

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2958

STATE OF NEW JERSEY  
218th LEGISLATURE

DATED: JUNE 5, 2019

SUMMARY

**Synopsis:** Establishes the “Energy Infrastructure Public-Private Partnership Act.”

**Type of Impact:** Annual State cost and revenue increases.

**Agencies Affected:** New Jersey Economic Development Authority

Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Before Energy-Related Projects Completed</u></b>	<b><u>After Energy-Related Projects Completed</u></b>
<b>Annual EDA Cost Increase</b>	Indeterminate	Indeterminate
<b>Annual EDA Revenue Increase</b>	-----	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will result in an indeterminate increase in annual Economic Development Authority (EDA) costs and revenues related to the establishment and operation of the Energy Public-Private Partnership Unit (Energy P3 Unit), with fee revenues lagging start-up and operating costs until projects are completed. The Energy P3 Unit will be responsible for formulating Statewide policy for energy-related public-private partnership (P3) projects between government and private entities and the coordination, oversight, and approval of these projects. Its activities may initially be funded from revenues received by the EDA from the Global Warming Solutions Fund until the time that energy projects are completed and the private entities are charged a fee for services rendered by the Energy P3 Unit.

BILL DESCRIPTION

This bill would permit a governmental entity to enter into a P3 agreement with a private entity for the purposes of developing and implementing an energy-related project and would permit a qualified private entity to develop, design, build, operate, or maintain one or more energy-related projects, and to assume financial, developmental, operational, managerial, and administrative responsibility for one or more energy-related projects, in partnership with a governmental entity.

The private entity would be responsible for the performance of each energy-related project and the governmental entity would retain an ownership or leasehold interest in the land upon which the energy-related project is developed. No particular method or structure of project financing would be required under the bill.

The bill would establish, within the EDA, an Energy P3 Unit. The Energy P3 Unit would be responsible for the formulation and execution of a Statewide policy for P3 agreements for energy-related projects, and for the development, oversight, and approval of those agreements. The bill provides that the costs associated with the establishment and operation of the Energy P3 Unit may be funded from revenues received by the authority from the Global Warming Solutions Fund and requires the authority to provide sufficient funding to the Energy P3 Unit to enable the unit to perform its duties and responsibilities. The Energy P3 Unit would be permitted to hire one or more private consultants to assist the unit and would be required to charge a private entity a fee as compensation for the services rendered by the unit or by any retained private consultants.

The bill establishes a procedure whereby the Energy P3 Unit may qualify a private entity to develop and engage in a particular type of energy-related project. The unit would establish and maintain a list of all of the qualified private entities, arranged by project type, and make that list available to governmental entities seeking to develop that type of energy-related project. For each proposed energy-related project, a governmental entity would be required to solicit proposals from the qualified private entities set forth on the list maintained by the Energy P3 Unit.

The bill specifies that a governmental entity and a private entity must cooperate to leverage, to the greatest extent possible, available private sector financial resources and expertise to enhance the ability of the project to obtain federal, State, local, and other funds. In order to facilitate the financing and development of an energy-related project, a governmental entity would be authorized to: become the owner or lessee of the energy-related project, or lessee of the land, or both; issue indebtedness in accordance with the governmental entity's enabling legislation, provided that the private entity guarantees the performance of the energy-related project to the governmental entity; dedicate any property interest that the governmental entity has for public use; and exercise all powers conferred on the governmental entity by law. Under the bill, a public-private partnership agreement may also provide for the sale, long-term lease, or lease-purchase of, or grant of concessions for, the existing or new assets and facilities of a governmental entity to a private entity, or for revenue sharing between the governmental entity and the private entity.

Under the bill, the development of an energy-related project would be deemed to constitute the performance of an essential public function. Any energy-related project predominantly used by a governmental entity, that is owned by or leased to a governmental entity, nonprofit business entity, or business entity wholly owned by a nonprofit business entity, would be exempt from property taxation and special assessments of the State or any municipality or other political subdivision of the State, and would not be subject to payments in lieu of taxes.

The bill would require all energy-related projects proposed by a governmental entity to be submitted to the Energy P3 Unit for project review and approval. The Energy P3 Unit would have the authority to revoke approval under certain circumstances. An energy-related project that is approved by the Energy P3 Unit would be required to be completed within five years after the date of approval by the Energy P3 Unit. A contract for the sale of electricity or thermal energy, or both, produced by a combined heat and power facility, cogeneration facility, on-site generation facility, a microgrid, a district energy system, or a distributed energy resource may last for up to 25 years.

The bill would require the authority to submit to the Governor and the Legislature, within three years, and annually thereafter, a report concerning the status of energy-related public-private partnership agreements and recommendations for improvement.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS finds that this bill will result in indeterminate annual cost and revenue increases to the EDA related to the establishment and operations of the Energy P3 Unit, with fee revenues lagging the unit's start-up and operating costs until projects are completed. The broad scope of administrative responsibilities imposed on the Energy P3 Unit will likely require notable professional staffing or extensive use of private consultants, including legal services, various P3 management professionals, professionals with experience in various forms of energy production and energy facility management, and professionals experienced in government program management and policy development. Funding for these operations from the Global Warming Solutions Fund is authorized under this bill and may support the establishment and activities of the unit until such a time when energy-related projects are completed and the private partners are charged a fee for services provided by the Energy P3 Unit or its consultants.

These private entities will be charged a flat fee or a percentage fee based on the total cost of a completed energy-related project, not to exceed 3 percent of that total cost. The amount and timing of these revenues is somewhat uncertain since fees will not be received until the project is completed, which could be years following the effective date of this bill. The bill, however, does give the Energy P3 Unit the authority to establish standard project development or project review fees for projects that are not completed so that the unit is compensated for serviced rendered even if the project does not come to fruition. The extent of these revenues and the expenditures incurred by the unit will ultimately be a function of the amount of P3 activity that emerges in the State.

*Section: Authorities, Utilities, Transportation and Communications*

*Analyst: Patrick Brennan  
Principal Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).