31 development rating system.

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

37 f. (1) All projects proposed in accordance with this section  
38 shall be submitted to the New Jersey Economic Development  
39 Authority for the authority's review and approval <sup>1</sup>, which shall be  
40 conducted in consultation with the Commissioner of the Department  
41 of Community Affairs<sup>1</sup>. The projects are encouraged, when  
42 practicable, to adhere to the green building manual prepared by the  
43 Commissioner of Community Affairs pursuant to section 1 of  
44 P.L.2007, c.132 (C.52:27D-130.6).

45 (2) (a) In order for an application to be complete and considered  
46 by the authority, the application shall include, but not be limited to:  
47 (i) a full description of the proposed public-private partnership  
48 agreement between the local government unit and the private

1 developer; (ii) a full description of the project, including a  
2 description of any agreement for the lease of a revenue-producing  
3 facility related to the project; (iii) the estimated costs and financial  
4 documentation for the project; (iv) a timetable for completion of the  
5 construction of the project extending no more than five years after  
6 consideration and approval; and (v) any other requirements that the  
7 authority deems appropriate or necessary. <sup>1</sup>The application shall  
8 also include a resolution by the local government unit's governing  
9 body of its intent to enter into a public-private partnership  
10 agreement pursuant to this section.<sup>1</sup>

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

19 (3) The authority shall review all completed applications, and  
20 request additional information as is needed to make a complete  
21 assessment of the project. <sup>1</sup>The criteria for assessing the project  
22 shall include, but may not be limited to: (i) feasibility and design of  
23 the project; (ii) experience and qualifications of the private entity;  
24 (iii) soundness of the financial plan; (iv) adequacy of the required  
25 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
26 existence of a clear public benefit; and (vii) a resolution by the local  
27 government unit's governing body of its intent to enter into a  
28 public-private partnership agreement for the project.<sup>1</sup> No project  
29 shall commence the procurement process until <sup>1</sup>**["final"]** approval  
30 has been granted by the authority <sup>1</sup>. Following the procurement  
31 process, but before the local government unit enters into a public-  
32 private partnership agreement, the project and the resultant short list  
33 of private entities shall be submitted to the authority for final  
34 approval<sup>1</sup>; provided, however, that the authority shall retain the  
35 right to revoke approval if it determines that the project has  
36 <sup>1</sup>substantially<sup>1</sup> deviated from the plan submitted pursuant to  
37 paragraph (2) of this subsection, and shall retain the right to cancel  
38 a procurement after a short list of private entities is developed if  
39 deemed in the public interest as specified under subsection j. of this  
40 section. Notwithstanding any provision of this section to the  
41 contrary, all roadway or highway projects shall be subject to review  
42 and approval by the State Treasurer, <sup>1</sup>which shall be conducted in  
43 consultation with the Commissioner of the Department of  
44 Transportation,<sup>1</sup> and the authority shall not approve any roadway or  
45 highway project disapproved by the State Treasurer.

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

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

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

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

21 j. (1) A private entity seeking to enter into a public-private  
22 partnership agreement with the local government unit shall be  
23 qualified by the local government unit as part of the procurement  
24 process, provided such process ensures that the private entity meets  
25 at least the minimum local government unit standards for  
26 qualification for professional services, construction contracting, and  
27 other qualifications applicable to the project, prior to submitting a  
28 proposal under the procurement process. <sup>1</sup>The local governing  
29 unit's governing body shall issue a request for proposals, which  
30 shall close within 45 days.<sup>1</sup> The qualification process <sup>1</sup>shall be  
31 conducted within 45 days after the closing date for the receipt of  
32 proposals, and<sup>1</sup> shall result in a list of qualified private entities, that  
33 may be ranked in order to generate a short list of private entities  
34 requested to submit a final proposal.

35 (2) The local government unit may accept unsolicited proposals  
36 from private entities for public-private partnership agreements. If  
37 the local government unit receives an unsolicited proposal and  
38 determines that it meets the standards of this section, the local  
39 government unit shall publish a notice of the receipt of the proposal  
40 on the Internet site of the local government unit, or through  
41 advertisements in newspapers. If a notice is published exclusively  
42 in newspapers, the notice shall appear in two or more newspapers  
43 circulated wholly or in part in the county where the proposed  
44 project is to be located. The notice shall provide that the local  
45 government unit will accept, for <sup>1</sup>**[45]** 120<sup>1</sup> days after the initial  
46 date of publication, proposals meeting the standards of this section  
47 from other private entities for eligible projects that satisfy the same  
48 basic purpose and need. A copy of the notice shall be mailed to

1 each municipal and county local government body in the geographic  
2 area affected by the proposal.

