

**SENATE, No. 4114**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED NOVEMBER 30, 2023

**Sponsored by:**

**Senator CHRISTOPHER J. CONNORS**  
**District 9 (Atlantic, Burlington and Ocean)**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**

**SYNOPSIS**

Increases maximum lease in public-private partnership agreements from 30 to 40 years.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/4/2024)**

1 AN ACT concerning certain public-private partnership lease  
2 agreements and amending P.L.2018, c.90 and P.L.2009, c.90.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.2018, c.90 (C.40A:11-52) is amended to  
8 read as follows:

9 1. a. As used in this section:

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

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

16 "Local government unit" means a county, a municipality, or any  
17 board, commission, committee, authority or agency thereof that is  
18 subject to the provisions of the "Local Public Contracts Law,"  
19 P.L.1971, c.198 (C.40A:11-1 et seq.), including a housing authority  
20 or redevelopment agency created or continued under the "Local  
21 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et  
22 seq.). A local government unit shall not include a public entity that  
23 has entered into a contract with a private firm or a public authority  
24 pursuant to the "New Jersey Wastewater Treatment Public-Private  
25 Contracting Act," P.L.1995, c.216 (C.58:27-19 et al.), for the  
26 provision of wastewater treatment services.

27 "Project" means the development, construction, reconstruction,  
28 repair, alteration, improvement, extension, operation, and  
29 maintenance of any building, local or county road, vertical  
30 structure, or facility constructed or acquired by a local government  
31 unit to operate local government functions, including any  
32 infrastructure or facility used or to be used by the public or in  
33 support of a public purpose or activity; and including any site  
34 acquisition, provided that, with respect to a project, a qualifying  
35 project shall include an expenditure of at least \$10 million in public  
36 funds, or any expenditure in solely private funds.

37 "Public building, road, structure, infrastructure, or facility"  
38 means any site building, road, structure, infrastructure, or facility  
39 used or to be used by a local government unit to house a local  
40 government function or functions, including any infrastructure or  
41 facility used or to be used by the public, or in support of a public  
42 purpose or activity.

43 "Public-private partnership agreement" means an agreement  
44 entered into by a local government unit and a private entity  
45 pursuant to this section for the purpose of permitting a private entity

**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 to assume full financial and administrative responsibility for the  
2 development, construction, reconstruction, repair, alteration,  
3 improvement, extension, operation, and maintenance of a project of,  
4 or for the benefit of, the local government unit.

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

13 (2) A public-private partnership agreement may include an  
14 agreement under which a local government unit and a private entity  
15 enter into a lease of a revenue-producing public building, road,  
16 structure, infrastructure, or facility in exchange for up-front or  
17 structured financing by the private entity for the project. Under the  
18 lease agreement, the private entity shall be responsible for the  
19 management, operation, and maintenance of the building, road,  
20 structure, infrastructure, or facility. The private entity shall receive  
21 some or all, as per the agreement, of the revenue generated by the  
22 building, road, structure, infrastructure, or facility, and shall operate  
23 the building, road structure, infrastructure, or facility in accordance  
24 with local government unit standards. At the end of the lease term,  
25 subsequent revenue generated by the building, road, structure,  
26 infrastructure, or facility, along with management, operation, and  
27 maintenance responsibility, shall revert to the local government  
28 unit. A lease agreement entered into pursuant to this section shall be  
29 limited in duration to a term of not more than **【30】 40** years. A  
30 lease agreement shall be subject to all applicable provisions of  
31 current law governing leases by a local government unit not  
32 inconsistent with the provisions of this section. For the purposes of  
33 this section, "revenue-producing" shall include leaseback  
34 arrangements.

35 (3) Bundling of projects shall be prohibited under this section.

36 (4) Nothing in this section shall be construed to exempt a local  
37 government unit from provisions of the "Local Bond Law,"  
38 N.J.S.40A:2-1 et seq., or the "Local Authorities Fiscal Control  
39 Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), or other law, that may  
40 apply to local government unit borrowing or financing, including  
41 but not limited to provisions requiring review by and approval from  
42 the Local Finance Board or the Director of the Division of Local  
43 Government Services in the Department of Community Affairs.

44 c. (1) Unless otherwise set forth herein, a private entity that  
45 assumes full financial and administrative responsibility for a project  
46 pursuant to this section shall not be subject to the procurement and  
47 contracting requirements of all statutes applicable to the local  
48 government unit at which the project is completed, including, but

1 not limited to, the "Local Public Contracts Law," P.L.1971, c.198  
2 (C.40A:11-1 et seq.).

3 (2) Notwithstanding any provision of law to the contrary, a  
4 public entity shall be empowered to enter into contracts with a  
5 private entity and its affiliates without being subject to the  
6 procurement and contracting requirements of any statute applicable  
7 to the public entity provided that the private entity has been selected  
8 by the local government unit pursuant to a solicitation of proposals  
9 or qualifications from at least two private entities, or it has received  
10 an unsolicited proposal and followed the procedure set forth in  
11 paragraph (4) of subsection j. of this section. A local government  
12 unit shall be the owner or lessee of any project being financed by a  
13 local government unit.

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

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

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

1 prequalified by the Department of Transportation, New Jersey  
2 Transit, or the New Jersey Turnpike Authority, as appropriate, to  
3 perform work on a public-private partnership project.

4 (2) All projects proposed in accordance with this section shall  
5 be submitted to the State Treasurer, in consultation with the New  
6 Jersey Economic Development Authority and the Department of  
7 Community Affairs for a review and approval in accordance with  
8 subsection f. of this section prior to the execution of the public-  
9 private partnership agreement and, when practicable, are  
10 encouraged to adhere to the Leadership in Energy and  
11 Environmental Design Green Building Rating System as adopted by  
12 the United States Green Building Council, the Green Globes  
13 Program adopted by the Green Building Initiative, or a comparable  
14 nationally recognized, accepted, and appropriate sustainable  
15 development rating system.

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

21 (4) Prior to being submitted to the State Treasurer for review  
22 and approval, all projects proposed in accordance with this section  
23 shall be subject to a public hearing, the record of which shall be  
24 made available to the public within seven days following the  
25 conclusion of the hearing, after the ranking of proposals takes place  
26 pursuant to paragraph (5) of subsection j. of this section. The local  
27 government unit shall provide notice of the public hearing no less  
28 than 14 days prior to the date of the hearing. The notice shall  
29 prominently state the purpose and nature of the proposed project,  
30 and shall be published on the official Internet website of the local  
31 government unit and at least once in one or more newspapers with  
32 Statewide circulation.

33 (5) Prior to entering into a **【public -private】** public-private  
34 partnership, the local government unit shall determine: (i) the  
35 benefits to be realized by the project; (ii) the cost of project if it is  
36 developed by the public sector supported by comparisons to  
37 comparable projects; (iii) the maximum public contribution that  
38 local government unit will allow under the **【public -private】** public-  
39 private partnership; (iv) a comparison of the financial and non-  
40 financial benefits of the public-private partnership compared to  
41 other options including the public sector option; (v) a list of risks,  
42 liabilities and responsibilities to be transferred to the private entity  
43 and those to be retained by the local government unit; and (vi) if the  
44 project has a high, medium or low level of project delivery risk and  
45 how the public is protected from these risks.

