

SENATE, No. 2958

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/27/2018)

1 AN ACT concerning energy infrastructure public-private
2 partnerships and supplementing Title 52 of the Revised Statutes
3 and amending P.L.1971, c.198 and N.J.S.18A:18A-42.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) This act shall be known and may be cited as
9 the “Energy Infrastructure Public-Private Partnerships Act.”
10

11 2. (New section) a. The Legislature finds and declares that:

12 (1) It is the public policy of this State to assure that the State’s
13 energy infrastructure is developed and maintained in a manner that
14 assures, to the greatest extent possible, the availability of reliable
15 and resilient state-of-the-art energy resources to the State and, in
16 particular, to the critical governmental facilities that provide
17 necessary lifeline services to the State’s citizens and businesses;

18 (2) The increasing magnitude and frequency of weather events,
19 such as Winter Storm Quinn, Hurricane Irene, and Superstorm
20 Sandy, and the devastation they inflicted on the State, has revealed
21 the vulnerability, inadequacies, and obsolescence of the State’s
22 energy infrastructure, which has failed, sometimes for prolonged
23 periods of time, to provide adequate, reliable, and resilient service
24 to the State;

25 (3) These weather events, and the current condition of the
26 State’s aging energy infrastructure, underscore the substantial and
27 immediate need for the State to improve the energy resources
28 available to State, county, and municipal facilities that provide
29 critical lifeline services, including medical facilities, police and fire
30 departments, water and wastewater treatment facilities, shelters,
31 colleges, universities, schools, and prisons;

32 (4) The reliability, resiliency, and efficiency of the State’s
33 energy infrastructure will be improved if the State encourages the
34 development of the energy-related projects contemplated by P.L. ,
35 c. (C.) (pending before the Legislature as this bill), which will
36 reduce the vulnerability of critical governmental facilities to threats
37 posed by weather and other exogenous factors, minimize equipment
38 failures caused by deterioration, disrepair and obsolescence,
39 enhance the production and delivery of energy, improve the energy
40 efficiency of governmental facilities, reduce the demand for energy,
41 energy costs and greenhouse gas emissions, create jobs, and
42 promote economic development; and

43 (5) The need to upgrade the State’s energy infrastructure comes
44 at a time of fiscal austerity and budgetary constraints.
45 Governmental entities have witnessed dramatic reductions in
46 available revenues as a consequence of the recent recession and

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

Matter underlined thus is new matter.

1 major storm events, among other reasons, which have adversely
2 affected the ability of State, county, and municipal governments to
3 make needed investments in energy infrastructure.

4 b. The Legislature therefore determines that:

5 (1) It shall be the public policy of this State to foster energy-
6 related public-private partnerships that will enable governmental
7 entities to partner with private entities to develop needed state-of-
8 the-art energy projects and obviate or minimize the need for capital
9 investments in energy projects by governmental entities, taxpayers,
10 and energy public utility ratepayers;

11 (2) In order to foster the energy projects contemplated by
12 P.L. , c. (C.) (pending before the Legislature as this bill), it
13 is necessary and appropriate for the Legislature to authorize the use
14 of public-private partnerships to leverage private sector financial
15 resources and expertise and permit governmental and private
16 entities to share the responsibilities and benefits of these projects;

17 (3) Current economic conditions, together with the critical and
18 immediate need to improve the State's energy infrastructure,
19 compel the State to pursue the energy-related public-private
20 partnerships contemplated by P.L. , c. (C.) (pending before
21 the Legislature as this bill), which will enhance the reliability,
22 resilience and efficiency of the State's energy infrastructure by
23 introducing state-of-the-art energy technologies that will mitigate
24 current vulnerabilities to major storm events, harden critical
25 infrastructure, energy generation and delivery systems, enhance
26 redundancy in energy supply, promote greater emergency
27 preparedness, enhance fuel supply diversity, increase energy
28 efficiency, expand the use of renewable energy resources, reduce
29 energy demand, energy costs and greenhouse gas emissions, and
30 promote economic development and local job creation, thereby
31 ensuring a better and more prosperous future for the State and its
32 citizens; and

33 (4) The energy-related public-private partnerships contemplated
34 by P.L. , c. (C.) (pending before the Legislature as this bill)
35 will encourage private capital investment and leverage the
36 technical, financial, and managerial expertise of the private sector
37 to enable governmental entities that otherwise lack the necessary
38 resources or expertise, to design, develop, own, manage, operate,
39 and maintain needed energy infrastructure projects.

40
41 3. (New section) As used in P.L. , c. (C.) (pending
42 before the Legislature as this bill):

43 "Board" means the Board of Public Utilities or any successor
44 agency.

45 "Authority" means the New Jersey Economic Development
46 Authority or any successor agency.

47 "District energy system" means an on-site generation facility, as
48 defined in section 3 of P.L.1999, c.23 (C.48:3-51), that provides

1 thermal or electric energy services to end-use customers for use for
2 heating or cooling, or both, regardless of whether the customer is
3 located on property that is separated from the property on which the
4 on-site generation facility is located by more than one easement,
5 public thoroughfare, or transportation or utility-owned right-of-way.

6 “Energy P3 Unit” means the “Energy Public-Private Partnership
7 Unit” established pursuant to section 7 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9 “Energy-related project” or “project” means a project developed
10 for a new or existing facility or facilities, owned by a governmental
11 entity, involving the application of energy efficiency, energy
12 conservation, energy optimization, renewable and non-carbon-
13 emitting energy technologies, or demand side management
14 measures including, but not limited to:

15 energy efficient appliances, lighting, motors, and other energy or
16 water conservation measures;

17 smart metering and smart grid technologies and demand
18 response; and

19 distributed electric generation resources including, but not
20 limited to, cogeneration, combined heat and power and on-site
21 generation facilities, district energy systems, and microgrids;

22 Class I and Class II renewable energy resources, as those terms
23 are defined in section 3 of P.L.1999, c.23 (C.48:3-51), including
24 solar photovoltaic technologies, wind energy, geothermal energy,
25 biomass, biogas, waste-to-energy and wastewater-to-energy
26 technologies, energy storage technologies, resource recovery, and
27 hydroelectric power facilities.

28 “Energy-related project” shall not include a self-funded energy
29 efficiency project that is an energy savings improvement program
30 undertaken pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-
31 4.6 et al.) and P.L.2012, c.55 (C.52:34-25.1 et al.).

32 “Governmental entity” means the State, its subdivisions, and the
33 departments, agencies, commissions, authorities, boards, and
34 instrumentalities thereof, a county, a municipality, a board of
35 education, a State college or university, a county community
36 college, a regional or municipal utility or utility authority, and a
37 municipal corporation. “Governmental entity” may include a
38 combination of governmental entities as defined herein, but shall
39 not mean a municipal electric utility established pursuant to
40 R.S.40:62-12.

41 “Microgrid” means a group of interconnected customer loads and
42 distributed energy resources including, but not limited to, combined
43 heat and power, cogeneration, on-site generation, district energy
44 system, renewable energy generation, dispatchable generation, and
45 energy storage facilities, located within a clearly defined electrical
46 or geographic boundary, that acts as a single controllable entity and
47 is capable of disconnection from the utility grid to enable the
48 microgrid to operate in both utility grid-connected and islanded

1 modes. Notwithstanding the provisions of any other law, rule,
2 regulation, decision, or order to the contrary, a distributed energy
3 resource that is included as part of a microgrid shall not be required
4 to be located on the property, or on a property contiguous to the
5 property on which a customer that is interconnected with the
6 microgrid is located, or be otherwise subject to any form of
7 contiguity or proximity-related requirement, other than the
8 requirement that all interconnected distributed energy resources and
9 customer loads that comprise the microgrid be located within the
10 electrical or geographic boundary of the microgrid. Nor shall a
11 microgrid be limited with regard to the number or type of customers
12 that may be served by the microgrid, subject to the limitation that
13 all customers served by the microgrid must be located within the
14 electrical or geographic boundary of the microgrid. A microgrid
15 may utilize privately-owned distribution wires to interconnect the
16 distributed energy resources with customers served by the microgrid
17 and that are located within the electric or geographic boundary of
18 the microgrid. A microgrid shall be considered an “on-site
19 generation facility” for the purposes of sections 3 and 28 of
20 P.L.1999, c.23, (C.48:3-51 and C.48:3-77.) A microgrid shall not be
21 considered a public utility as defined in R.S.48:2-13.

22 “Private entity” means a person, a combination of persons, a
23 business entity, a combination of business entities, or a combination
24 of persons and business entities. “Private entity” shall include a
25 “commercial, institutional, and industrial entity” as the term is
26 mentioned in section 7 of P.L.2007, c.340 (C.26:2C-51). “Private
27 entity” shall not include a public utility as defined in R.S.48:2-13,
28 but shall include an affiliate of a public utility that is not subject to
29 regulation pursuant to Title 48 of the Revised Statutes or subject to
30 the board’s jurisdiction.