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

15 (4) The local government unit may require that the private entity  
16 assume responsibility for all costs incurred by the local government  
17 unit before execution of the public-private partnership agreement,  
18 including costs of retaining independent experts to review, analyze,  
19 and advise the local government unit 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 local government unit  
28 may 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 local government unit of any design element  
31 contained in an unsuccessful proposal shall be at the sole risk and  
32 discretion of the local government unit and shall not confer liability  
33 on the recipient of the stipulated stipend amount. After payment of  
34 the stipulated stipend amount, the local government unit and the  
35 unsuccessful proposer shall jointly own the rights to, and may make  
36 use of any work product contained in the proposal, including the  
37 technologies, techniques, methods, processes, ideas, and  
38 information contained in the proposal, project design, and project  
39 financial plan. The use by the unsuccessful proposer of any part of  
40 the work product contained in the proposal shall be at the sole risk  
41 of the unsuccessful proposer and shall not confer liability on the  
42 local government unit.

43

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

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

48 <sup>1</sup>["Availability payment" means a periodic payment made by a  
49 school district to a private entity in exchange for making available



1 the use of a public building, structure, infrastructure, or facility at a  
2 predetermined level of service, operation, or maintenance. **1**<sup>1</sup>

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

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

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

17 “School district” means and includes a local school district,  
18 regional school district, or county special services school district or  
19 county vocational school established and operating under the  
20 provisions of Title 18A of the New Jersey Statutes. The term  
21 “school district” shall **1**<sup>1</sup>**[not]**<sup>1</sup> include a charter school established  
22 under P.L.1995, c.426 (C.18A:36A-1 et seq.) <sup>1</sup>and a renaissance  
23 school established under P.L.2011. c.176 (C.18A:36C-1 et seq.)<sup>1</sup>.

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

30 (2) A public-private partnership agreement may include an  
31 agreement under which a school district and a private entity enter  
32 into a lease of a revenue-producing public building, structure, or  
33 facility in exchange for up-front or structured financing by the  
34 private entity for the project. Under the lease agreement, the  
35 private entity may be responsible for the management, operation,  
36 and maintenance of the building, structure, or facility. The private  
37 entity may receive some or all, as per the agreement, of the revenue  
38 generated by the building, structure, or facility, and may operate the  
39 building, structure, or facility in accordance with school district  
40 standards. At the end of the lease term, subsequent revenue  
41 generated by the building, structure, or facility, along with  
42 management, operation, and maintenance responsibility, shall revert  
43 to the school district. <sup>1</sup>A lease agreement entered into pursuant to  
44 this section shall be limited in duration to a term of not more than  
45 30 years. A lease agreement shall be subject to all applicable  
46 provisions of current law governing leases by a school district not  
47 inconsistent with the provisions of this section.<sup>1</sup>

1       (3) <sup>1</sup> [A public-private partnership agreement may include the  
2 use of availability payments if deemed to be in the best interest of  
3 the public and the school district, provided the private entity shall  
4 operate the building, structure, infrastructure or facility in  
5 accordance with school district standards.

6       (4) <sup>1</sup> Bundling of projects shall be prohibited under this section.

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

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

32       (3) As the carrying out of any project described pursuant to this  
33 section constitutes the performance of an essential public function,  
34 all projects predominantly used in furtherance of the purposes of the  
35 school district undertaken pursuant to this section, provided the  
36 project is owned by or leased to a public entity, non-profit business  
37 entity, foreign or domestic, or a business entity wholly owned by  
38 such non-profit business entity, shall at all times be exempt from  
39 property taxation and special assessments of the State, or any  
40 municipality, or other political subdivision of the State and,  
41 notwithstanding the provisions of section 15 of P.L.1974,  
42 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or  
43 any other section of law to the contrary, shall not be required to  
44 make payments in lieu of taxes. The land upon which the project is  
45 located shall also at all times be exempt from property taxation.  
46 The project and land upon which the project is located shall not be  
47 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-  
48 1.10) regarding the tax liability of private parties conducting for  
49 profit activities on tax exempt land, or section 1 of P.L.1949,

1 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in  
2 exempt property that are held by nonexempt parties.

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

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

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

40 (2) All projects proposed in accordance with this section shall  
41 be submitted to the New Jersey Economic Development Authority  
42 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
43 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
44 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
45 are encouraged to adhere to the Leadership in Energy and  
46 Environmental Design Green Building Rating System as adopted by  
47 the United States Green Building Council, the Green Globes  
48 Program adopted by the Green Building Initiative, or a comparable

1 nationally recognized, accepted, and appropriate sustainable  
2 development rating system.

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

8 f. (1) All projects proposed in accordance with this section  
9 shall be submitted to the New Jersey Economic Development  
10 Authority for the authority's review and approval <sup>1</sup>, which shall be  
11 conducted in consultation with the Commissioner of the Department  
12 of Education<sup>1</sup>. The projects are encouraged, when practicable, to  
13 adhere to the green building manual prepared by the Commissioner  
14 of Community Affairs pursuant to section 1 of P.L.2007,  
15 c.132 (C.52:27D-130.6).

