

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 865

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 865, with committee amendments.

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

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

The bill specifically allows the government entity to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity. If the agreement includes the lease of a public building, road, infrastructure, or facility in exchange for up-front or structured financing by the private entity, the term of the lease may not be for a period greater than 30 years.

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

Under the bill, the bundling of multiple projects is prohibited. In addition, roadway or highway projects must include an expenditure of

at least \$10 million in public funds or any expenditure in private funds. A private entity is required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor is precluded from engaging in a project having an expenditure of under \$50 million if the contractor contributed more than 10 percent of the project's financing. All projects are required to undergo a procurement process established under the bill.

All applications for agreements authorized under the bill are to be submitted to the EDA for review and approval prior to commencing the procurement process. However, the EDA must consult with the Commissioner of Community Affairs and the Commissioner of Education upon the review and approval of proposed local government unit and school district projects, respectively; the State Treasurer must consult with the Commissioner of Transportation concerning review and approval of roadway and highway projects. A project must be resubmitted to the EDA for final approval after the procurement process is conducted but before the government entity enters into the public-private partnership agreement. The EDA is empowered to cancel procurement after a short list of private entities is developed, if deemed in the public interest, and may also revoke final approval upon its determination that the project substantially deviates from the approved plan.

The EDA must post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) include housing authorities, redevelopment agencies, charter schools, renaissance schools, and the South Jersey Port Corporation as entities eligible to enter into public-private partnerships; and exclude public entities that have entered into a contract with a private firm or public authority pursuant to the "New Jersey Wastewater Treatment Public-Private Contracting Act" for the provision of wastewater treatment services;

(2) limit lease agreements to a maximum duration of 30 years, and eliminate the option of availability payment agreements;

(3) require the New Jersey Economic Development Authority to review and approve proposed local government unit and school district projects in consultation with the Commissioners of the Departments of Community Affairs and Education, respectively;

(4) require the State Treasurer to consult with the Commissioner of the Department of Transportation when reviewing and approving roadway or highway projects;

(5) require a resolution by the governing body of the local government unit, school district, or State or county college of its intention to enter into a public-private partnership to be included in the project application submitted to the authority;

(6) specify the criteria the authority must follow for assessing the project, including, but not limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the governing body of the local government unit, school district, or State or county college of its intent to enter into a public-private partnership agreement for the project;

(7) following the issuance of a request for proposals by the public entity, require a 45-day timeframe for the submission of proposals and a 45-day timeframe for the production of a short list of qualified private entities; and require a 120-day timeframe for the submission of proposals in the case of unsolicited proposals;

(8) require resubmission of the project to the authority for final approval, including the short list of private entities, after the procurement process is conducted but before the public entity enters into the public-private partnership agreement with the private entity;

(9) provide that the authority retains the right to revoke final approval if determines that the project has substantially deviated from the approved plan;

(10) add New Jersey Transit and the New Jersey Turnpike Authority as entities with which the general contractor, construction manager, design-build team, or subcontractor for a construction project must be prequalified, as appropriate; and

(11) add the New Jersey Educational Facilities Authority as a public entity eligible to become the owner or lessee of a project concerning a State or county college.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.