31 “Public-private partnership agreement” or “agreement” means an
32 agreement entered into by a governmental entity and a private entity
33 pursuant to section 4 of P.L. , c. (C.) (pending before the
34 Legislature as this bill) for the purposes of undertaking an energy-
35 related project.

36
37 4. (New section) A governmental entity may enter into a
38 public-private partnership agreement with a private entity, pursuant
39 to the provisions of P.L. , c. (C.) (pending before the
40 Legislature as this bill) and subject to the approval of the Energy P3
41 Unit. A public-private partnership agreement shall permit a private
42 entity to develop, design, build, operate, or maintain, one or more
43 energy-related projects, and to assume financial, developmental,
44 operational, managerial and administrative responsibility for one or
45 more energy-related projects, in partnership with a governmental
46 entity. Energy-related projects may involve the design,
47 construction, reconstruction, alteration, or improvement of one or
48 more buildings, structures, or facilities owned, or to be owned, by

1 the governmental entity, provided that the private entity is
2 responsible for the performance of each energy-related project, as
3 the case may be, and the governmental entity retains an ownership
4 or leasehold interest in the land upon which the energy-related
5 project is developed. No particular method or structure of project
6 financing shall be required of a private entity, unless the method or
7 structure of project financing or, if applicable, provision for
8 ownership and title transfer to the governmental entity at the end of
9 the term of the agreement, is clearly described by the governmental
10 entity in any formal authorized solicitation process for an energy-
11 related project. A governmental entity may solicit a proposal for an
12 energy-related project, or receive an unsolicited proposal for an
13 energy-related project, only from a private entity that has been duly
14 qualified by the Energy P3 Unit pursuant to sections 7 and 8 of
15 P.L. , c. (C.) (pending before the Legislature as this bill) and
16 any other applicable law.

17
18 5. (New section) a. An energy-related project may be
19 proposed either by a governmental entity or by a private entity. A
20 public-private partnership agreement may provide that, as part of
21 the agreement, an energy-related project may be proposed and
22 selected individually or as part of the design, construction,
23 reconstruction, alteration, improvement, development or
24 redevelopment of one or more buildings, structures, or facilities
25 owned, or to be owned, by a governmental entity. The public-
26 private partnership agreement may provide for the inclusion of
27 buildings, structures or facilities owned, or to be owned, by one or
28 more non-governmental entities. An energy-related project shall be
29 designed to enable a governmental entity to more reliably,
30 efficiently, and cost-effectively generate, distribute, conserve, store,
31 consume, and acquire energy; improve the reliability and resiliency
32 of its energy infrastructure; reduce greenhouse gas emissions;
33 diversify its sources of energy supply; create jobs; and foster
34 economic development.

35 b. If an unsolicited energy-related project is proposed by a
36 private entity to a governmental entity, the governmental entity to
37 which the energy-related project proposal is made shall determine
38 whether to accept, reject, or modify the proposal. If the energy-
39 related project proposal is accepted in its entirety, or with
40 modifications, by the governmental entity, and the governmental
41 entity elects to implement the energy-related project, the
42 governmental entity shall initiate and adhere to the competitive
43 solicitation procedure established pursuant to sections 8 and 9 of
44 P.L. , c. (C.) (pending before the Legislature as this bill). If
45 the unsolicited proposal is rejected by the governmental entity, the
46 governmental entity shall promptly return the unsolicited proposal,
47 and all copies thereof, to the private entity and shall treat the
48 unsolicited proposal, and all records of communications and

1 negotiations related to the proposal, as confidential and exempt
2 from public disclosure in accordance with the provisions of section
3 17 of P.L. , c. (C.) (pending before the Legislature as this
4 bill).

5
6 6. (New section) a. Notwithstanding the provisions of any
7 law, rule, regulation, decision, or order to the contrary, a
8 governmental entity for which a private entity assumes financial,
9 operational, developmental, managerial, or administrative
10 responsibility for an energy-related project pursuant to P.L. ,
11 c. (C.) (pending before the Legislature as this bill) under a
12 public-private partnership agreement, shall not be required to
13 advertise for public bid the energy-related project prior to the
14 private entity assuming responsibility for that project.

15 b. A governmental entity shall be authorized to enter into one
16 or more public-private partnership agreements with a private entity,
17 its affiliates, and approved subcontractors without being subject to
18 the requirement of advertisement for public bid otherwise
19 applicable to the governmental entity, provided that the private
20 entity has been selected by the governmental entity pursuant to a
21 solicitation process conducted pursuant to section 8 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill).

23 c. Except as otherwise specifically set forth in P.L. ,
24 c. (C.) (pending before the Legislature as this bill) including
25 the provision related to the advertisement for public bid, all
26 solicitations for proposals conducted pursuant to section 8 of
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 shall be subject to the procurement laws and procedures otherwise
29 applicable to the governmental entity.

30 d. For the purposes of this section, a governmental entity shall
31 include the authority, and any energy-related project undertaken
32 pursuant to P.L. , c. (C.) (pending before the Legislature as
33 this bill) of which the authority becomes an owner or lessee, or
34 which is situated on land of which the authority becomes the lessee,
35 shall be deemed a project as that term is defined in section 3 of
36 P.L.1974, c.80 (C.34:1B-3).

37
38 7. (New section) a. (1) There is hereby established in the
39 authority an Energy Public-Private Partnership Unit or "Energy P3
40 Unit." The Energy P3 Unit shall be responsible for the formulation
41 and execution of a comprehensive Statewide policy for public-
42 private partnership agreements that facilitate the development of
43 energy-related projects and shall be responsible for the
44 development, promotion, coordination, oversight, and approval of
45 public-private partnership agreements pursuant to P.L. ,
46 c. (C.) (pending before the Legislature as this bill). In doing
47 so, the Energy P3 Unit shall consult and coordinate with
48 representatives of other State departments, agencies, boards, and

1 authorities, including the board, as the Energy P3 Unit and authority
2 shall deem necessary and appropriate, to accomplish the goals of
3 P.L. , c. (C.) (pending before the Legislature as this bill) to
4 facilitate public-private partnership agreements. The costs
5 associated with the establishment and operation of the Energy P3
6 Unit shall be funded from revenues received by the authority from
7 the “Global Warming Solutions Fund” created pursuant to section 6
8 of P.L.2007, c.340 (C.26:2C-50), and may be repaid from fees
9 collected from private entities pursuant to subsection c. of this
10 section.

11 (2) Within 12 months of the effective date of P.L. ,
12 c. (C.) (pending before the Legislature as this bill), the Energy
13 P3 Unit shall:

14 (a) establish policies and procedures that encourage private
15 entity participation and investment in governmental energy-related
16 projects as necessary and appropriate to implement the provisions
17 of P.L. , c. (C.) (pending before the Legislature as this bill);

18 (b) provide technical advice, guidance, and assistance to
19 governmental entities to ensure the availability of the necessary
20 expertise and capacity to develop and evaluate the merits of
21 proposed energy-related projects;

22 (c) review and approve proposed energy-related projects;

23 (d) promote informed and timely decision-making with regard to
24 the procurement of energy-related projects;

25 (e) establish appropriate qualification criteria for private
26 entities, including the qualification and ranking of private entities to
27 develop particular energy-related projects; and

28 (f) monitor and enforce the procurement policies and
29 procedures established pursuant to P.L. , c. (C.) (pending
30 before the Legislature as this bill). The policies may also include
31 provision for potential revenue sharing opportunities between a
32 governmental entity and a private entity in certain defined or agreed
33 circumstances, including energy-related projects that achieve profits
34 that exceed a negotiated rate of return established for a private
35 entity in a public-private partnership agreement.

36 b. The authority shall identify the resources and personnel of
37 the authority and other participating agencies, departments, boards,
38 and authorities, including the board, that are deemed necessary and
39 appropriate to staff and support the Energy P3 Unit. The authority
40 may retain one or more qualified private consultants with relevant
41 expertise to provide the technical assistance and resources deemed
42 necessary and appropriate to assist the Energy P3 Unit.

43 c. The authority shall provide sufficient funding to the Energy
44 P3 Unit to enable the Energy P3 Unit to adequately and properly
45 perform the duties and responsibilities established by P.L. ,
46 c. (C.) (pending before the Legislature as this bill), including
47 the retention of one or more private consultants to assure
48 compliance with the duties and responsibilities established for the

1 Energy P3 Unit by this section. The Energy P3 Unit shall charge a
2 private entity a fee as compensation for the services rendered by the
3 Energy P3 Unit and, if applicable, by one or more retained private
4 consultants, in connection with a completed energy-related project.
5 The fee shall be assessed on a flat fee or percentage basis, based
6 upon the total costs of a completed energy-related project. If a
7 percentage fee is utilized, the percentage fee shall not exceed three
8 percent of the total costs of a completed energy-related project. The
9 Energy P3 Unit may establish standard project development or
10 project review fees for energy-related projects that are not
11 completed for any reason.