16 (2) (a) In order for an application to be complete and considered  
17 by the authority, the application shall include, but not be limited to:  
18 (i) a full description of the proposed public-private partnership  
19 agreement between the school district and the private developer; (ii)  
20 a full description of the project, including a description of any  
21 agreement for the lease of a revenue-producing facility related to  
22 the project; (iii) the estimated costs and financial documentation for  
23 the project; (iv) a timetable for completion of the construction of  
24 the project extending no more than five years after consideration  
25 and approval; and (v) any other requirements that the authority  
26 deems appropriate or necessary. <sup>1</sup>The application shall also include  
27 a resolution by the school district's governing body of its intent to  
28 enter into a public-private partnership agreement pursuant to this  
29 section.<sup>1</sup>

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

38 (3) The authority shall review all completed applications, and  
39 request additional information as is needed to make a complete  
40 assessment of the project. <sup>1</sup>The criteria for assessing the project  
41 shall include, but may not be limited to: (i) feasibility and design of  
42 the project; (ii) experience and qualifications of the private entity;  
43 (iii) soundness of the financial plan; (iv) adequacy of the required  
44 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
45 existence of a clear public benefit; and (vii) a resolution by the  
46 school district's governing body of its intent to enter into a public-  
47 private partnership agreement for the project.<sup>1</sup> No project shall  
48 commence the procurement process until <sup>1</sup>**[final]**<sup>1</sup> approval has

1 been granted by the authority <sup>1</sup>. Following the procurement process,  
2 but before the school district enters into a public-private partnership  
3 agreement, the project and the resultant short list of private entities  
4 shall be submitted to the authority for final approval<sup>1</sup>; provided,  
5 however, that the authority shall retain the right to revoke approval  
6 if it determines that the project has <sup>1</sup>substantially<sup>1</sup> deviated from the  
7 plan submitted pursuant to paragraph (2) of this subsection, and  
8 shall retain the right to cancel a procurement after a short list of  
9 private entities is developed if deemed in the public interest as  
10 specified under subsection j. of this section.

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

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

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

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

34 j. (1) A private entity seeking to enter into a public-private  
35 partnership agreement with the school district shall be qualified by  
36 the school district as part of the procurement process, provided such  
37 process ensures that the private entity meets at least the minimum  
38 school district standards for qualification for professional services,  
39 construction contracting, and other qualifications applicable to the  
40 project, prior to submitting a proposal under the procurement  
41 process. <sup>1</sup>The school district's governing body shall issue a request  
42 for proposals, which shall close within 45 days.<sup>1</sup> The qualification  
43 process <sup>1</sup>shall be conducted within 45 days after the closing date for  
44 the receipt of proposals, and<sup>1</sup> shall result in a list of qualified  
45 private entities, that may be ranked in order to generate a short list  
46 of private entities requested to submit a final proposal.

47 (2) The school district may accept unsolicited proposals from  
48 private entities for public-private partnership agreements. If the

1 school district receives an unsolicited proposal and determines that  
2 it meets the standards of this section, the school district shall  
3 publish a notice of the receipt of the proposal on the Internet site of  
4 the school district, or through advertisements in newspapers. If a  
5 notice is published exclusively in newspapers, the notice shall  
6 appear in two or more newspapers circulated wholly or in part in  
7 the county where the proposed project is to be located. The notice  
8 shall provide that the school district will accept, for <sup>1</sup>~~45~~ 120<sup>1</sup>  
9 days after the initial date of publication, proposals meeting the  
10 standards of this section from other private entities for eligible  
11 projects that satisfy the same basic purpose and need. A copy of the  
12 notice shall be mailed to each municipal and county local  
13 government body in the geographic area affected by the proposal.

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

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

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

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

1 the proposal shall be at the sole risk of the unsuccessful proposer  
2 and shall not confer liability on the school district.

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

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

8 <sup>1</sup>“Availability payment” means a periodic payment made by a  
9 State government entity to a private entity in exchange for making  
10 available the use of a public building, road, structure, infrastructure,  
11 or facility at a predetermined level of service, operation, or  
12 maintenance.”<sup>1</sup>

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

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

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

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

39 “State government entity” means the State or any department,  
40 agency, board, commission, committee, or authority thereof subject  
41 to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et  
42 seq.), <sup>1</sup>“but including the South Jersey Port Corporation created  
43 pursuant to “The South Jersey Port Corporation Act,” P.L.1968,  
44 c.60 (C.12:11A-1 et seq.). State government entity”<sup>1</sup> shall not  
45 include any State institution of higher education.

46 b. (1) A State government entity may enter into a contract with  
47 a private entity, subject to subsection f. of this section, to be  
48 referred to as a public-private partnership agreement, that permits  
49 the private entity to assume financial and administrative

1 responsibility for the construction, reconstruction, repair, alteration,  
2 improvement, extension, operation, and maintenance of a building  
3 or highway of, or for the benefit of, the State government entity,  
4 provided that the building or highway project is financed in whole  
5 or in part by the private entity.