46 (6) Prior to entering into a public-private partnership, the local  
47 government unit at a public hearing shall find that the project is in  
48 the best interest of the public by finding that (i) it will cost less than

1 the public sector option, or if it costs more there are factors that  
2 warrant the additional expense; (ii) there is a public need for the  
3 project and the project is consistent with existing long-term plans;  
4 (iii) there are specific significant benefits to the project; (iv) there  
5 are specific significant benefits to using the public-private  
6 partnership instead of other options including No-Build; (v) the  
7 private development will result in timely and efficient development  
8 and operation; and (vi) the risks, liabilities and responsibilities  
9 transferred to the private entity provide sufficient benefits to  
10 warrant not using other means of procurement.

11 f. (1) All projects proposed in accordance with this section  
12 shall be submitted to the State Treasurer for review and approval,  
13 which shall be conducted in consultation with the Commissioner of  
14 the Department of Community Affairs. The projects are  
15 encouraged, when practicable, to adhere to the green building  
16 manual prepared by the Commissioner of Community Affairs  
17 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

18 (2) All projects proposed in accordance with this section that  
19 have a transportation component or impact the transportation  
20 infrastructure shall be submitted to the State Treasurer, in  
21 consultation with the Commissioner of the Department of  
22 Transportation, for review and approval.

23 (3) (a) In order for an application to be complete and  
24 considered by the State Treasurer, the application shall include, but  
25 not be limited to: (i) a full description of the proposed public-  
26 private partnership agreement between the local government unit  
27 and the private developer, including all information obtained by and  
28 findings of the local government unit pursuant to paragraphs (4) and  
29 (5) of subsection e. of this section; (ii) a full description of the  
30 project, including a description of any agreement for the lease of a  
31 revenue-producing facility related to the project; and (iii) the  
32 estimated costs and financial documentation for the project showing  
33 the underlying financial models and assumptions that determined  
34 the estimated costs. The financial documentation shall include at  
35 least three different projected estimated costs showing scenarios in  
36 which materially different economic circumstances are assumed and  
37 an explanation for how the estimated costs were determined based  
38 on the three scenarios; (iv) a timetable for completion of the  
39 construction of the project; (v) an analysis of all available funding  
40 options for the project, including an analysis of the financial  
41 viability and advisability of such project, along with evidence of the  
42 public benefit in advancing the project as a public-private  
43 partnership; (vi) a record of the public hearing held pursuant to  
44 paragraph (4) of subsection e. of this section, which shall have been  
45 made available to the public within seven days following the  
46 conclusion of the hearing; and (vii) any other requirements that the  
47 State Treasurer deems appropriate or necessary. The application  
48 shall also include a resolution by the local government unit's

1 governing body of its intent to enter into a public-private  
2 partnership agreement pursuant to this section.

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

11 (4) The State Treasurer, in consultation with the authority and  
12 the Commissioner of the Department of Community Affairs, shall  
13 review all completed applications, and request additional  
14 information as is needed to make a complete assessment of the  
15 project. No public-private partnership agreement shall be executed  
16 until approval has been granted by the State Treasurer. Prior to a  
17 final decision by the State Treasurer on the application, the  
18 authority and the Department of Community Affairs shall be  
19 afforded the opportunity to provide comments on the application  
20 that they deem appropriate, and the State Treasurer shall consider  
21 any comments submitted by the authority and the Department of  
22 Community Affairs with respect to the application. In order to  
23 approve the application, the State Treasurer shall find that: (i) the  
24 local government unit's assumptions regarding the project's scope,  
25 its benefits, its risks and the cost of the public sector option were  
26 fully and reasonably developed; (ii) the design of the project is  
27 feasible; (iii) the experience and qualifications of the private entity;  
28 (iv) the financial plan is sound; (v) the long-range maintenance plan  
29 is adequate to protect the investment; (vi) the project is in the best  
30 interest of the public, using the criteria in paragraph (6) of  
31 subsection e. of this section; (vii) a resolution by the local  
32 government unit's governing body of its intent to enter into a  
33 public-private partnership agreement for the project has been  
34 received; and (viii) the term sheet for any proposed procurement  
35 contains all necessary elements. The State Treasurer shall retain the  
36 right to revoke approval if the project has substantially deviated  
37 from the plan submitted pursuant to this section, and shall retain the  
38 right to cancel a procurement after a short list of private entities is  
39 developed if deemed in the public interest.

40 (5) The State Treasurer, the authority, and division may  
41 promulgate any rules and regulations necessary to implement this  
42 subsection, including, but not limited to, provisions for fees to  
43 cover administrative costs, and for the determination of minimum  
44 local government unit standards for the operation of the project, and  
45 for the qualification for professional services, construction  
46 contracting, and other relevant qualifications.

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

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

5 h. The power of eminent domain shall not be delegated to any  
6 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52  
7 et al.); however, a local government unit may dedicate any property  
8 interest, including improvements and tangible personal property of  
9 the local government unit for public use in a qualifying project if  
10 the local government unit finds that so doing will serve the public  
11 purpose of the project by minimizing the cost of the project to the  
12 local government unit or reducing the delivery time of a project.

13 i. Any public-private partnership agreement, if appropriate,  
14 shall include provisions affirming that the agreement and any work  
15 performed under the agreement are subject to the provisions of the  
16 "Construction Industry Independent Contractor Act," P.L.2007,  
17 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement  
18 shall also include, at a minimum: (i) the term of the agreement; (ii)  
19 the total project cost; (iii) a completion date guarantee; (iv) a  
20 provision for damages if the private entity fails to meet the  
21 completion date; and (v) a maximum rate of return to the private  
22 entity and a provision for the distribution of excess earnings to the  
23 local government unit or to the private party for debt reduction.

24 j. (1) A private entity seeking to enter into a public-private  
25 partnership agreement with the local government unit shall be  
26 qualified by the local government unit as part of the procurement  
27 process, provided such process ensures that the private entity and its  
28 subcontractors and consultants, when relevant meet at least the  
29 minimum qualifications standards promulgated by the State  
30 Treasurer, in consultation with the New Jersey Economic  
31 Development Authority, Department of Community Affairs, and  
32 such other local government unit standards for qualification for  
33 professional services, construction contracting, and other  
34 qualifications applicable to the project, prior to submitting a  
35 proposal under the procurement process.

36 (2) A request for qualifications for a public-private partnership  
37 agreement shall be advertised at least 45 days prior to the  
38 anticipated date of receipt. The advertisement of the request for  
39 qualifications shall be published on the official Internet website of  
40 the local government unit and at least one or more newspapers with  
41 Statewide circulation.