12 d. The authority may promulgate rules and regulations,
13 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
14 (C.52:14B-1 et seq.), as are necessary to implement the provisions
15 of P.L. , c. (C.) (pending before the Legislature as this bill).
16 The authority may be assisted as appropriate by other participating
17 agencies, departments, boards, and authorities, including the board
18 and the Division of Purchase and Property in the Department of the
19 Treasury, in the promulgation of necessary rules and regulations.

20 e. The authority shall, within 90 days of the effective date of
21 P.L. , c. (C.) (pending before the Legislature as this bill),
22 undertake a study of the staffing and other resources, including one
23 or more private consultants, deemed necessary to enable the Energy
24 P3 Unit to perform the duties and responsibilities established for the
25 Energy P3 Unit by P.L. , c. (C.) (pending before the
26 Legislature as this bill). The authority shall prepare a report of its
27 study, and shall provide a copy thereof to the Governor and,
28 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
29 Legislature, recommending any further action and implementation.

30
31 8. (New section) a. The Energy P3 Unit shall require each
32 private entity that seeks to submit a solicited or unsolicited energy-
33 related project proposal to a governmental entity pursuant to
34 P.L. , c. (C.) (pending before the Legislature as this bill) to
35 provide a certified statement in response to a questionnaire that is
36 standardized for like classes of energy-related projects and private
37 entities. The questionnaire shall be designed to fully develop the
38 prior experience and qualifications, financial strength, adequacy of
39 equipment, plant, organization and personnel of the private entity,
40 and other pertinent and material facts deemed necessary by the
41 Energy P3 Unit, in order to enable the Energy P3 Unit to qualify a
42 private entity for the type, cost, or other applicable metric, of
43 energy-related project that the private entity shall be deemed
44 qualified to develop, design, build, finance, own, operate, or
45 maintain, or a combination of thereof, as the case may be. The
46 qualification criteria established by the Energy P3 Unit shall be
47 competitively neutral, designed to maximize participation by
48 qualified private entities, and shall not include classifications or

1 requirements that would create preferences or advantages of any
2 nature to particular classes of private entities including, but not
3 limited to, private entities that are located within the State,
4 equipment manufacturers, or incumbent providers of energy-related
5 products or services, including operational and maintenance
6 services, to governmental entities.

7 b. The Energy P3 Unit shall determine the qualification of each
8 private entity that seeks to be qualified to develop an energy-related
9 project. The private entity classifications established pursuant to
10 this section shall be tiered to coincide with the level of experience
11 and qualifications, financial strength, adequacy of personnel,
12 equipment and other necessary resources sufficient for the energy-
13 related projects or classifications that are included within each tier.
14 A finding by the Energy P3 Unit that a private entity is qualified to
15 develop energy-related projects included within a particular tier
16 shall be predicated upon the demonstrated ability of the private
17 entity to develop, design, build, finance, own, operate, and
18 maintain, as the case may be, energy-related projects having the
19 same or similar experience, sophistication, complexity, and capital
20 investment established for projects within the tier. The Energy P3
21 Unit shall classify each private entity within 60 business days after
22 receipt of certified statements from the private entity that are
23 deemed to be administratively complete and fully responsive to the
24 questionnaire described in this section. Notice of the classification
25 shall be forwarded to the private entity by registered mail within
26 five business days after the classification is made. Each
27 classification shall be subject to expiration and renewal upon terms
28 as shall be established by the Energy P3 Unit in accordance with
29 this section.

30 c. A private entity that is dissatisfied with its classification may
31 request, in writing, a hearing before the authority or its designee,
32 and may present the evidence with respect to the financial
33 responsibility, organization, plant and equipment, personnel, or
34 experience of the private entity as might justify a different
35 classification. After presentation of the evidence, the authority or its
36 designee may retain or modify the classification of the private
37 entity.

38 d. A current list of each qualified private entity, arranged by
39 tier of energy-related project or projects for which the private entity
40 has been qualified, shall be maintained by the Energy P3 Unit. Each
41 governmental entity that seeks to develop an energy-related project
42 pursuant to P.L. c. (C.) (pending before the Legislature as
43 this bill) shall be provided with the complete list of approved
44 private entities that have been qualified by the Energy P3 Unit for
45 the type of energy-related project proposed by the governmental
46 entity. The Energy P3 Unit shall post the list on an Internet website
47 maintained by or for the Energy P3 Unit and shall update the list
48 monthly.

1 9. (New section) a. For each proposed energy-related project,
2 a governmental entity shall solicit proposals from the private
3 entities set forth on the list of private entities, maintained by the
4 Energy P3 Unit, as required pursuant to section 8 of P.L. ,
5 c. (C.) (pending before the Legislature as this bill) that have
6 been qualified for inclusion in the tier established for the energy-
7 related project contemplated by the governmental entity. The
8 solicitation by the governmental entity shall invite each private
9 entity qualified within the applicable tier to submit a proposal to the
10 governmental entity for the proposed energy-related project. Each
11 private entity proposal shall detail how the private entity would
12 design, develop, finance, build, operate, or maintain, as the case
13 may be, the energy-related project, and summarize the experience
14 of the private entity with comparable energy-related projects and all
15 proposed team members and subcontractors. A separate
16 procurement shall not be required for a subcontractor that is part of
17 the private entity's proposal to the governmental entity. The
18 governmental entity or its designee shall review the proposal
19 received from each private entity in response to the solicitation and
20 shall select, pursuant to the criteria set forth in section 8 of P.L. ,
21 c. (C.) (pending before the Legislature as this bill), no more
22 than five private entities deemed to be the most qualified for the
23 energy-related project. The governmental entity may select fewer
24 than three private entities if fewer than three private entities
25 respond to the solicitation.

26 b. Once the private entities have been selected, each private
27 entity shall be requested to make a formal proposal to the
28 governmental entity regarding the energy-related project. The
29 proposal shall include, but not be limited to, a project scope of
30 work, identification of proposed equipment and measures,
31 subcontractors, projected project costs, and, if applicable, long term
32 maintenance and operations costs and anticipated energy or other
33 cost savings. If the governmental entity so elects, it may request
34 supplemental information or revised proposals from the private
35 entities and may require each private entity to make an oral
36 presentation, and to respond to questions regarding the private
37 entity's proposal. The governmental entity shall afford each private
38 entity a reasonable opportunity to present supplemental information
39 with regard to the private entity's proposal and to respond to
40 questions regarding the private entity's proposal or qualification to
41 develop the energy-related project. Each private entity shall be
42 afforded an opportunity to supplement its proposal to respond to
43 any proposed changes to the scope or specifications of the energy-
44 related project by the governmental entity after review of the
45 private entities' written proposals.

46 c. The governmental entity shall specify the manner in which
47 the price term shall be bid by a private entity as part of a proposal
48 for an energy-related project including, but not limited to, fixed

1 price, guaranteed maximum price, cost-plus open book, cost-plus
2 open book with guaranteed maximum price, or power purchase
3 agreement. If the fixed price option is selected by the governmental
4 entity, the private entity must fully and accurately disclose, in a
5 single line item entry, the total installed cost of the proposed
6 energy-related project. The fixed cost quoted shall include, but not
7 be limited to, all costs for all products, measures and equipment,
8 fees for all subcontractors, installation labor, and professional,
9 administrative and management services necessary to fully develop
10 and implement the proposed energy-related project, including
11 procurement of all required licenses, permits, and approvals from
12 governmental entities with jurisdiction over the energy-related
13 project. Any proposal by a private entity which includes a fixed
14 price bid that does not comply with the requirements of this section
15 shall be rejected by the governmental entity and the Energy P3
16 Unit.

17 d. The governmental entity shall award the energy-related
18 project to the private entity whose proposal is determined to be the
19 most advantageous to the governmental entity, with price and other
20 factors considered. The criteria upon which the determination shall
21 be based shall include, but not be limited to:

22 (1) the general reputation, industry experience, technical
23 capability, and expertise of the private entity;

24 (2) the cost of the proposed energy-related project;

25 (3) the responsiveness, creativity, innovativeness, and
26 comprehensiveness of the private entity's proposal;

27 (4) if applicable, the ability of the private entity to arrange
28 financing on terms favorable to the governmental entity;

29 (5) the proposed allocation of risks and performance guarantees;

30 (6) the incorporation of innovative terms and conditions that
31 would not otherwise be available to, or would not be available upon
32 a comparable basis to the governmental entity;

33 (7) if applicable, any cost savings associated with the energy-
34 related project;

35 (8) the public benefits of the energy-related project, including
36 economic development, job creation, and reduced electric demand
37 and greenhouse gas emissions; and

38 (9) the experience and capability of the private entity in the
39 implementation of comparable energy-related projects.