6 (2) A public-private partnership agreement may include an  
7 agreement under which a State government entity and a private  
8 entity enter into a lease of a revenue-producing public building or  
9 highway in exchange for up-front or structured financing by the  
10 private entity for the project. Under the lease agreement, the  
11 private entity may be responsible for the management, operation,  
12 and maintenance of the building or highway. The private entity  
13 may receive some or all, as per the agreement, of the revenue  
14 generated by the building or highway, and may operate the building  
15 or highway in accordance with State government entity standards.  
16 At the end of the lease term, subsequent revenue generated by the  
17 building or highway, along with management, operation, and  
18 maintenance responsibility, shall revert to the State government  
19 entity. <sup>1</sup>A lease agreement entered into pursuant to this section shall  
20 be limited in duration to a term of not more than 30 years. A lease  
21 agreement shall be subject to all applicable provisions of current  
22 law governing leases by a State government entity not inconsistent  
23 with the provisions of this section.<sup>1</sup>

24 (3) <sup>1</sup>~~【~~A public-private partnership agreement may include the  
25 use of availability payments if deemed to be in the best interest of  
26 the public and the State government entity, provided the private  
27 entity shall operate the building, road, structure, infrastructure or  
28 facility in accordance with State government entity standards.

29 (4)<sup>1</sup> Bundling of projects shall be prohibited under this section.

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

37 (2) For the purposes of facilitating the financing of a project  
38 pursuant to this section, a public entity may become the owner or  
39 lessee of the project or the lessee of the land, or both, may become  
40 the lessee of a building or highway to which the State government  
41 entity holds title and, notwithstanding any provision of law to the  
42 contrary, shall be empowered to enter into contracts with a private  
43 entity and its affiliates without being subject to the procurement and  
44 contracting requirements, unless otherwise set forth herein, of any  
45 statute applicable to the public entity provided that the private  
46 entity has been selected by the public entity pursuant to a  
47 solicitation of proposals or qualifications from at least two private  
48 entities. For the purposes of this subsection, a public entity shall  
49 include the New Jersey Department of Transportation, New Jersey



1 Turnpike Authority, South Jersey Transportation Authority, New  
2 Jersey Transit, and the New Jersey Economic Development  
3 Authority, and any project undertaken pursuant to this section of  
4 which the public entity becomes the owner or lessee, or which is  
5 situated on land of which the public entity becomes the lessee, shall  
6 be deemed a "project" under the "New Jersey Economic  
7 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

8 (3) As the carrying out of any project described pursuant to this  
9 section constitutes the performance of an essential public function,  
10 all projects predominantly used in furtherance of the purposes of the  
11 State government entity undertaken pursuant to this section,  
12 provided the project is owned by or leased to a public entity, non-  
13 profit business entity, foreign or domestic, or a business entity  
14 wholly owned by such non-profit business entity, shall at all times  
15 be exempt from property taxation and special assessments of the  
16 State, or any municipality, or other political subdivision of the State  
17 and, notwithstanding the provisions of section 15 of P.L.1974, c.80  
18 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or any  
19 other section of law to the contrary, shall not be required to make  
20 payments in lieu of taxes. The land upon which the project is  
21 located shall also at all times be exempt from property taxation.  
22 The project and land upon which the project is located shall not be  
23 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-  
24 1.10) regarding the tax liability of private parties conducting for  
25 profit activities on tax exempt land, or section 1 of P.L.1949, c.177  
26 (C.54:4-2.3) regarding the taxation of leasehold interests in exempt  
27 property that are held by nonexempt parties.

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

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

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

16 (2) All projects proposed in accordance with this section shall  
17 be submitted to the New Jersey Economic Development Authority  
18 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
19 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
20 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
21 are encouraged to adhere to the Leadership in Energy and  
22 Environmental Design Green Building Rating System as adopted by  
23 the United States Green Building Council, the Green Globes  
24 Program adopted by the Green Building Initiative, or a comparable  
25 nationally recognized, accepted, and appropriate sustainable  
26 development rating system.

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

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

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

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

10 (3) The authority shall review all completed applications, and  
11 request additional information as is needed to make a complete  
12 assessment of the project. <sup>1</sup>The criteria for assessing the project  
13 shall include, but may not be limited to: (i) feasibility and design of  
14 the project; (ii) experience and qualifications of the private entity;  
15 (iii) soundness of the financial plan; (iv) adequacy of the required  
16 exhibits; (v) adequacy of the long-range maintenance plan; and (vi)  
17 the existence of a clear public benefit.<sup>1</sup> No project shall commence  
18 the procurement process until <sup>1</sup>**["final"]**<sup>1</sup> approval has been granted  
19 by the authority <sup>1</sup>. Following the procurement process, but before  
20 the State government entity enters into a public-private partnership  
21 agreement, the project and the resultant short list of private entities  
22 shall be submitted to the authority for final approval<sup>1</sup>; provided,  
23 however, that the authority shall retain the right to revoke approval  
24 if it determines that the project has <sup>1</sup>substantially<sup>1</sup> deviated from the  
25 plan submitted pursuant to paragraph (2) of this subsection, and  
26 shall retain the right to cancel a procurement after a short list of  
27 private entities is developed if deemed in the public interest as  
28 specified under subsection j. of this section. Notwithstanding any  
29 provision of this section to the contrary, all roadway or highway  
30 projects shall be subject to review and approval by the State  
31 Treasurer, <sup>1</sup>which shall be conducted in consultation with the  
32 Commissioner of the Department of Transportation,<sup>1</sup> and the  
33 authority shall not approve any roadway or highway project  
34 disapproved by the State Treasurer.