42 (3) After the local government unit determines the qualified  
43 respondents utilizing, at minimum, the qualification standards  
44 promulgated by the State Treasurer, the local government entity  
45 shall issue a request for proposals to each qualified respondent no  
46 less than 45 days prior to the date established for submission of the  
47 proposals. The request for proposals shall include relevant  
48 technical submissions, documents, and the evaluation criteria to be

1 used in the selection of the designated respondent. The evaluation  
2 criteria shall be, at minimum, criteria promulgated by the State  
3 Treasurer, in consultation with the New Jersey Economic  
4 Development Authority and Department of Community Affairs.

5 (4) The local government unit may accept unsolicited proposals  
6 from private entities for public-private partnership agreements. If  
7 the local government unit receives an unsolicited proposal and  
8 determines that it meets the standards of this section, the local  
9 government unit shall publish a notice of the receipt of the proposal  
10 on the Internet site of the local government unit and through  
11 advertisement in at least one or more newspapers with Statewide  
12 circulation. The local government unit shall also provide notice  
13 of the proposal at its next scheduled public meeting and to the State  
14 Treasurer. To qualify as an unsolicited proposal, the unsolicited  
15 proposal shall at a minimum include a description of the public-  
16 private project, the estimated construction and life-cycle costs, a  
17 timeline for development, proposed plan of financing, including  
18 projected revenues, public or private, debt, equity investment,  
19 description of how the project meets needs identified in existing  
20 plans, the permits and approvals needed to develop the project from  
21 local, state and federal agencies and a projected schedule for  
22 obtaining such permits and approvals, a statement of risks,  
23 liabilities and responsibilities to be assumed by the private entity.  
24 The notice shall provide that the local government unit shall accept,  
25 for 120 days after the initial date of publication, proposals meeting  
26 the standards of this section from other private entities for eligible  
27 projects that satisfy the same basic purpose and need. A copy of the  
28 notice shall be mailed to each municipal and county local  
29 government body in the geographic area affected by the proposal.

30 (5) After the proposal or proposals have been received, and any  
31 public notification period has expired, the local government unit  
32 shall rank the proposals in order of preference. In ranking the  
33 proposals, the local government unit shall rely upon, at minimum,  
34 the evaluation criteria promulgated by the State Treasurer, in  
35 consultation with the New Jersey Economic Development Authority  
36 and the Department of Community Affairs. In addition, the local  
37 government unit may consider factors that include, but may not be  
38 limited to, professional qualifications, general business terms,  
39 innovative engineering, architectural services, or cost-reduction  
40 terms, finance plans, and the need for local government funds to  
41 deliver the project and discharge the agreement. The private entity  
42 selected shall comply with all laws and regulations required by the  
43 State government entity, including but not limited to section 1 of  
44 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,  
45 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),  
46 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-  
47 51 et al.), Executive Order No. 117 of 2008, Executive Order No.  
48 118 of 2008, Executive Order No. 189, prior to executing the public

1 private partnership agreement. If only one proposal is received, the  
2 local government unit shall negotiate in good faith and, if not  
3 satisfied with the results of the negotiations, the local government  
4 unit may, at its sole discretion, terminate negotiations.

5 (6) The local government unit may require, upon receipt of one  
6 or more proposals, that the private entity assume responsibility for  
7 all costs incurred by the local government unit before execution of  
8 the public-private partnership agreement, including costs of  
9 retaining independent experts to review, analyze, and advise the  
10 local government unit with respect to the proposal.

11 (7) Stipends may be used on ~~public private~~ public-private  
12 partnership projects when there is a substantial opportunity for  
13 innovation and the costs for developing a proposal are significant.  
14 The local government unit may elect to pay unsuccessful proposers  
15 for the work product they submit with their proposal in response to  
16 a request for proposals. The use by the local government unit of  
17 any design element contained in an unsuccessful proposal shall be  
18 at the sole risk and discretion of the local government unit and shall  
19 not confer liability on the recipient of the stipulated stipend amount.  
20 After payment of the stipulated stipend amount, the local  
21 government unit and the unsuccessful proposer shall jointly own the  
22 rights to, and may make use of any work product contained in the  
23 proposal, including the technologies, techniques, methods,  
24 processes, ideas, and information contained in the proposal, project  
25 design, and project financial plan. The use by the unsuccessful  
26 proposer of any part of the work product contained in the proposal  
27 shall be at the sole risk of the unsuccessful proposer and shall not  
28 confer liability on the local government unit. The State Treasurer,  
29 in consultation with the New Jersey Economic Development  
30 Authority of New Jersey and Department of Community Affairs  
31 shall promulgate guidelines based upon which any stipends paid by  
32 a local government unit are to be based.

33 (8) The local government unit shall set aside one percent of each  
34 project and remit it the Public Private Partnership Review fund  
35 established pursuant to P.L.2018, c.90 (C.40A:11-52 et al.), for  
36 purposes of plan review and analysis required under the bill.

37 (9) Nothing in this section shall be construed as or deemed a  
38 waiver of the sovereign immunity of the State, the local government  
39 unit or an affected locality or public entity or any officer or  
40 employee thereof with respect to the participation in or approval of  
41 all or any part of the public-private project.

42 (cf: P.L.2018, c.90, s.1)

43  
44 2. Section 2 of P.L.2018, c.90 (C.18A:18A-60) is amended to  
45 read as follows:

46 2. a. As used in this section:

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

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

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

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

18 "School district" shall have the same meaning as provided in  
19 section 3 of P.L.2000, c.72 (C.18A:7G-3) and includes a local  
20 school district, regional school district, or county special services  
21 school district or county vocational school established and  
22 operating under the provisions of Title 18A of the New Jersey  
23 Statutes that can demonstrate to the satisfaction of the  
24 Commissioner of Education and the Chief Executive Officer of the  
25 Schools Development Authority that a school facility is necessary  
26 due to overcrowding or is in need of replacement. The term "school  
27 district" shall include a charter school established under P.L.1995,  
28 c.426 (C.18A:36A-1 et seq.)

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

35 (2) A public-private partnership agreement may include an  
36 agreement under which a school district and a private entity enter  
37 into a lease of a revenue-producing public building, structure, or  
38 facility in exchange for up-front or structured financing by the  
39 private entity for the project. Under the lease agreement, the  
40 private entity shall be responsible for the management, operation,  
41 and maintenance of the building, structure, or facility. The private  
42 entity shall receive some or all, as per the agreement, of the revenue  
43 generated by the building, structure, or facility, and shall operate  
44 the building, structure, or facility in accordance with school district  
45 standards. At the end of the lease term, subsequent revenue  
46 generated by the building, structure, or facility, along with  
47 management, operation, and maintenance responsibility, shall revert  
48 to the school district. A lease agreement entered into pursuant to

1 this section shall be limited in duration to a term of not more than  
2 **【30】** 40 years. A lease agreement shall be subject to all applicable  
3 provisions of current law governing leases by a school district not  
4 inconsistent with the provisions of this section.

5 (3) Bundling of projects shall be prohibited under this section.