40 e. The governmental entity shall negotiate a public-private
41 partnership agreement for the energy-related project with the
42 private entity selected as having submitted the most advantageous
43 proposal in accordance with the selection standards set forth in the
44 section. If the governmental entity elected the fixed price option
45 described in this section, the price term included in any public
46 private partnership agreement shall not exceed, by more than ten
47 percent, the quoted price for the same scope of work presented
48 during the procurement phase of the energy-related project. In the

1 event that the price term presented by a private entity for inclusion
2 in a public-private partnership agreement shall exceed, by more
3 than ten percent, the private entity's original fixed price quoted for
4 the same scope of work, the governmental entity may, at its sole
5 election, terminate negotiations with the private entity, without cost
6 or penalty to the governmental entity.

7 f. If the governmental entity is unable to negotiate a public-
8 private partnership agreement with the selected private entity on
9 terms that the governmental entity determines to be fair and
10 reasonable, negotiations with the selected private entity shall be
11 terminated. The governmental entity shall then commence
12 negotiations with the private entity deemed to have submitted the
13 next best proposal in accordance with the selection standards set
14 forth in this section. If the governmental entity is unable to
15 negotiate a public-private partnership agreement with the second
16 selected private entity, the governmental entity shall terminate
17 negotiations and commence negotiations with the third selected
18 private entity. If the governmental entity is unable to negotiate a
19 public-private partnership agreement with the third selected private
20 entity, the governmental entity shall continue to negotiate with the
21 remaining private entities that submitted proposals, in order of
22 selection, as are necessary in order to enable the governmental
23 entity to conclude a satisfactory public-private partnership
24 agreement with a qualified private entity. If the governmental entity
25 is unable to conclude a satisfactory public-private partnership
26 agreement with a qualified private entity, the governmental entity
27 may cease further negotiations and terminate the energy-related
28 project or commence a new proposal procedure in accordance with
29 the provisions of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

31
32 10. (New section) Prior to, or in connection with, the
33 negotiation and execution of a public-private partnership
34 agreement, a governmental entity may negotiate and execute a
35 preliminary agreement with the private entity selected for the
36 energy-related project. The preliminary agreement may:

37 a. authorize the private entity to commence certain preliminary
38 activities for which it may be compensated including, but not
39 limited to, project planning, design and engineering, performance of
40 initial and supplemental energy audits and environmental studies,
41 securing project financing, and acquisition of equipment;

42 b. establish the terms and conditions and procedures for the
43 negotiation of the public-private partnership agreement;

44 c. define the nature and extent of the expenditures that may be
45 made pursuant to the preliminary agreement; and

46 d. establish other terms and conditions that the governmental
47 entity and private entity deem necessary and appropriate to foster
48 the development of the energy-related project.

1 11. (New section) a. A governmental entity and a private entity
2 shall cooperate to leverage, to the greatest extent possible, available
3 private sector financial resources and expertise and to enhance the
4 ability of the energy-related project to obtain and maximize federal,
5 State, local or other funds, including the “Global Warming
6 Solutions Fund,” grants or incentives, tax advantages, or financial
7 and other benefits to finance, secure, guarantee, service or reduce
8 project debt, or to minimize, repay, or accelerate the repayment of
9 project costs, or provide other financial or other advantages.
10 Notwithstanding the provisions of any law, rule, regulation,
11 decision, or order to the contrary, funding available to an energy-
12 related project from the “Global Warming Solutions Fund” shall be
13 incremental to funding available to an energy-related project from
14 all other sources including, but not limited to, the New Jersey Clean
15 Energy Program administered by the board.

16 b. In order to facilitate the financing, development, and
17 delivery of, or to minimize the costs associated with, an energy-
18 related project, a governmental entity may:

19 (1) become the owner or lessee of the energy-related project, or
20 lessee of the land, or both;

21 (2) issue indebtedness in accordance with the governmental
22 entity’s enabling legislation provided that, at a minimum, the
23 private entity guarantees the performance of the energy-related
24 project to the governmental entity;

25 (3) dedicate any property interest, including land, improvements,
26 fixtures, and tangible personal property that the governmental entity
27 has for public use; and

28 (4) exercise all powers conferred on the governmental entity by
29 law including, but not limited to, the power to lease or grant rights
30 of way, easements, and access, exercise the power of eminent
31 domain, grant development rights, issue and accelerate permits and
32 other authorizations, and grant licenses, franchises, contractual, and
33 real property rights.

34 c. A public-private partnership agreement may also provide for
35 the sale, long-term lease, or lease-purchase of, or grant of
36 concessions for, the existing and new assets and facilities of a
37 governmental entity to a private entity, and to enter into revenue
38 sharing opportunities between the governmental entity and private
39 entity in agreed circumstances. If the public-private partnership
40 agreement provides for ownership of the energy-related project, or a
41 portion thereof, by the private entity during the term of the
42 agreement, the agreement may provide for the transfer of the project
43 by the private entity to the governmental entity at no charge upon
44 the expiration of the term of the agreement or any extension thereof.
45

46 12. (New section) The development of an energy-related project
47 pursuant to P.L. , c. (C.) (pending before the Legislature as
48 this bill) shall be deemed to constitute the performance of an

1 essential public function. All energy-related projects predominantly
2 used by, or developed in furtherance of the purposes of a
3 governmental entity pursuant to P.L. , c. (C.) (pending
4 before the Legislature as this bill) that are owned by or leased to a
5 governmental entity, nonprofit business entity, foreign or domestic,
6 or business entity wholly owned by a nonprofit business entity,
7 shall be exempt from property taxation and special assessments of
8 the State, or any municipality, or other political subdivision of the
9 State and, notwithstanding the provisions of section 15 of P.L.1974,
10 c.80 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or
11 any other law to the contrary, shall not be required to make
12 payments in lieu of taxes. The land upon which the energy-related
13 project is located shall be exempt from property taxation. The
14 energy-related project and the land upon which the energy-related
15 project is located shall not be subject to the provisions of section 1
16 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax liability of
17 private parties conducting for-profit activities on tax exempt land,
18 or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding the taxation
19 of leasehold interests in exempt property that are held by
20 nonexempt parties. This section shall apply only when the energy-
21 related project is owned by or leased to the governmental entity, a
22 nonprofit business entity, foreign or domestic, or a business entity
23 wholly owned by a nonprofit business entity, and the energy-related
24 project furthers the purposes of the governmental entity.

25
26 13. (New section) If no public fund has been established for the
27 financing of an energy-related project developed pursuant to
28 P.L. , c. (C.) (pending before the Legislature as this bill), the
29 chief financial officer of the governmental entity may require the
30 private entity responsible for the development of the energy-related
31 project to post, or to cause to be posted, a bond guaranteeing
32 prompt payment of funds due to the contractor, its subcontractors,
33 and to all persons furnishing labor or materials to the contractor or
34 its subcontractors in the conduct of the work on the energy-related
35 project.

36
37 14. (New section) a. All workers employed in the performance
38 of any construction undertaken in connection with an energy-related
39 project for which a public-private partnership agreement has been
40 negotiated pursuant to P.L. , c. (C.) (pending before the
41 Legislature as this bill), including all workers for subcontractors
42 employed in the performance of any construction undertaken in
43 connection with an energy-related project, shall be paid not less
44 than the prevailing wage rate for the worker's craft or trade as
45 determined by the Commissioner of Labor and Workforce
46 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
47 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

1 b. All energy-related projects developed pursuant to a public-
2 private partnership agreement negotiated pursuant to P.L. ,
3 c. (C.) (pending before the Legislature as this bill) may
4 contain a project labor agreement. A project labor agreement shall
5 be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.)
6 and shall be structured in a manner that to the greatest extent
7 possible enhances employment opportunities for individuals
8 residing in the county in which the energy-related project will be
9 located.

10 c. A private entity selected by a governmental entity to develop
11 an energy-related project pursuant to P.L. , c. (C.) (pending
12 before the Legislature as this bill), and all affiliates and
13 subcontractors of the private entity, shall comply with the
14 provisions of “The Public Works Contractor Registration Act,”
15 P.L.1999, c. 238 (C.34:11-56.48 et seq.).
16

17 15. (New section) Each general contractor, construction
18 manager, design-build team, and subcontractor that performs work
19 in connection with an energy-related project pursuant to P.L. ,
20 c. (C.) (pending before the Legislature as this bill) shall be
21 classified by the Energy P3 Unit in accordance with the provisions
22 of P.L. , c. (C.) (pending before the Legislature as this bill),
23 in consultation with the Division of Property Management and
24 Construction in the Department of the Treasury.
25

26 16. (New section) a. All energy-related projects proposed by a
27 governmental entity, upon receiving a solicited or unsolicited
28 energy-related project proposal pursuant to section 8 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill), shall be
30 submitted to the Energy P3 Unit for project review and approval.
31 Only an application deemed to be complete by the Energy P3 Unit
32 shall be considered. In order for an application to be deemed
33 complete, the application shall include, but not be limited to:

34 (1) a public-private partnership agreement between a
35 governmental entity and a private entity and, if applicable, a
36 preliminary agreement;

37 (2) a copy of any land lease or land agreement between the
38 governmental entity and the private entity;

39 (3) a project narrative that includes a full description of the
40 background and experience of the private entity, and the nature and
41 scope of the energy-related project and its anticipated benefits;