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

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

44 h. The power of eminent domain shall not be delegated to any  
45 private entity under the provisions of P.L. , c. (C. )  
46 (pending before the Legislature as this bill); however, a State  
47 government entity may dedicate any property interest, including  
48 land, improvements, and tangible personal property of the State

1 government entity for public use in a qualifying project if the State  
2 government entity finds that so doing will serve the public purpose  
3 of the project by minimizing the cost of the project to the State  
4 government entity or reducing the delivery time of a project.

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

10 j. (1) A private entity seeking to enter into a public-private  
11 partnership agreement with the State government entity shall be  
12 qualified by the State government entity as part of the procurement  
13 process, provided such process ensures that the private entity meets  
14 at least the minimum State government entity standards for  
15 qualification for professional services, construction contracting, and  
16 other qualifications applicable to the project, prior to submitting a  
17 proposal under the procurement process. ‘The State government  
18 entity shall issue a request for proposals, which shall close within  
19 45 days.’ The qualification process ‘shall be conducted within 45  
20 days after the closing date for the receipt of proposals, and’ shall  
21 result in a list of qualified private entities, that may be ranked in  
22 order to generate a short list of private entities requested to submit a  
23 final proposal.

24 (2) The State government entity may accept unsolicited  
25 proposals from private entities for public-private partnership  
26 agreements. If the State government entity receives an unsolicited  
27 proposal and determines that it meets the standards of this section,  
28 the State government entity shall publish a notice of the receipt of  
29 the proposal on the Internet site of the State government entity, or  
30 through advertisements in newspapers. If a notice is published  
31 exclusively in newspapers, the notice shall appear in two or more  
32 newspapers circulated wholly or in part in the county where the  
33 proposed project is to be located. The notice shall provide that the  
34 State government entity will accept, for **‘[45] 120’** days after the  
35 initial date of publication, proposals meeting the standards of this  
36 section from other private entities for eligible projects that satisfy  
37 the same basic purpose and need. A copy of the notice shall be  
38 mailed to each municipal and county local government body in the  
39 geographic area affected by the proposal.

40 (3) After the proposal or proposals have been received, and any  
41 public notification period has expired, the State government entity  
42 shall rank the proposals in order of preference. In ranking the  
43 proposals, the State government entity may consider factors that  
44 include, but may not be limited to, professional qualifications,  
45 general business terms, innovative engineering, architectural  
46 services, or cost-reduction terms, finance plans, and the need for  
47 State government entity funds to deliver the project and discharge  
48 the agreement. If only one proposal is received, the State  
49 government entity shall negotiate in good faith and, if not satisfied

1 with the results of the negotiations, the State government entity  
2 may, at its sole discretion, terminate negotiations.

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

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

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

32

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

37

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

40 43. a. (1) A State college or county college may enter into a  
41 contract with a private entity, subject to subsection f. of this section,  
42 to be referred to as a public-private partnership agreement, that  
43 permits the private entity to assume **【full】** financial and  
44 administrative responsibility for the on-campus or off-campus  
45 construction, reconstruction, repair, alteration, improvement,  
46 extension, management, or operation of a building, structure, or  
47 facility of, or for the benefit of, the institution, provided that the  
48 project is financed in whole or in part by the private entity and that

1 the State or institution of higher education, as applicable, retains  
2 full ownership of the land upon which the project is completed.

3 (2) A public-private partnership agreement may include an  
4 agreement under which a State or county college ~~leases to a~~  
5 ~~private entity the operation~~ and the private entity enter into a lease  
6 of a dormitory or other revenue-producing facility to which the  
7 college holds title, in exchange for up-front or structured financing  
8 by the private entity for the construction of classrooms,  
9 laboratories, or other academic or research buildings. Under the  
10 lease agreement, the college shall continue to hold title to the  
11 facility, and the private entity shall be responsible for the  
12 management, operation, and maintenance of the facility. The  
13 private entity shall receive some or all, as per the agreement, of the  
14 revenue generated by the facility and shall operate the facility in  
15 accordance with college standards. A lease agreement shall not  
16 affect the status or employment rights of college employees who are  
17 assigned to, or provide services to, the leased facility. A lease  
18 agreement shall not affect the status or employment rights of  
19 college employees who are assigned to, or provide services to, the  
20 leased facility. At the end of the lease term, subsequent revenue  
21 generated by the facility, along with management, operation, and  
22 maintenance responsibility, shall revert to the college. <sup>1</sup>A lease  
23 agreement entered into pursuant to this section shall be limited in  
24 duration to a term of not more than 30 years. A lease agreement  
25 shall be subject to all applicable provisions of current law  
26 governing leases by a State or county college not inconsistent with  
27 the provisions of this section.<sup>1</sup>