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

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

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

47 d. Each worker employed in the construction, rehabilitation, or  
48 building maintenance services of facilities by a private entity that

1 has entered into a public-private partnership agreement with a  
2 school district pursuant to this section shall be paid not less than the  
3 prevailing wage rate for the worker's craft or trade as determined by  
4 the Commissioner of Labor and Workforce Development pursuant  
5 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379  
6 (C.34:11-56.58 et seq.).

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

21 (2) All projects proposed in accordance with this section shall  
22 be submitted to the State Treasurer, in consultation with the  
23 Department of Education, Schools Development Authority, and the  
24 New Jersey Economic Development Authority for a review and  
25 approval in accordance with subsection f. of this section prior to the  
26 execution of the public-private partnership agreement and, when  
27 practicable, are encouraged to adhere to the Leadership in Energy  
28 and Environmental Design Green Building Rating System as  
29 adopted by the United States Green Building Council, the Green  
30 Globes Program adopted by the Green Building Initiative, or a  
31 comparable nationally recognized, accepted, and appropriate  
32 sustainable development rating system.

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

38 (4) Prior to being submitted to the State Treasurer for review  
39 and approval, all projects proposed in accordance with this section  
40 shall be subject to a public hearing, the record of which shall have  
41 been kept open for a period of seven days following the conclusion  
42 of the hearing, after the ranking of proposals takes place pursuant to  
43 paragraph (5) of subsection j. of this section. The school district  
44 shall provide notice of the public hearing no less than 14 days prior  
45 to the date of the hearing. The notice shall prominently state the  
46 purpose and nature of the proposed project, and shall be published  
47 on the official Internet website of the school district and in at least  
48 one or more newspapers with Statewide circulation.

1 (5) Prior to entering into a **【public -private】** public-private  
2 partnership, the school district must determine: (i) the benefits to be  
3 realized by the project, (ii) the cost of the project if it is developed  
4 by the public sector supported by comparisons to comparable  
5 projects, (iii) the maximum public contribution that the school  
6 district will allow under the **【public -private】** public-private  
7 partnership, (iv) a comparison of the financial and non-financial  
8 benefits of the public-private partnership compared to other options  
9 including the public sector option, (v) a list of risks, liabilities and  
10 responsibilities to be transferred to the private entity and those to be  
11 retained by the school district, and (vi) if the project has a high,  
12 medium or low level of project delivery risk and how the public is  
13 protected from these risks.

14 (6) Prior to entering into a **【public- private】** public-private  
15 partnership, the school district at a public hearing shall find that the  
16 project is in the best interest of the public by finding that (i) it will  
17 cost less than the public sector option, or if it costs more there are  
18 factors that warrant the additional expense (ii) there is a public need  
19 for the project and the project is consistent with existing long-term  
20 plans, (iii) there are specific significant benefits to the project, (iv)  
21 there are specific significant benefits to using the public-private  
22 partnership instead of other options including No-Build (v) the  
23 private development will result in timely and efficient development  
24 and operation and (vi) the risks, liabilities and responsibilities  
25 transferred to the private entity provide sufficient benefits to  
26 warrant not using other means of procurement.

27 f. (1) All projects proposed in accordance with this section  
28 shall be submitted to the State Treasurer for review and approval,  
29 which shall be conducted in consultation with the Commissioner of  
30 the Department of Education and the Chief Executive Officer of the  
31 Schools Development Authority. The Commissioner of the  
32 Department of Education shall determine if a project is subject to  
33 voter approval pursuant to N.J.S.18A:24-10. If a project is subject  
34 to voter approval, such approval is required prior to progressing  
35 thru the procurement process. The projects are encouraged, when  
36 practicable, to adhere to the green building manual prepared by the  
37 Commissioner of Community Affairs pursuant to section 1 of  
38 P.L.2007, c.132 (C.52:27D-130.6).

39 (2) All projects proposed in accordance with this section that  
40 have a transportation component or impact the transportation  
41 infrastructure shall be submitted to the Department of  
42 Transportation. The State Treasurer shall consult with the  
43 Department of Transportation in making its final determination.

44 (3) (a) In order for an application to be complete and  
45 considered by the State Treasurer, the application shall include, but  
46 not be limited to: (i) a full description of the proposed public-  
47 private partnership agreement between the school district and the  
48 private developer, including all information obtained by and

1 findings of the school district pursuant to paragraphs (4) and (5) of  
2 subsection (e) of this section; (ii) a full description of the project,  
3 including a description of any agreement for the lease of a revenue-  
4 producing facility related to the project; (iii) the estimated costs and  
5 financial documentation for the project showing the underlying  
6 financial models and assumptions that determined the estimated  
7 costs. The financial documentation must include at least three  
8 different projected estimated costs showing scenarios in which  
9 materially different economic circumstances are assumed and an  
10 explanation for how the estimated costs were determined based on  
11 the three scenarios; (iv) a timetable for completion of the  
12 construction of the project; (v) an analysis of all available funding  
13 options for the project, including an analysis of the financial  
14 viability and advisability of such project, along with evidence of the  
15 public benefit in advancing the project as a public-private  
16 partnership; (vi) a record of the public hearing held pursuant to  
17 paragraph (4) of subsection e. of this section, which shall have been  
18 kept open for a period of seven days following the conclusion of the  
19 hearing; (vii) any other requirements that the State Treasurer deems  
20 appropriate or necessary. The application shall also include a  
21 resolution by the school district's governing body of its intent to  
22 enter into a public-private partnership agreement pursuant to this  
23 section.

24 (b) As part of the estimated costs and financial documentation  
25 for the project, the application shall contain a long-range  
26 maintenance plan and a long-range maintenance bond and shall  
27 specify the expenditures that qualify as an appropriate investment in  
28 maintenance. The long-range maintenance plan shall be approved  
29 by the State Treasurer pursuant to regulations promulgated by the  
30 State Treasurer that reflect national building maintenance standards  
31 and other appropriate building maintenance benchmarks.

32 (4) The State Treasurer, in consultation with the authority, the  
33 Commissioner of the Department of Education, and the Chief  
34 Executive Officer of the Schools Development Authority, shall  
35 review all completed applications, and request additional  
36 information as is needed to make a complete assessment of the  
37 project. No public-private partnership agreement shall be executed  
38 until approval has been granted by the State Treasurer. Prior to a  
39 final decision by the State Treasurer on the application, the  
40 authority, the Department of Education, and the Schools  
41 Development Authority shall be afforded the opportunity to provide  
42 comments on the application that they deem appropriate, and the  
43 State Treasurer shall consider any comments submitted by the  
44 authority, the Department of Education, and the Schools  
45 Development Authority with respect to the application. The State  
46 Treasurer will find that: (i) the school district's assumptions  
47 regarding the project's scope, its benefits, its risks and the cost of  
48 the public sector option were fully and reasonably developed (ii) the

1 design of the project is feasible; (iii) the experience and  
2 qualifications of the private entity; (iv) the financial plan is sound;  
3 (v) the long-range maintenance plan is adequate to protect the  
4 investment; (vi) the project is in the best interest of the public,  
5 using the criteria in paragraph (6) of subsection e. of this section;  
6 (vii) a resolution by the school district's governing body of its intent  
7 to enter into a public-private partnership agreement for the project  
8 has been received; and (viii) the term sheet for any proposed  
9 procurement contains all necessary elements.