42 (4) financial information, including the estimated cost of the
43 energy-related project, a sources and uses statement, an operating
44 pro forma, evidence of legally binding financial commitments,
45 evidence of the private entity’s bonding capacity for the
46 development and operation of the energy-related project and, if
47 applicable, a long term service agreement;

- 1 (5) a detailed project schedule, including a timetable for
2 completion of all predevelopment, development, and placed-in-
3 service tasks and milestones, which shall demonstrate that the
4 energy-related project will be constructed within five years of the
5 date of approval by the Energy P3 Unit;
- 6 (6) proof of receipt or anticipated date of receipt of required
7 approvals;
- 8 (7) if applicable, a demonstration of projected energy cost
9 savings; and
- 10 (8) any other requirements that the Energy P3 Unit may
11 reasonably deem necessary or appropriate for the energy-related
12 project.
- 13 b. As part of the estimated costs and financial documentation
14 for an energy-related project, the application of the private entity
15 shall contain a long-range operation and maintenance plan and shall
16 separately state and clearly set forth the expenditures associated
17 with the plan. The long-range operation and maintenance plan shall
18 be approved by the Energy P3 Unit pursuant to regulations
19 promulgated by the Energy P3 Unit that reflect national building
20 maintenance standards and other appropriate building maintenance
21 benchmarks.
- 22 c. The Energy P3 Unit shall review all applications for
23 completeness in accordance with this section, and may request
24 additional information as may be required to make a complete
25 assessment of the energy-related project. The Energy P3 Unit shall
26 perform a substantive review of the application, which shall include
27 an assessment of the feasibility and design of the project, the
28 experience and qualification of the private entity, the soundness of
29 the financial plan, the adequacy of the public-private partnership
30 agreement, preliminary agreement, land lease, and other
31 agreements, and the adequacy of the long range operation and
32 maintenance plan. The Energy P3 Unit shall have the right to obtain
33 additional information from a private entity if required to complete
34 the review, including the right to issue notices of deficiency to the
35 private entity and require that the record be supplemented until it is
36 deemed complete.
- 37 d. An energy-related project shall not proceed until the
38 application has met the conditions established pursuant to the
39 provisions of this section and has received the approval of the
40 Energy P3 Unit. The Energy P3 Unit shall be permitted to revoke an
41 approval if it determines that an energy-related project materially
42 deviates from the application submitted pursuant to this section or
43 has not received all required approvals, including a certificate of
44 occupancy. An energy-related project that has been approved by the
45 Energy P3 Unit shall be completed within five years after the date
46 of approval by the Energy P3 Unit.

1 17. (New section) a. Notwithstanding the provisions of any
2 law, rule, regulation, decision, or order to the contrary, a private
3 entity that submits a proposal in response to a solicitation for an
4 energy-related project may identify those portions of the proposal
5 that the private entity deems to be confidential, competitively
6 sensitive bid-related information, including, but not limited to,
7 pricing and financing terms, and proprietary or trade secret
8 information. The private entity shall provide justification as to why
9 the materials identified as confidential should not, upon request, be
10 produced to others by the governmental entity. Information
11 determined by the governmental entity to be confidential,
12 competitively sensitive bid-related information shall not be subject
13 to disclosure or considered a public or government record under
14 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
15 al.), or otherwise, prior to the selection of the winning proposal.
16 Disclosure of confidential, competitively sensitive bid-related
17 information shall occur, upon request, after the selection of the
18 winning proposal, but prior to the execution of the final public-
19 private partnership agreement by the governmental entity and the
20 private entity. Information determined to be proprietary or trade
21 secret information shall not be subject to production at any time by
22 the governmental entity pursuant to P.L.1963, c.73 (C.47:1A-1 et
23 seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), or otherwise.

24 b. Notwithstanding the provisions of any law, rule, regulation,
25 decision, or order to the contrary, a private entity that submits an
26 unsolicited proposal for an energy-related project that is accepted
27 by a governmental entity and made the basis for a solicitation for an
28 energy-related project pursuant to P.L. , c. (C.) (pending
29 before the Legislature as this bill), may identify those portions of
30 the unsolicited proposal that the private entity deems to be
31 confidential, competitively sensitive bid-related information,
32 including, but not limited to, pricing, financing terms, and
33 proprietary or trade secret information. The private entity shall
34 provide justification as to why the materials identified as
35 confidential should not, upon request, be produced to others by the
36 governmental entity. Information determined by the governmental
37 entity to be confidential, competitively sensitive bid-related
38 information shall not be subject to disclosure or considered a public
39 or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) or
40 P.L.2001, c.404 (C.47:1A-5 et al.) or otherwise, prior to the
41 selection of the winning proposal. Disclosure of confidential,
42 competitively sensitive bid-related information shall occur, upon
43 request, after the selection of the winning proposal, but prior to the
44 execution of the final public-private partnership agreement by the
45 governmental entity and the private entity. Information determined
46 to be proprietary or trade secret information shall not be subject to
47 production at any time by the governmental entity pursuant to

1 P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et
2 al.), or otherwise.

3 c. Notwithstanding the provisions of any law, rule, regulation,
4 decision, or order to the contrary, a private entity that submits an
5 unsolicited proposal for an energy-related project that is rejected by
6 a governmental entity and not made the basis of a solicitation for an
7 energy-related project pursuant to P.L. , c. (C.) (pending
8 before the Legislature as this bill), may request the governmental
9 entity to return the entire unsolicited proposal to the private entity,
10 and the governmental entity shall promptly comply with any
11 request. An unsolicited proposal for a governmental entity energy-
12 related project that is rejected by a governmental entity and not
13 made the basis of a solicitation for an energy-related project shall
14 not be subject to disclosure or considered a public or government
15 record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404
16 (C.47:1A-5 et al.), or otherwise, and no disclosure of the unsolicited
17 proposal, or any portion thereof, or records of any communications
18 relating to the unsolicited proposal, shall be made to the public
19 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404
20 (C.47:1A-5 et al.), or otherwise.

21
22 18. (New section) Notwithstanding the provisions of section 2
23 of P.L.1999, c.440 (C.40A:11-4.2), section 46 of P.L.1999, c.440
24 (C.18A:18A-4.2), and P.L.1954, c.48 (C.52:34-6 et seq.), and any
25 other law, regulation, decision, or order to the contrary, a public-
26 private partnership agreement between a governmental entity and a
27 private entity to design, develop, finance, build, own, operate or
28 maintain, or a combination thereof, an energy-related project in
29 accordance with the provisions of P.L. , c. (C.) (pending
30 before the Legislature as this bill), may have a term not to exceed
31 20 years. A public-private partnership agreement between a
32 governmental entity and a private entity to design, develop, finance,
33 build, own, operate or maintain an energy-related project that
34 includes a combined heat and power facility, cogeneration facility,
35 or on-site generation facility, as those terms are defined pursuant to
36 section 3 of P.L.1999, c.23 (C.48:3-51), a district energy system, a
37 microgrid, or a distributed energy resource in accordance with the
38 provisions of P.L. , c. (C.) (pending before the Legislature
39 as this bill) may have a term not to exceed 25 years, which term
40 shall commence after construction of the combined heat and power
41 facility, cogeneration facility, on-site generation facility, district
42 energy system, microgrid, or distributed energy resource has been
43 completed and commercial operation of the facility has commenced.
44 A public-private partnership agreement between a governmental
45 entity and a private entity may authorize the entry of a long term
46 service agreement that may include routine and preventive
47 maintenance and overhaul and rebuild coverage, for coverage
48 periods of not less than 10 years, up to the period coinciding with

1 the useful life of the equipment included within the scope of the
2 service agreement.

3

4 19. (New section) The provisions of P.L.2009, c.136 (C.52:18-
5 42 et seq.) shall not apply to any energy-related project developed
6 pursuant to P.L. , c. (C.) (pending before the Legislature as
7 this bill).

8

9 20. (New section) Nothing in P.L. , c. (C.) (pending
10 before the Legislature as this bill) shall limit the powers of the
11 Office of the State Comptroller pursuant to P.L.2007, c.52
12 (C.52:15C-1 et al.).

13

14 21. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
15 read as follows:

16 15. All contracts for the provision or performance of goods or
17 services shall be awarded for a period not to exceed 24 consecutive
18 months, except that contracts for professional services pursuant to
19 subparagraph (i) of paragraph (a) of subsection (1) of section 5 of
20 P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to
21 exceed 12 consecutive months. Contracts may be awarded for
22 longer periods of time as follows:

23 (1) Supplying of:

24 (a) (Deleted by amendment, P.L.1996, c.113.)

25 (b) (Deleted by amendment, P.L.1996, c.113.)

26 (c) Thermal energy produced by a cogeneration facility, for use
27 for heating or air conditioning or both, for any term not exceeding
28 40 years, when the contract is approved by the Board of Public
29 Utilities. For the purposes of this paragraph, "cogeneration" means
30 the simultaneous production in one facility of electric power and
31 other forms of useful energy such as heating or process steam;

32 (2) (Deleted by amendment, P.L.1977, c.53.)