28 (3) <sup>1</sup>A public-private partnership agreement may include the  
29 use of availability payments if deemed to be in the best interest of  
30 the public and the State or county college, provided the private  
31 entity shall operate the building, structure, infrastructure or facility  
32 in accordance with State or county college standards.<sup>1</sup> Bundling  
33 of projects shall be prohibited. As used in this paragraph,  
34 <sup>1</sup>“availability payment” means a periodic payment made by a State  
35 or county college to a private entity in exchange for making  
36 available the use of a public building, structure, infrastructure, or  
37 facility at a predetermined level of service, operation, or  
38 maintenance. “Bundling” “bundling”<sup>1</sup> means the use of a  
39 solicitation for multiple projects in one single contract, through a  
40 public-private partnership project delivery method, the result of  
41 which restricts competition.

42 b. (1) A private entity that assumes financial and administrative  
43 responsibility for a project pursuant to subsection a. of this section  
44 shall not be subject, unless otherwise set forth herein, to the  
45 procurement and contracting requirements of all statutes applicable  
46 to the institution of higher education at which the project is  
47 completed, including, but not limited to, the "State College  
48 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the

1 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
2 et seq.). For the purposes of facilitating the financing of a project  
3 pursuant to subsection a. of this section, a public entity , including  
4 any State or county college or public research university, may  
5 become the owner or lessee of the project or the lessee of the land,  
6 or both, may become the lessee of a dormitory or other revenue-  
7 producing facility to which the college holds title, may issue  
8 indebtedness in accordance with the public entity's or institution's  
9 enabling legislation and, notwithstanding any provision of law to  
10 the contrary, shall be empowered to enter into contracts with a  
11 private entity and its affiliates, unless otherwise set forth herein,  
12 without being subject to the procurement and contracting  
13 requirements of any statute applicable to the public entity or  
14 institution provided that the private entity has been selected by the  
15 institution of higher education pursuant to a solicitation of  
16 proposals or qualifications from at least two private entities. For  
17 the purposes of this section, a public entity shall include the New  
18 Jersey Economic Development Authority <sup>1</sup>or the New Jersey  
19 Educational Facilities Authority<sup>1</sup>, and any project undertaken  
20 pursuant to subsection a. of this section of which the authority  
21 becomes the owner or lessee, or which is situated on land of which  
22 the authority becomes the lessee, shall be deemed a "project" under  
23 the "The New Jersey Economic Development Authority Act,"  
24 P.L.1974, c.80 (C.34:1B-1 et seq.) <sup>1</sup>or the "New Jersey educational  
25 facilities authority law," N.J.S.18A:72A-1 et seq., as appropriate<sup>1</sup>.

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

48 (3) Prior to the commencement of work on a project, the private  
49 entity shall establish a construction account and appoint a third-

1 party financial institution, who shall act as a collateral agent, to  
2 manage the construction account. The construction account shall  
3 include the funding, financial instruments, or both, that shall be  
4 used to fully capitalize and fund the project, and the collateral agent  
5 shall maintain a full accounting of the funds and instruments in the  
6 account. The funds and instruments in the construction account  
7 shall be held in trust for the benefit of the contractor, construction  
8 manager, and design-build team involved in the project. The funds  
9 and instruments in the construction account shall not be the  
10 property of the private entity unless all amounts due to the  
11 construction account beneficiaries are paid in full. The construction  
12 account shall not be designated for more than one project.

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

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

36 (2) All **【construction】** projects proposed in accordance with this  
37 **【paragraph】** section shall be submitted to the New Jersey Economic  
38 Development Authority for its review and approval <sup>1</sup>in accordance  
39 with subsection f. of this section<sup>1</sup> prior to commencing  
40 procurement of the project <sup>1</sup>in accordance with subsection k. of this  
41 section<sup>1</sup> and, when practicable, are encouraged to adhere to the  
42 Leadership in Energy and Environmental Design Green Building  
43 Rating System as adopted by the United States Green Building  
44 Council, the Green Globes Program adopted by the Green Building  
45 Initiative, or a comparable nationally recognized, accepted, and  
46 appropriate sustainable development rating system.