10 (5) The State Treasurer, in consultation with the Commissioner  
11 of the Department of Education and Chief Executive Officer of the  
12 Schools Development Authority, may promulgate any rules and  
13 regulations necessary to implement this subsection, including, but  
14 not limited to, provisions for fees to cover administrative costs, and  
15 for the determination of minimum school district standards for the  
16 operation of the project, and for the qualification for professional  
17 services, construction contracting, and other relevant qualifications.

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

24 h. The power of eminent domain shall not be delegated to any  
25 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52  
26 et al.); however, a school district may dedicate any property  
27 interest, including improvements, and tangible personal property of  
28 the school district for public use in a qualifying project if the school  
29 district finds that so doing will serve the public purpose of the  
30 project by minimizing the cost of the project to the school district or  
31 reducing the delivery time of a project.

32 i. Any public-private partnership agreement, if appropriate,  
33 shall include provisions affirming that the agreement and any work  
34 performed under the agreement are subject to the provisions of the  
35 "Construction Industry Independent Contractor Act," P.L.2007,  
36 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement  
37 will also include, at a minimum: (i) the term of the agreement, (ii)  
38 the total project cost, (iii) a completion date guarantee, (iv) a  
39 provision for damages if the private entity fails to meet the  
40 completion date and (v) a maximum rate of return to the private  
41 entity and a provision for the distribution of excess earnings to the  
42 local government unit or to the private party for debt reduction.

43 j. (1) A private entity seeking to enter into a public-private  
44 partnership agreement with the school district shall be qualified by  
45 the school district as part of the procurement process, provided such  
46 process ensures that the private entity and its subcontractors and  
47 consultants, where relevant, meet at least the minimum  
48 qualifications standards promulgated by the State Treasurer, in

1 consultation with the New Jersey Economic Development  
2 Authority, Department of Education, Schools Development  
3 Authority, and such other school district standards for qualification  
4 for professional services, construction contracting, and other  
5 qualifications applicable to the project, prior to submitting a  
6 proposal under the procurement process.

7 (2) A request for qualifications for a public-private partnership  
8 agreement shall be advertised at least 45 days prior to the  
9 anticipated date of receipt. The advertisement of the request for  
10 qualifications shall be published on the official Internet website of  
11 the school district and at least one or more newspapers with  
12 Statewide circulation.

13 (3) After the school district determines the qualified respondents  
14 utilizing, at minimum, the qualification standards promulgated by  
15 the State Treasurer, the school district shall issue a request for  
16 proposals to each qualified respondent no less than 45 days prior to  
17 the date established for submission of the proposals. The request  
18 for proposals shall include relevant technical submissions,  
19 documents, and the evaluation criteria to be used in the selection of  
20 the designated respondent. The evaluation criteria shall be, at  
21 minimum, criteria promulgated by the State Treasurer, in  
22 consultation with the New Jersey Economic Development  
23 Authority, Department of Education, and Schools Development  
24 Authority.

25 (4) The school district may accept unsolicited proposals from  
26 private entities for public-private partnership agreements. If the  
27 school district receives an unsolicited proposal and determines that  
28 it meets the standards of this section, the school district shall  
29 publish a notice of the receipt of the proposal on the Internet site of  
30 the school district and through advertisement in at least one or more  
31 newspapers with Statewide circulation. The school district shall  
32 also provide notice of the proposal at its next scheduled public  
33 meeting and to the State Treasurer. To qualify as an unsolicited  
34 proposal, the unsolicited proposal must at a minimum include a  
35 description of the public-private project, the estimated construction  
36 and life-cycle costs, a timeline for development, proposed plan of  
37 financing, including projected revenues, public or private, debt,  
38 equity investment, description of how the project meets needs  
39 identified in existing plans, the permits and approvals needed to  
40 develop the project from local, state and federal agencies and a  
41 projected schedule for obtaining such permits and approvals, a  
42 statement of risks, liabilities and responsibilities to be assumed by  
43 the private entity. The notice shall provide that the school district  
44 will accept, for 120 days after the initial date of publication,  
45 proposals meeting the standards of this section from other private  
46 entities for eligible projects that satisfy the same basic purpose and  
47 need. A copy of the notice shall be mailed to each municipal and

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

3 (5) After the proposal or proposals have been received, and any  
4 public notification period has expired, the school district shall rank  
5 the proposals in order of preference. In ranking the proposals, the  
6 school district shall rely upon, at minimum, the evaluation criteria  
7 promulgated by the State Treasurer, in consultation with the New  
8 Jersey Economic Development Authority, Department of Education,  
9 and Schools Development Authority. In addition, the local school  
10 district may consider factors that include, but may not be limited to,  
11 professional qualifications, general business terms, innovative  
12 engineering, architectural services, or cost-reduction terms, finance  
13 plans, and the need for school district funds to deliver the project  
14 and discharge the agreement. The private entity selected shall  
15 comply with all laws and regulations required by the State  
16 government entity, including but not limited to section 1 of  
17 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,  
18 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25-24.2),  
19 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-  
20 51 et al.), Executive Order No. 117 of 2008, Executive Order No.  
21 118 of 2008, Executive Order No. 189, prior to executing the public  
22 private partnership agreement. If only one proposal is received, the  
23 school district shall negotiate in good faith and, if not satisfied with  
24 the results of the negotiations, the school district may, at its sole  
25 discretion, terminate negotiations.

26 (6) The school district may require, upon receipt of one or more  
27 proposals, that the private entity assume responsibility for all costs  
28 incurred by the school district before execution of the public-private  
29 partnership agreement, including costs of retaining independent  
30 experts to review, analyze, and advise the school district with  
31 respect to the proposal.

32 (7) The school district shall set aside one percent of each project  
33 and remit it the Public-Private Partnership Review fund established  
34 pursuant to section 8 of P.L.2018, c.90 (C.52:18A-260), for  
35 purposes of plan review and analysis required under the bill.

36 (8) Nothing in this section shall be construed as or deemed a  
37 waiver of the sovereign immunity of the State, the local government  
38 unit or an affected locality or public entity or any officer or  
39 employee thereof with respect to the participation in or approval of  
40 all or any part of the public-private project.

41 (cf: P.L.2018, c.90, s.2)

42

43 3. Section 3 of P.L.2018, c.90 (C.52:34-26) is amended to read  
44 as follows:

45 3. a. As used in this section:

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

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

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

10 "Department" means the Department of Transportation.

11 "Division" means the Division of Property Management and  
12 Construction within the Department of the Treasury.

13 "Highway project" means the construction, reconstruction,  
14 repair, alteration, improvement, or extension of public expressways,  
15 freeways, and parkways, including bridges, tunnels, overpasses,  
16 underpasses, interchanges, rest areas, express bus roadways, bus  
17 pullouts and turnarounds, and park and ride facilities, including any  
18 infrastructure or facility used or to be used by the public or in  
19 support of a public purpose or activity; provided that the project  
20 shall include an expenditure of at least \$100 million in public funds,  
21 or any expenditure in solely private funds.