33 (3) The collection and disposal of municipal solid waste, the
34 collection and disposition of recyclable material, or the disposal of
35 sewage sludge, for any term not exceeding in the aggregate, five
36 years;

37 (4) The collection and recycling of methane gas from a sanitary
38 landfill facility, for any term not exceeding 25 years, when the
39 contract is in conformance with a district solid waste management
40 plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and
41 with the approval of the Division of Local Government Services in
42 the Department of Community Affairs and the Department of
43 Environmental Protection. The contracting unit shall award the
44 contract to the highest responsible bidder, notwithstanding that the
45 contract price may be in excess of the amount of any necessarily
46 related administrative expenses; except that if the contract requires
47 the contracting unit to expend funds only, the contracting unit shall
48 award the contract to the lowest responsible bidder. The approval

1 by the Division of Local Government Services of public bidding
2 requirements shall not be required for those contracts exempted
3 therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

4 (5) Data processing service, for any term of not more than seven
5 years;

6 (6) Insurance, including the purchase of insurance coverages,
7 insurance consulting or administrative services, claims
8 administration services and including participation in a joint self-
9 insurance fund, risk management program or related services
10 provided by a contracting unit insurance group, or participation in
11 an insurance fund established by a local unit pursuant to
12 N.J.S.40A:10-6, or a joint insurance fund established pursuant to
13 P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more
14 than three years;

15 (7) Leasing or servicing of (a) automobiles, motor vehicles,
16 machinery, and equipment of every nature and kind, for a period not
17 to exceed five years, or (b) machinery and equipment used in the
18 generation of electricity by a municipal shared services energy
19 authority established pursuant to section 4 of P.L.2015, c.129
20 (C.40A:66-4), or a contracting unit engaged in the generation of
21 electricity, for a period not to exceed 20 years; provided, however, a
22 contract shall be awarded only subject to and in accordance with the
23 rules and regulations promulgated by the Director of the Division of
24 Local Government Services in the Department of Community
25 Affairs;

26 (8) The supplying of any product or the rendering of any service
27 by a company providing voice, data, transmission, or switching
28 services for a term not exceeding five years;

29 (9) Any single project for the construction, reconstruction, or
30 rehabilitation of any public building, structure, or facility, or any
31 public works project, including the retention of the services of any
32 architect or engineer in connection therewith, for the length of time
33 authorized and necessary for the completion of the actual
34 construction;

35 (10) The providing of food services for any term not exceeding
36 three years;

37 (11) On-site inspections and plan review services undertaken by
38 private agencies pursuant to the "State Uniform Construction Code
39 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not
40 more than three years;

41 (12) (Deleted by amendment, P.L.2009, c.4.)**[.]**

42 (13) (Deleted by amendment, P.L.1999, c.440.)

43 (14) (Deleted by amendment, P.L.1999, c.440.)

44 (15) Leasing of motor vehicles, machinery, and other equipment
45 primarily used to fight fires, for a term not to exceed ten years,
46 when the contract includes an option to purchase, subject to and in
47 accordance with rules and regulations promulgated by the Director

1 of the Division of Local Government Services in the Department of
2 Community Affairs;

3 (16) The provision of water supply services or the designing,
4 financing, construction, operation, or maintenance, or any
5 combination thereof, of a water supply facility, or any component
6 part or parts thereof, including a water filtration system, for a period
7 not to exceed 40 years, when the contract for these services is
8 approved by the Division of Local Government Services in the
9 Department of Community Affairs, the Board of Public Utilities,
10 and the Department of Environmental Protection pursuant to
11 P.L.1985, c.37 (C.58:26-1 et al.), except that no approvals shall be
12 required for those contracts otherwise exempted pursuant to
13 subsection (30), (31), (34), (35),² or (43) of this section. For the
14 purposes of this subsection, "water supply services" means any
15 service provided by a water supply facility; "water filtration
16 system" means any equipment, plants, structures, machinery,
17 apparatus, or land, or any combination thereof, acquired, used,
18 constructed, rehabilitated, or operated for the collection,
19 impoundment, storage, improvement, filtration, or other treatment
20 of drinking water for the purposes of purifying and enhancing water
21 quality and insuring its potability prior to the distribution of the
22 drinking water to the general public for human consumption,
23 including plants and works, and other personal property and
24 appurtenances necessary for their use or operation; and "water
25 supply facility" means and refers to the real property and the plants,
26 structures, or interconnections between existing water supply
27 facilities, machinery and equipment and other property, real,
28 personal, and mixed, acquired, constructed, or operated, or to be
29 acquired, constructed, or operated, in whole or in part by or on
30 behalf of a political subdivision of the State or any agency thereof,
31 for the purpose of augmenting the natural water resources of the
32 State and making available an increased supply of water for all
33 uses, or of conserving existing water resources, and any and all
34 appurtenances necessary, useful, or convenient for the collecting,
35 impounding, storing, improving, treating, filtering, conserving, or
36 transmitting of water and for the preservation and protection of
37 these resources and facilities and providing for the conservation and
38 development of future water supply resources;

39 (17) The provision of resource recovery services by a qualified
40 vendor, the disposal of the solid waste delivered for disposal which
41 cannot be processed by a resource recovery facility or the residual
42 ash generated at a resource recovery facility, including hazardous
43 waste and recovered metals and other materials for reuse, or the
44 design, financing, construction, operation, or maintenance of a
45 resource recovery facility for a period not to exceed 40 years when
46 the contract is approved by the Division of Local Government
47 Services in the Department of Community Affairs, and the
48 Department of Environmental Protection pursuant to P.L.1985, c.38

1 (C.13:1E-136 et al.); and when the resource recovery facility is in
2 conformance with a district solid waste management plan approved
3 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
4 this subsection, "resource recovery facility" means a solid waste
5 facility constructed and operated for the incineration of solid waste
6 for energy production and the recovery of metals and other
7 materials for reuse; or a mechanized composting facility, or any
8 other facility constructed or operated for the collection, separation,
9 recycling, and recovery of metals, glass, paper, and other materials
10 for reuse or for energy production; and "residual ash" means the
11 bottom ash, fly ash, or any combination thereof, resulting from the
12 combustion of solid waste at a resource recovery facility;

13 (18) The sale of electricity or thermal energy, or both, produced
14 by a resource recovery facility for a period not to exceed 40 years
15 when the contract is approved by the Board of Public Utilities, and
16 when the resource recovery facility is in conformance with a district
17 solid waste management plan approved pursuant to P.L.1970, c.39
18 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource
19 recovery facility" means a solid waste facility constructed and
20 operated for the incineration of solid waste for energy production
21 and the recovery of metals and other materials for reuse; or a
22 mechanized composting facility, or any other facility constructed or
23 operated for the collection, separation, recycling, and recovery of
24 metals, glass, paper, and other materials for reuse or for energy
25 production;

26 (19) The provision of wastewater treatment services or the
27 designing, financing, construction, operation, or maintenance, or
28 any combination thereof, of a wastewater treatment system, or any
29 component part or parts thereof, for a period not to exceed 40 years,
30 when the contract for these services is approved by the Division of
31 Local Government Services in the Department of Community
32 Affairs and the Department of Environmental Protection pursuant to
33 P.L.1985, c.72 (C.58:27-1 et al.), except that no approvals shall be
34 required for those contracts otherwise exempted pursuant to
35 subsection (36) or (43) of this section. For the purposes of this
36 subsection, "wastewater treatment services" means any services
37 provided by a wastewater treatment system, and "wastewater
38 treatment system" means equipment, plants, structures, machinery,
39 apparatus, or land, or any combination thereof, acquired, used,
40 constructed, or operated for the storage, collection, reduction,
41 recycling, reclamation, disposal, separation, or other treatment of
42 wastewater or sewage sludge, or for the final disposal of residues
43 resulting from the treatment of wastewater, including, but not
44 limited to, pumping and ventilating stations, facilities, plants and
45 works, connections, outfall sewers, interceptors, trunk lines, and
46 other personal property and appurtenances necessary for their
47 operation;

1 (20) The supplying of goods or services for the purpose of
2 lighting public streets, for a term not to exceed five years;

3 (21) The provision of emergency medical services for a term not
4 to exceed five years;

5 (22) Towing and storage contracts, awarded pursuant to
6 paragraph u. of subsection (1) of section 5 of P.L.1971, c.198
7 (C.40A:11-5) for any term not exceeding three years;

8 (23) Fuel for the purpose of generating electricity for a term not
9 to exceed eight years;

10 (24) The purchase of electricity or administrative or dispatching
11 services related to the transmission of electricity, from a supplier of
12 electricity subject to the jurisdiction of a federal regulatory agency,
13 from a qualifying small power producing facility or qualifying
14 cogeneration facility, as defined by 16 U.S.C. s.796, or from any
15 supplier of electricity within any regional transmission organization
16 or independent system operator or from an organization or operator
17 or their successors, by a contracting unit engaged in the generation
18 of electricity for retail sale, as of May 24, 1991, for a term not to
19 exceed 40 years, or by a contracting unit engaged solely in the
20 distribution of electricity for retail sale for a term not to exceed ten
21 years, except that a contract with a contracting unit, engaged solely
22 in the distribution of electricity for retail sale, in excess of ten
23 years, shall require the written approval of the Director of the
24 Division of Local Government Services. If the director fails to
25 respond in writing to the contracting unit within 10 business days,
26 the contract shall be deemed approved;

27 (25) Basic life support services, for a period not to exceed five
28 years. For the purposes of this subsection, "basic life support"
29 means a basic level of prehospital care, which includes but need not
30 be limited to patient stabilization, airway clearance,
31 cardiopulmonary resuscitation, hemorrhage control, initial wound
32 care, and fracture stabilization;

33 (26) (Deleted by amendment, P.L.1999, c.440.)