47 **【(2) Where no public fund has been established for the financing**  
48 **of a public improvement, the chief financial officer of the public**



1 owner shall require the private entity for whom the public  
2 improvement is being made】 (3) The general contractor,  
3 construction manager, or design-build team shall be required to post  
4 【, or cause to be posted,】 a performance bond to ensure completion  
5 of the project and a payment bond guaranteeing prompt payment of  
6 moneys due 【to the contractor, his or her subcontractors and to all  
7 persons furnishing labor or materials to the contractor or his or her  
8 subcontractors in the prosecution of the work on the public  
9 improvement】 in accordance with and conforming to the  
10 requirements of N.J.S.2A:44-143 et seq.

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

18 f. (1) 【On or before August 1, 2015, all】 All projects proposed  
19 in accordance with this section shall be submitted to the New Jersey  
20 Economic Development Authority for the authority's review and  
21 approval 【; except that in the case of projects proposed in  
22 accordance with paragraph (2) of subsection a. of this section, all  
23 projects shall be submitted on or before August 1, 2016】. The  
24 projects are encouraged, when practicable, to adhere to the green  
25 building manual prepared by the Commissioner of Community  
26 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).  
27 【Any application that is deemed to be incomplete on August 2,  
28 2015, or on August 2, 2016 in the case of an application submitted  
29 pursuant to paragraph (2) of subsection a. of this section, shall not  
30 be eligible for consideration.】

31 (2) (a) In order for an application to be complete and considered  
32 by the authority, the application shall include, but not be limited to:  
33 (i) a full description of the proposed public-private partnership  
34 agreement between the State or county college and the private  
35 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. <sup>1</sup>The application shall  
42 also include a resolution by the governing body of the State or  
43 county college of its intent to enter into a public-private partnership  
44 agreement pursuant to this section.<sup>1</sup>

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

1 maintenance. The long-range maintenance plan shall be approved  
2 by the authority pursuant to regulations promulgated by the  
3 authority that reflect national building maintenance standards and  
4 other appropriate building maintenance benchmarks. All contracts  
5 to implement a long-range maintenance plan pursuant to this  
6 paragraph shall contain a project labor agreement. The project  
7 labor agreement shall be subject to the provisions of P.L.2002,  
8 c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest  
9 extent possible enhances employment opportunities for individuals  
10 residing in the county of the project's location.

11 (3) The authority shall review all completed applications, and  
12 request additional information as is needed to make a complete  
13 assessment of the project. <sup>1</sup>The criteria for assessing the project  
14 shall include, but may not be limited to: (i) feasibility and design of  
15 the project; (ii) experience and qualifications of the private entity;  
16 (iii) soundness of the financial plan; (iv) adequacy of the required  
17 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
18 existence of a clear public benefit; and (vii) a resolution by the  
19 governing body of the State or county college of its intent to enter  
20 into a public-private partnership agreement for the project.<sup>1</sup> No  
21 project shall [be undertaken] commence the procurement process  
22 until '[final]' approval has been granted by the authority <sup>1</sup>.  
23 Following the procurement process, but before the State or county  
24 college enters into a public-private partnership agreement, the  
25 project and the resultant short list of private entities shall be  
26 submitted to the authority for final approval<sup>1</sup>; provided, however,  
27 that the authority shall retain the right to revoke approval if it  
28 determines that the project has '<sup>1</sup>substantially<sup>1</sup> deviated from the  
29 plan submitted pursuant to paragraph (2) of this subsection, and  
30 shall retain the right to cancel a procurement after a short list of  
31 private entities is developed if deemed in the public interest as  
32 specified under subsection k. of this section.

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

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

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

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

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

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

21    k. (1) A private entity seeking to enter into a public-private  
22    partnership agreement with the State or county college shall be  
23    qualified by the State or county college as part of the procurement  
24    process, provided such process ensures that the private entity meets  
25    at least the minimum State or county college standards for  
26    qualification for professional services, construction contracting, and  
27    other qualifications applicable to the project, prior to submitting a  
28    proposal under the procurement process. <sup>1</sup>The State or county  
29    college shall issue a request for proposals, which shall close within  
30    45 days.<sup>1</sup> The qualification process <sup>1</sup>shall be conducted within 45  
31    days after the closing date for the receipt of proposals, and<sup>1</sup> shall  
32    result in a list of qualified private entities, that may be ranked in  
33    order to generate a short list of private entities requested to submit a  
34    final proposal.

35    (2) The State or county college may accept unsolicited proposals  
36    from private entities for public-private partnership agreements. If  
37    the State or county college receives an unsolicited proposal and  
38    determines that it meets the standards of this section, the State or  
39    county college shall publish a notice of the receipt of the proposal  
40    on the Internet site of the State or county college, or through  
41    advertisements in newspapers. If a notice is published exclusively  
42    in newspapers, the notice shall appear in two or more newspapers  
43    circulated wholly or in part in the county where the proposed  
44    project is to be located. The notice shall provide that the State or  
45    county college will accept, for <sup>1</sup>[45] 120<sup>1</sup> days after the initial date  
46    of publication, proposals meeting the standards of this section from  
47    other private entities for eligible projects that satisfy the same basic  
48    purpose and need. A copy of the notice shall be mailed to each

1 municipal and county local government body in the geographic area  
2 affected by the proposal.