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

30 "State government entity" means the State or any department,  
31 agency, commission, or authority thereof subject to the public  
32 contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.),  
33 including the South Jersey Port Corporation created pursuant to  
34 "The South Jersey Port Corporation Act," P.L.1968, c.60  
35 (C.12:11A-1 et seq.), and New Jersey Transit. State government  
36 entity shall not include any State institution of higher education.

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

47 (2) A public-private partnership agreement may include an  
48 agreement under which a State government entity and a private

1 entity enter into a lease of a revenue-producing public building or  
2 highway in exchange for up-front or structured financing by the  
3 private entity for the project. Under the lease agreement, the  
4 private entity shall be responsible for the management, operation,  
5 and maintenance of the building or highway. The private entity  
6 shall receive some or all, as per the agreement, of the revenue  
7 generated by the building or highway, and shall operate the building  
8 or highway in accordance with State government entity standards.  
9 At the end of the lease term, subsequent revenue generated by the  
10 building or highway, along with management, operation, and  
11 maintenance responsibility, shall revert to the State government  
12 entity. A lease agreement entered into pursuant to this section shall  
13 be limited in duration to a term of not more than ~~30~~ 40 years,  
14 unless it includes a highway project component in which case the  
15 lease agreement shall be limited in duration to a term not more than  
16 50 years. A lease agreement shall be subject to all applicable  
17 provisions of current law governing leases by a State government  
18 entity not inconsistent with the provisions of this section. For the  
19 purposes of this section, "revenue-producing" shall include  
20 leaseback arrangements.

21 (3) Bundling of projects shall be prohibited under this section.

22 (4) The total number of approved State highway projects  
23 developed through a public-private partnership shall not exceed  
24 eight projects at any given time.

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

32 (2) Notwithstanding any provision of law to the contrary, a State  
33 government entity shall be empowered to enter into contracts with a  
34 private entity and its affiliates without being subject to the  
35 procurement and contracting requirements, unless otherwise set  
36 forth herein, of any statute applicable to the public entity provided  
37 that the private entity has been selected by the public entity  
38 pursuant to a solicitation of proposals or qualifications from at least  
39 two private entities, or it has received an unsolicited proposal and  
40 followed the procedure set forth in paragraph (2) of subsection j. of  
41 this section. A State government entity shall be the owner or lessee  
42 of any project financed by a State entity.

43 (3) Prior to the commencement of work on a project, the private  
44 entity shall establish a construction account and appoint a third-  
45 party financial institution, who shall be prequalified by the State  
46 Treasurer, to act as a collateral agent, and manage the construction  
47 account. The construction account shall include the funding,  
48 financial instruments, or both, that shall be used to fully capitalize

1 and fund the project, and the collateral agent shall maintain a full  
2 accounting of the funds and instruments in the account. The funds  
3 and instruments in the construction account shall be held in trust for  
4 the benefit of the contractor, construction manager, and design-  
5 build team involved in the project. The funds and instruments in  
6 the construction account shall not be the property of the private  
7 entity unless all amounts due to the construction account  
8 beneficiaries are paid in full. The construction account shall not be  
9 designated for more than one project.

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

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

34 (2) All building projects proposed in accordance with this  
35 section shall be submitted to the State Treasurer for its review and  
36 approval in accordance with subsection f. of this section prior to the  
37 execution of the public-private partnership agreement in accordance  
38 with subsection j. of this section. When practicable, State  
39 government entities are encouraged to adhere to the Leadership in  
40 Energy and Environmental Design Green Building Rating System  
41 as adopted by the United States Green Building Council, the Green  
42 Globes Program adopted by the Green Building Initiative, or a  
43 comparable nationally recognized, accepted, and appropriate  
44 sustainable development rating system.

45 (3) The general contractor, construction manager, or design-  
46 build team shall be required to post a performance bond to ensure  
47 the completion of the project and a payment bond guaranteeing

1 prompt payment of moneys due in accordance with and conforming  
2 to the requirements of N.J.S.2A:44-143 et seq.

3 f. (1) Prior to entering into a **【public -private】** public-  
4 private partnership, the State government entity shall determine: (i)  
5 the benefits to be realized by the project; (ii) the cost of project if it  
6 is developed by the public sector supported by comparisons to  
7 comparable projects; (iii) the maximum public contribution that the  
8 State government entity will allow under the **【public -private】**  
9 public-private partnership; (iv) a comparison of the financial and  
10 non-financial benefits of the public-private partnership compared to  
11 other options including the public sector option; (v) a list of risks,  
12 liabilities and responsibilities to be transferred to the private entity  
13 and those to be retained by the State government entity; and (vi) if  
14 the project has a high, medium or low level of project delivery risk  
15 and how the public is protected from these risks.

16 (2) Prior to entering into a **【public- private】** public-private  
17 partnership, the State government entity at a public hearing or via  
18 notice to the public, shall find that the project is in the best interest  
19 of the public by finding that (i) it will cost less than the public  
20 sector option, or if it costs more there are factors that warrant the  
21 additional expense; (ii) there is a public need for the project and the  
22 project is consistent with existing long-term plans; (iii) there are  
23 specific significant benefits to the project; (iv) there are specific  
24 significant benefits to using the public-private partnership instead  
25 of other options including No-Build; (v) the private development  
26 will result in timely and efficient development and operation; and  
27 (vi) the risks, liabilities and responsibilities transferred to the  
28 private entity provide sufficient benefits to warrant not using other  
29 means of procurement.

30 (3) All projects proposed in accordance with this section shall  
31 be submitted to the State Treasurer for review and approval. The  
32 projects are encouraged, when practicable, to adhere to the green  
33 building manual prepared by the Commissioner of Community  
34 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

35 (4) All projects proposed in accordance with this section that  
36 have a transportation component or impact the transportation  
37 infrastructure shall be submitted to the State Treasurer, in  
38 consultation with the Commissioner of the Department of  
39 Transportation, for review and approval.

40 (5) (a) In order for an application to be complete and  
41 considered by the State Treasurer, the application shall include, but  
42 not be limited to: (i) a full description of the proposed public-  
43 private partnership agreement between the State government entity  
44 and the private developer, including all information obtained by and  
45 findings of the State government entity pursuant to paragraphs (1)  
46 and (2) of this subsection; (ii) a full description of the project,  
47 including a description of any agreement for the lease of a revenue-  
48 producing building or highway related to the project; (iii) the

1 estimated costs and financial documentation for the project showing  
2 the underlying financial models and assumptions that determined  
3 the estimated costs. The financial documentation shall include at  
4 least three different projected estimated costs showing scenarios in  
5 which materially different economic circumstances are assumed and  
6 an explanation for how the estimated costs were determined based  
7 on the three scenarios; (iv) a timetable for completion of the  
8 construction of the project; (v) an analysis of all available funding  
9 options for the project, including an analysis of the financial  
10 viability and advisability of such project, along with evidence of the  
11 public benefit in advancing the project as a public-private  
12 partnership; and (vi) any other requirements that the State Treasurer  
13 deems appropriate or necessary.