34 (27) The provision of transportation services to an elderly
35 person, an individual with a disability, or an indigent person for any
36 term of not more than three years. For the purposes of this
37 subsection, "elderly person" means a person who is 60 years of age
38 or older. "Individual with a disability" means a person of any age
39 who, by reason of illness, injury, age, congenital malfunction, or
40 other permanent or temporary incapacity or disability, are unable,
41 without special facilities or special planning or design to utilize
42 mass transportation facilities and services as effectively as persons
43 who are not so affected. "Indigent person " means a person of any
44 age whose income does not exceed 100 percent of the poverty level,
45 adjusted for family size, established and adjusted under section
46 673(2) of subtitle B, the "Community Services Block Grant Act,"
47 Pub.L.97-35 (42 U.S.C. s.9902 (2));

1 (28) The supplying of liquid oxygen or other chemicals, for a
2 term not to exceed five years, when the contract includes the
3 installation of tanks or other storage facilities by the supplier, on or
4 near the premises of the contracting unit;

5 (29) The performance of patient care services by contracted
6 medical staff at county hospitals, correction facilities, and long term
7 care facilities, for any term of not more than three years;

8 (30) The acquisition of an equitable interest in a water supply
9 facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a
10 contract entered into pursuant to the "County and Municipal Water
11 Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into
12 no later than January 7, 1995, for any term of not more than forty
13 years;

14 (31) The provision of water supply services or the financing,
15 construction, operation, or maintenance or any combination thereof,
16 of a water supply facility or any component part or parts thereof, by
17 a partnership or copartnership established pursuant to a contract
18 authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a
19 period not to exceed 40 years;

20 (32) Laundry service and the rental, supply, and cleaning of
21 uniforms for any term of not more than three years;

22 (33) The supplying of any product or the rendering of any
23 service, including consulting services, by a cemetery management
24 company for the maintenance and preservation of a municipal
25 cemetery operating pursuant to the "New Jersey Cemetery Act,"
26 N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

27 (34) A contract between a public entity and a private firm
28 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of
29 water supply services may be entered into for any term which, when
30 all optional extension periods are added, may not exceed 40 years;

31 (35) A contract for the purchase of a supply of water from a
32 public utility company subject to the jurisdiction of the Board of
33 Public Utilities in accordance with tariffs and schedules of charges
34 made, charged or exacted or contracts filed with the Board of Public
35 Utilities, for any term of not more than 40 years;

36 (36) A contract between a public entity and a private firm or
37 public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for
38 the provision of wastewater treatment services may be entered into
39 for any term of not more than 40 years, including all optional
40 extension periods;

41 (37) The operation and management of a facility under a license
42 issued or permit approved by the Department of Environmental
43 Protection, including a wastewater treatment system or a water
44 supply or distribution facility, as the case may be, for any term of
45 not more than ten years. For the purposes of this subsection,
46 "wastewater treatment system" refers to facilities operated or
47 maintained for the storage, collection, reduction, disposal, or other
48 treatment of wastewater or sewage sludge, remediation of

1 groundwater contamination, stormwater runoff, or the final disposal
2 of residues resulting from the treatment of wastewater; and "water
3 supply or distribution facility" refers to facilities operated or
4 maintained for augmenting the natural water resources of the State,
5 increasing the supply of water, conserving existing water resources,
6 or distributing water to users;

7 (38) Municipal solid waste collection from facilities owned by a
8 contracting unit, for any term of not more than three years;

9 (39) Fuel for heating purposes, for any term of not more than
10 three years;

11 (40) Fuel or oil for use in motor vehicles for any term of not
12 more than three years;

13 (41) Plowing and removal of snow and ice for any term of not
14 more than three years;

15 (42) Purchases made under a contract awarded by the Director of
16 the Division of Purchase and Property in the Department of the
17 Treasury for use by counties, municipalities, or other contracting
18 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
19 term not to exceed the term of that contract;

20 (43) A contract between the governing body of a city of the first
21 class and a duly incorporated nonprofit association for the provision
22 of water supply services as defined in subsection (16) of this
23 section, or wastewater treatment services as defined in subsection
24 (19) of this section, may be entered into for a period not to exceed
25 40 years;

26 (44) The purchase of electricity generated through class I
27 renewable energy or from a power production facility that is fueled
28 by methane gas extracted from a landfill in the county of the
29 contacting unit for any term not exceeding 25 years;

30 (45) The provision or performance of goods or services for the
31 purpose of producing class I renewable energy or class II renewable
32 energy, as those terms are defined in section 3 of P.L.1999, c.23
33 (C.48:3-51), at, or adjacent to, buildings owned by, or operations
34 conducted by, the contracting unit, the entire price of which is to be
35 established as a percentage of the resultant savings in energy costs,
36 for a term not to exceed 15 years; provided, however, that a contract
37 shall be entered into only subject to and in accordance with
38 guidelines promulgated by the Board of Public Utilities establishing
39 a methodology for computing energy cost savings and energy
40 generation costs;

41 (46) A power supply contract, as defined pursuant to section 3 of
42 P.L.2015, c.129 (C.40A:66-3), between a member municipality as
43 defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), and
44 the municipal shared services energy authority established pursuant
45 to the provisions of P.L.2015, c.129 (C.40A:66-1 et al.) to meet the
46 electric power needs of its members, for the lease, operation, or
47 management of electric generation within a member municipality's
48 corporate limits and franchise area or the purchase of electricity, or

1 the purchase of fuel for generating units for a term not to exceed 40
2 years; **and**

3 (47) A contract entered into pursuant to paragraph (2) of
4 subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) between
5 a county hospital authority and a manager for the management,
6 operation, and maintenance of a hospital owned by the authority or
7 the county for a term not to exceed 20 years, provided, however,
8 that a contract entered into pursuant to paragraph (2) of subsection
9 a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) may be renewed for
10 two additional periods, not to exceed five years each **and**

11 (48)The sale of electricity or thermal energy, or both, produced
12 by a combined heat and power facility, cogeneration facility, or on-
13 site generation facility, as those terms are defined pursuant to
14 section 3 of P.L.1999, c.23 (C.48:3-51), a microgrid, as that term is
15 defined in section 3 of P.L. , c. (C.) (pending before the
16 Legislature as this bill), a district energy system, or a distributed
17 energy resource, for a period not to exceed 25 years, which period
18 shall commence after construction of the facility has been
19 completed and commercial operation of the facility has commenced.

20 Any contract for services other than professional services, the
21 statutory length of which contract is for three years or less, may
22 include provisions for no more than one two-year, or two one-year,
23 extensions, subject to the following limitations: a. The contract
24 shall be awarded by resolution of the governing body upon a
25 finding by the governing body that the services are being performed
26 in an effective and efficient manner; b. No contract shall be
27 extended so that it runs for more than a total of five consecutive
28 years; c. Any price change included as part of an extension shall be
29 based upon the price of the original contract as cumulatively
30 adjusted pursuant to any previous adjustment or extension and shall
31 not exceed the change in the index rate for the 12 months preceding
32 the most recent quarterly calculation available at the time the
33 contract is renewed; and d. The terms and conditions of the contract
34 remain substantially the same.

35 All multiyear leases and contracts entered into pursuant to this
36 section, including any two-year or one-year extensions, except
37 contracts involving the supplying of electricity for the purpose of
38 lighting public streets and contracts for thermal energy authorized
39 pursuant to subsection (1) above, construction contracts authorized
40 pursuant to subsection (9) above, contracts for the provision or
41 performance of goods or services or the supplying of equipment to
42 promote energy conservation through the production of class I
43 renewable energy or class II renewable energy authorized pursuant
44 to subsection (45) above, contracts for water supply services or for
45 a water supply facility, or any component part or parts thereof
46 authorized pursuant to subsection (16), (30), (31), (34), (35), (37),
47 or (43) above, contracts for resource recovery services or a resource
48 recovery facility authorized pursuant to subsection (17) above,

1 contracts for the sale of energy produced by a resource recovery
2 facility authorized pursuant to subsection (18) above, contracts for
3 wastewater treatment services or for a wastewater treatment system
4 or any component part or parts thereof authorized pursuant to
5 subsection (19), (36), (37), or (43) above, and contracts for the
6 purchase of electricity or administrative or dispatching services
7 related to the transmission of electricity authorized pursuant to
8 subsection (24) above, contracts for the purchase of electricity
9 generated from a power production facility that is fueled by
10 methane gas authorized pursuant to subsection (44) above, and
11 power supply contracts authorized pursuant to subsection (46)
12 respectively, shall contain a clause making them subject to the
13 availability and appropriation annually of sufficient funds as may
14 be required to meet the extended obligation, or contain an annual
15 cancellation clause.