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

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

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

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

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

45  
46 6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read  
47 as follows:

48 5. The authority shall have the following powers:

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

1 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),  
2 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,  
3 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
4 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
5 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and  
6 conditions thereof;

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

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

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

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

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

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

43 q. To extend credit or make loans to any person for the  
44 planning, designing, acquiring, constructing, reconstructing,  
45 improving, equipping and furnishing of a project or school facilities  
46 project, which credits or loans may be secured by loan and security  
47 agreements, mortgages, leases and any other instruments, upon such  
48 terms and conditions as the authority shall deem reasonable,  
49 including provision for the establishment and maintenance of

1 reserve and insurance funds, and to require the inclusion in any  
2 mortgage, lease, contract, loan and security agreement or other  
3 instrument, of such provisions for the construction, use, operation  
4 and maintenance and financing of a project or school facilities  
5 project as the authority may deem necessary or desirable;

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

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

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

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

34 v. To do any and all things necessary or convenient to carry out  
35 its purposes and exercise the powers given and granted in P.L.1974,  
36 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-  
37 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal  
38 Rehabilitation and Economic Recovery Act," P.L.2002,  
39 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
40 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

41 w. To construct, reconstruct, rehabilitate, improve, alter, equip,  
42 maintain or repair or provide for the construction, reconstruction,  
43 improvement, alteration, equipping or maintenance or repair of any  
44 development property and lot, award and enter into construction  
45 contracts, purchase orders and other contracts with respect thereto,  
46 upon such terms and conditions as the authority shall determine to  
47 be reasonable, including, but not limited to, reimbursement for the  
48 planning, designing, financing, construction, reconstruction,  
49 improvement, equipping, furnishing, operation and maintenance of

- 1 any such development property and the settlement of any claims  
2 arising therefrom and the establishment and maintenance of reserve  
3 funds with respect to the financing of such development property;
- 4 x. When authorized by the governing body of a municipality  
5 exercising jurisdiction over an urban growth zone, to construct,  
6 cause to be constructed or to provide financial assistance to projects  
7 in an urban growth zone which shall be exempt from the terms and  
8 requirements of the land use ordinances and regulations, including,  
9 but not limited to, the master plan and zoning ordinances, of such  
10 municipality;
- 11 y. To enter into business employment incentive agreements as  
12 provided in the "Business Employment Incentive Program Act,"  
13 P.L.1996, c.26 (C.34:1B-124 et al.);
- 14 z. To enter into agreements or contracts, execute instruments,  
15 and do and perform all acts or things necessary, convenient or  
16 desirable for the purposes of the redevelopment utility to carry out  
17 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-  
18 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,  
19 c.137 (C.52:18A-235 et al.), including, but not limited to, entering  
20 into contracts with the State Treasurer, the Commissioner of  
21 Education, districts, the New Jersey Schools Development  
22 Authority, and any other entity which may be required in order to  
23 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),  
24 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
25 P.L.2009, c.90 (C.52:27D-489c et al.);
- 26 aa. (Deleted by amendment, P.L.2007, c.137);
- 27 bb. To make and contract to make loans to local units to finance  
28 the cost of school facilities projects and to acquire and contract to  
29 acquire bonds, notes or other obligations issued or to be issued by  
30 local units to evidence the loans, all in accordance with the  
31 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,  
32 c.137 (C.52:18A-235 et al.);
- 33 cc. Subject to any agreement with holders of its bonds issued to  
34 finance a project or school facilities project, obtain as security or to  
35 provide liquidity for payment of all or any part of the principal of  
36 and interest and premium on the bonds of the authority or for the  
37 purchase upon tender or otherwise of the bonds, lines of credit,  
38 letters of credit, reimbursement agreements, interest rate exchange  
39 agreements, currency exchange agreements, interest rate floors or  
40 caps, options, puts or calls to hedge payment, currency, rate, spread  
41 or similar exposure or similar agreements, float agreements,  
42 forward agreements, insurance contract, surety bond, commitment  
43 to purchase or sell bonds, purchase or sale agreement, or  
44 commitments or other contracts or agreements, and other security  
45 agreements or instruments in any amounts and upon any terms as  
46 the authority may determine and pay any fees and expenses required  
47 in connection therewith;
- 48 dd. To charge to and collect from local units, the State and any  
49 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  
49 the board in carrying out the revitalization, economic development

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

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

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

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

40  
41 7. (New section) The New Jersey Economic Development  
42 Authority shall post on its official website the status of each public-  
43 private partnership agreement subject to its consideration, review,  
44 amendment, or approval under subsection jj. of section 5 of  
45 P.L.1974, c.80 (C.34:1B-5), indicating the status of each agreement  
46 by designating it as a proposed, under review, or active public-  
47 private partnership project.

48  
49 8. This act shall take effect immediately.