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

23 (6) The State Treasurer, in consultation with the authority, shall  
24 review all completed applications, and request additional  
25 information as is needed to make a complete assessment of the  
26 project. No public-private partnership agreement shall be executed  
27 until approval has been granted by the State Treasurer. Prior to a  
28 final decision by the State Treasurer on the application, the  
29 authority shall be afforded the opportunity to provide comments on  
30 the application that it deems appropriate, and the State Treasurer  
31 shall consider any comments submitted by the authority or relevant  
32 State government entity with respect to the application. The State  
33 Treasurer shall find that: (i) the State government entity's  
34 assumptions regarding the project's scope, its benefits, its risks and  
35 the cost of the public sector option were fully and reasonably  
36 developed; (ii) the design of the project is feasible; (iii) the  
37 experience and qualifications of the private entity are adequate; (iv)  
38 the financial plan is sound; (v) the long-range maintenance plan is  
39 adequate to protect the investment; (vi) the project is in the best  
40 interest of the public, using the criteria in paragraph (2) of this  
41 subsection; and (vii) the term sheet for any proposed procurement  
42 contains all necessary elements. The criteria for assessing the  
43 project shall include, but may not be limited to: (i) feasibility and  
44 design of the project; (ii) experience and qualifications of the  
45 private entity; (iii) soundness of the financial plan; (iv) adequacy of  
46 the required exhibits; (v) adequacy of the long-range maintenance  
47 plan; and (vi) the existence of a clear public benefit. The State  
48 Treasurer shall retain the right to revoke approval if the project has

1 substantially deviated from the plan submitted pursuant to  
2 paragraph (2) of this subsection.

3 (7) The State Treasurer may promulgate any rules and  
4 regulations necessary to implement this subsection, including, but  
5 not limited to, provisions for fees to cover administrative costs and  
6 for the determination of minimum State government entity  
7 standards for the operation of the project, and for the qualification  
8 for professional services, construction contracting, and other  
9 relevant qualifications.

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

16 h. The power of eminent domain shall not be delegated to any  
17 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52  
18 et al.); however, the State Treasurer may dedicate any property  
19 interest, including improvements, and tangible personal property of  
20 the State for public use in a qualifying project if the State finds that  
21 so doing will serve the public purpose of the project by minimizing  
22 the cost of the project to the State government entity or reducing the  
23 delivery time of a project.

24 i. Any public-private partnership agreement, if appropriate,  
25 shall include provisions affirming that the agreement and any work  
26 performed under the agreement are subject to the provisions of the  
27 "Construction Industry Independent Contractor Act," P.L.2007,  
28 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement  
29 shall also include, at a minimum: (i) the term of the agreement, (ii)  
30 the total project cost, (iii) a completion date guarantee, (iv) a  
31 provision for damages if the private entity fails to meet the  
32 completion date, and (v) a maximum rate of return to the private  
33 entity and a provision for the distribution of excess earnings to the  
34 local government unit or to the private party for debt reduction.

35 j. (1) A private entity seeking to enter into a public-private  
36 partnership agreement with the Department of the Treasury on  
37 behalf of a State government entity shall be qualified by the State  
38 government entity as part of the procurement process, provided  
39 such process ensures that the private entity, and its subcontractors  
40 and consultants, when relevant, are identified and meet at least the  
41 minimum State government entity standards for qualification for  
42 professional services, construction contracting, and other  
43 qualifications applicable to the project, prior to submitting a  
44 proposal under the procurement process.

45 (2) A request for qualifications for a public-private partnership  
46 agreement shall be advertised at least 45 days prior to the  
47 anticipated date of receipt. The advertisement of the request for  
48 qualifications shall be published on the official Internet website of

1 the State government entity and at least one or more newspapers  
2 with Statewide circulation.

3 (3) After the State government entity determines the qualified  
4 respondents utilizing, at minimum, the qualification standards  
5 promulgated by the State Treasurer, the State government entity  
6 shall issue a request for proposals to each qualified respondent no  
7 less than 90 days prior to the date established for submission of the  
8 proposals. The request for proposals shall include relevant  
9 technical submissions, documents, and the evaluation criteria to be  
10 used in the selection of the designated respondent. The evaluation  
11 criteria shall be, at minimum, criteria promulgated by the State  
12 Treasurer, in consultation with the New Jersey Economic  
13 Development Authority.

14 (4) The State government entity may accept unsolicited  
15 proposals from private entities for public-private partnership  
16 agreements. If the State government entity receives an unsolicited  
17 proposal, determines that it meets the standards of this section, and  
18 the project meets the State government entity's needs, the State  
19 government entity shall publish a notice of the receipt of the  
20 proposal on the Internet site of the State government entity, or  
21 through at least one or more newspapers with Statewide circulation,  
22 and provide notice of the proposal at its next scheduled public  
23 meeting, if applicable, and to the State Treasurer. To qualify as an  
24 unsolicited proposal, the unsolicited proposal shall at a minimum  
25 include a description of the public-private project, the estimated  
26 construction and life-cycle costs, a timeline for development,  
27 proposed plan of financing, including projected revenues, public or  
28 private, debt, equity investment or availability payments,  
29 description of how the project meets needs identified in existing  
30 plans, the permits and approvals needed to develop the project from  
31 local, state and federal agencies and a projected schedule for  
32 obtaining such permits and approvals, and a statement of risks,  
33 liabilities and responsibilities to be assumed by the private entity. If  
34 a notice is published exclusively in newspapers, the notice shall  
35 appear in at least one or more newspapers with Statewide  
36 circulation. The notice shall provide that the State government  
37 entity may accept, for 120 days after the initial date of publication,  
38 proposals meeting the standards of this section from other private  
39 entities for eligible projects that satisfy the same basic purpose and  
40 need. A copy of the notice shall be mailed to each municipal and  
41 county local government body in the geographic area affected by  
42 the proposal.

43 (5) After the proposal or proposals have been received, and any  
44 public notification period has expired, the State government entity  
45 shall rank the proposals in order of preference. In ranking the  
46 proposals, the State government entity may consider factors that  
47 include, but may not be limited to, professional qualifications,  
48 general business terms, innovative engineering, architectural

1 services, or cost-reduction terms, finance plans, and the need for  
2 State government entity funds to deliver the project and discharge  
3 the agreement and shall rely upon, at a minimum, the evaluation  
4 criteria promulgated by the State Treasurer, in consultation with the  
5 New Jersey Economic Development Authority. The Department of  
6 the Treasury may negotiate the final terms with the private entities  
7 submitting proposals, including price, term, and any other term or  
8 condition so as to make the project well-suited to the needs of the  
9 State government entity and commercially viable for the private  
10 entity. The State Treasurer shall select proposals that meet the  
11 standards of this section and that best meet the needs, price and  
12 other factors considered by the State Treasurer. The private entity  
13 selected shall comply with all laws and regulations required by the  
14 State government entity, including but not limited to section 1 of  
15 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,  
16 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25-24.2),  
17 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-  
18 51 et al.), Executive Order No. 117 of 2008, Executive Order No.  
19 118 of 2008, Executive Order No. 189, prior to executing the public  
20 private partnership agreement. If only one proposal is received, the  
21 State government entity shall negotiate in good faith and, if not  
22 satisfied with the results of the negotiations, the State government  
23 entity may, at its sole discretion, terminate negotiations.