16 The Division of Local Government Services in the Department
17 of Community Affairs shall adopt and promulgate rules and
18 regulations concerning the methods of accounting for all contracts
19 that do not coincide with the fiscal year.

20 All contracts shall cease to have effect at the end of the
21 contracted period and shall not be extended by any mechanism or
22 provision, unless in conformance with the "Local Public Contracts
23 Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract
24 may be extended by mutual agreement of the parties to the contract
25 when a contracting unit has commenced rebidding prior to the time
26 the contract expires or when the awarding of a contract is pending
27 at the time the contract expires.

28 (cf: P.L.2016, c.55, s.10)

29

30 22. N.J.S.18A:18A-42 is amended to read as follows:

31 18A:18A-42. All contracts for the provision or performance of
32 goods or services shall be awarded for a period not to exceed 24
33 consecutive months, except that contracts for professional services
34 pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall
35 be awarded for a period not to exceed 12 consecutive months. Any
36 board of education may award a contract for longer periods of time
37 as follows:

38 a. Supplying of:

39 (1) Fuel for heating purposes, for any term not exceeding in the
40 aggregate, three years;

41 (2) Fuel or oil for use of automobiles, autobuses, motor vehicles
42 or equipment, for any term not exceeding in the aggregate, three
43 years;

44 (3) Thermal energy produced by a cogeneration facility, for use
45 for heating or air conditioning or both, for any term not exceeding
46 40 years, when the contract is approved by the Board of Public
47 Utilities. For the purposes of this paragraph, "cogeneration" means

- 1 the simultaneous production in one facility of electric power and
2 other forms of useful energy such as heating or process steam; or
- 3 b. Plowing and removal of snow and ice, for any term not
4 exceeding in the aggregate, three years; or
- 5 c. Collection and disposal of garbage and refuse, for any term
6 not exceeding in the aggregate, three years; or
- 7 d. Data processing service, for any term of not more than seven
8 years; or
- 9 e. Insurance, including the purchase of insurance coverages,
10 insurance consultant or administrative services, and including
11 participation in a joint self-insurance fund, risk management
12 program or related services provided by a school board insurance
13 group, or participation in an insurance fund established by a county
14 pursuant to N.J.S.40A:10-6, or a joint insurance fund established
15 pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of
16 not more than three years; or
- 17 f. Leasing or servicing of automobiles, motor vehicles,
18 electronic communications equipment, machinery and equipment of
19 every nature and kind and textbooks and non-consumable
20 instructional materials, for any term not exceeding in the aggregate,
21 five years; except that contracts for the leasing of school buses may
22 be awarded for any term not exceeding in the aggregate ten years.
23 Contracts awarded pursuant to this subsection shall be awarded only
24 subject to and in accordance with rules and regulations promulgated
25 by the State Board of Education; or
- 26 g. Supplying of any product or the rendering of any service by
27 a company providing voice, data, transmission or switching
28 services, for a term not exceeding five years; or
- 29 h. (Deleted by amendment, P.L.1999, c.440.)
- 30 i. Driver education instruction conducted by private, licensed
31 driver education schools, for any term not exceeding in the
32 aggregate, three years; or
- 33 j. (Deleted by amendment, P.L.2009, c.4.)**[.]**
- 34 k. Any single project for the construction, reconstruction or
35 rehabilitation of any public building, structure or facility, or any
36 public works project, including the retention of the services of any
37 architect or engineer in connection therewith, for the length of time
38 authorized and necessary for the completion of the actual
39 construction; or
- 40 l. Laundry service and the rental, supply and cleaning of
41 uniforms for any term of not more than three years; or
- 42 m. Food supplies and food services for any term of not more
43 than three years; or
- 44 n. Purchases made under a contract awarded by the Director of
45 the Division of Purchase and Property in the Department of the
46 Treasury for use by counties, municipalities or other contracting
47 units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a
48 term not to exceed the term of that contract; or

1 o. The provision or performance of goods or services for the
2 purpose of producing class I renewable energy, as that term is
3 defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent
4 to, buildings owned by any local board of education, the entire price
5 of which is to be established as a percentage of the resultant savings
6 in energy costs, for a term not to exceed 15 years; provided,
7 however, that these contracts shall be entered into only subject to
8 and in accordance with guidelines promulgated by the Board of
9 Public Utilities establishing a methodology for computing energy
10 cost savings and energy generation costs.

11 p. The sale of electricity or thermal energy, or both, produced
12 by a combined heat and power facility, cogeneration facility, or on-
13 site generation facility, as those terms are defined pursuant to
14 section 3 of P.L.1999, c.23 (C.48:3-51), a microgrid, as that term is
15 defined in section 3 of P.L. , c. (C.) (now pending before the
16 Legislature as this bill), a district energy system, or a distributed
17 energy resource, for a period not to exceed 25 years, which period
18 shall commence after construction of such facility has been
19 completed and commercial operation of the facility has commenced.

20 Any contract for services other than professional services, the
21 statutory length of which contract is for three years or less, may
22 include provisions for no more than one two-year, or two one-year,
23 extensions, subject to the following limitations: a. the contract shall
24 be awarded by resolution of the board of education upon a finding
25 by the board of education that the services are being performed in
26 an effective and efficient manner; b. no such contract shall be
27 extended so that it runs for more than a total of five consecutive
28 years; c. any price change included as part of an extension shall be
29 based upon the price of the original contract as cumulatively
30 adjusted pursuant to any previous adjustment or extension and shall
31 not exceed the change in the index rate for the 12 months preceding
32 the most recent quarterly calculation available at the time the
33 contract is renewed; and d. the terms and conditions of the contract
34 remain substantially the same.

35 All multiyear leases and contracts entered into pursuant to this
36 section, including any two-year or one-year extensions, except
37 contracts for insurance coverages, insurance consultant or
38 administrative services, participation or membership in a joint self-
39 insurance fund, risk management programs or related services of a
40 school board insurance group, participation in an insurance fund
41 established by a county pursuant to N.J.S.40A:10-6 or contracts for
42 thermal energy authorized pursuant to subsection a. above, and
43 contracts for the provision or performance of goods or services to
44 promote energy conservation through the production of class I
45 renewable energy, authorized pursuant to subsection o. of this
46 section, shall contain a clause making them subject to the
47 availability and appropriation annually of sufficient funds as may
48 be required to meet the extended obligation, or contain an annual

1 cancellation clause. All contracts shall cease to have effect at the
2 end of the contracted period and shall not be extended by any
3 mechanism or provision, unless in conformance with the "Public
4 School Contracts Law," N.J.S.18A:18A-1 et seq., except that a
5 contract may be extended by mutual agreement of the parties to the
6 contract when a board of education has commenced rebidding prior
7 to the time the contract expires or when the awarding of a contract
8 is pending at the time the contract expires.

9 (cf: P.L.2009, c.4, s.3)

10
11 23. This act shall take effect immediately.

12
13
14 STATEMENT

15
16 This bill, entitled the "Energy Infrastructure Public-Private
17 Partnership Act," permits private entities to propose to government
18 entities certain energy-related projects at government facilities
19 through a public-private partnership (P3) agreement. The bill
20 creates an Energy Public-Private Partnership Unit (Energy P3 Unit)
21 situated within the New Jersey Economic Development Authority
22 that is responsible for the formulation and execution of a
23 comprehensive Statewide policy for P3 agreements that facilitate
24 the development of energy-related projects and for the
25 development, promotion, coordination, oversight, and approval of
26 P3 agreements for energy-related projects. The bill provides that the
27 Energy P3 Unit is to consult and coordinate with representatives of
28 other State departments, agencies, boards, and authorities to
29 accomplish the goals of the bill and facilitate P3 agreements.

30 The bill provides criteria by which a governmental entity is to
31 award an energy-related project P3 agreement to a private entity
32 whose proposal is determined to be the most advantageous to the
33 government entity. The bill prescribes competitive contracting
34 procedures to govern energy-related project P3 agreements,
35 including procurements and prevailing wage requirements for
36 workers engaged in construction activities and other worker
37 protections, and provides necessary oversight authority to the
38 Energy P3 Unit to protect the interests of participating
39 governmental entities. The bill permits the inclusion of a project
40 labor agreement in all energy related-projects created pursuant to
41 the bill's provisions.