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

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

1 Authority, shall promulgate guidelines based upon which any  
2 stipends paid by a State government entity may be based.

3 (8) The State government entity shall set aside one percent of  
4 the total cost of each project and remit it to the Public Private  
5 Partnership Review fund established pursuant to P.L.2018, c.90  
6 (C.40A:11-52 et al.), for purposes of plan review and analysis  
7 required under the bill.

8 (9) Nothing in this section shall be construed as or deemed a  
9 waiver of the sovereign immunity of the State, an affected locality  
10 or public entity or any officer or employee thereof with respect to  
11 the participation in or approval of all or any part of the public-  
12 private project.

13 (cf: P.L.2018, c.90, s.3)

14

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

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

28 (2) A public-private partnership agreement may include an  
29 agreement under which a State or county college and the private  
30 entity enter into a lease of a dormitory or other revenue-producing  
31 facility to which the college holds title, in exchange for up-front or  
32 structured financing by the private entity for the construction of  
33 classrooms, laboratories, or other academic or research buildings.  
34 Under the lease agreement, the college shall continue to hold title to  
35 the facility, and the private entity shall be responsible for the  
36 management, operation, and maintenance of the facility. The  
37 private entity shall receive some or all, as per the agreement, of the  
38 revenue generated by the facility and shall operate the facility in  
39 accordance with college standards. A lease agreement shall not  
40 affect the status or employment rights of college employees who are  
41 assigned to, or provide services to, the leased facility. At the end of  
42 the lease term, subsequent revenue generated by the facility, along  
43 with management, operation, and maintenance responsibility, shall  
44 revert to the college. A lease agreement entered into pursuant to  
45 this section shall be limited in duration to a term of not more than  
46 **[30]** 40 years. A lease agreement shall be subject to all applicable  
47 provisions of current law governing leases by a State or county  
48 college not inconsistent with the provisions of this section. For the

1 purposes of this section, "revenue-producing" shall include  
2 leaseback arrangements.

3 (3) Bundling of projects shall be prohibited. As used in this  
4 paragraph, "bundling" means the use of a solicitation for multiple  
5 projects in one single contract, through a public-private partnership  
6 project delivery method, the result of which restricts competition.

7 b. (1) A private entity that assumes full financial and  
8 administrative responsibility for a project pursuant to subsection a.  
9 of this section shall not be subject, unless otherwise set forth herein,  
10 to the procurement and contracting requirements of all statutes  
11 applicable to the institution of higher education at which the project  
12 is completed, including, but not limited to, the "State College  
13 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the  
14 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
15 et seq.). Any capital improvements and conveyance of personal  
16 property owned by the State shall not be subject to the approval of  
17 the State House Commission pursuant to R.S.52:20-1 et seq., or the  
18 State Legislature, provided the State Treasurer approves of such  
19 transfer as being necessary to meet the goals of this act, P.L.2018,  
20 c.90 (C.40A:11-52 et al.). Notwithstanding any provision of law to  
21 the contrary, any State or county college or public research  
22 university shall be empowered to enter into contracts with a private  
23 entity and its affiliates, unless otherwise set forth herein, without  
24 being subject to the procurement and contracting requirements of  
25 any statute applicable to the public entity or institution provided  
26 that the private entity has been selected by the institution of higher  
27 education pursuant to a solicitation of proposals or qualifications  
28 from at least two private entities, or it has received an unsolicited  
29 proposal and followed the procedure set forth in paragraph (2) of  
30 subsection k. of this section. For the purposes of this section, a  
31 public entity shall include the New Jersey Economic Development  
32 Authority or the New Jersey Educational Facilities Authority, and  
33 any project undertaken pursuant to subsection a. of this section of  
34 which the authority becomes the owner or lessee, or which is  
35 situated on land of which either of those authorities becomes the  
36 lessee, shall be deemed a "project" under "The New Jersey  
37 Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1  
38 et seq.) or the "New Jersey educational facilities authority law,"  
39 N.J.S.18A:72A-1 et seq., as appropriate.

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

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

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

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

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

1 Transit, or the New Jersey Turnpike Authority, as appropriate, to  
2 perform work on a public-private partnership higher education  
3 project.

4 (2) All building projects proposed in accordance with this  
5 section shall be submitted to the State Treasurer, in consultation  
6 with the Secretary of Higher Education, and to the New Jersey  
7 Educational Facilities Authority, as to projects to be financed  
8 through the New Jersey Educational Facilities Authority, for review  
9 and approval in accordance with subsection f. of this section prior  
10 to the execution of the public-private partnership agreement in  
11 accordance with subsection k. of this section and, when practicable,  
12 are encouraged to adhere to the Leadership in Energy and  
13 Environmental Design Green Building Rating System as adopted by  
14 the United States Green Building Council, the Green Globes  
15 Program adopted by the Green Building Initiative, or a comparable  
16 nationally recognized, accepted, and appropriate sustainable  
17 development rating system.

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

23 e. (Deleted by amendment, P.L.2018, c.90)

24 f. (1) Prior to entering into a public-private partnership, the  
25 State or county college shall determine: (i) the benefits to be  
26 realized by the project; (ii) the cost of the project if it is developed  
27 by the public sector supported by comparisons to comparable  
28 projects; (iii) the maximum public contribution that the State or  
29 county college will allow under the public-private partnership; (iv)  
30 a comparison of the financial and non-financial benefits of the  
31 public-private partnership compared to other options including the  
32 public sector option; (v) a list of risks, liabilities and responsibilities  
33 to be transferred to the private entity and those to be retained by the  
34 State or county college; and (vi) if the project has a high, medium  
35 or low level of project delivery risk and how the public is protected  
36 from these risks.

37 (2) Prior to entering into a public-private partnership, the State  
38 or county college at a public meeting shall find that the project is in  
39 the best interest of the public by finding that: (i) it will cost less  
40 than the public sector option or if it costs more there are factors that  
41 warrant the additional expense; (ii) there is a public need for the  
42 project and the project is consistent with existing long-term plans;  
43 (iii) there are specific significant benefits to the project; (iv) there  
44 are specific significant benefits to using the public-private  
45 partnership instead of other options including No-Build; (v) the  
46 private development will result in timely and efficient development  
47 and operation; and (vi) the risks, liabilities and responsibilities

1 transferred to the private entity provide sufficient benefits to  
2 warrant not using other means of procurement.

3 (3) All projects proposed in accordance with this section shall  
4 be submitted to the State Treasurer, in consultation with the  
5 Secretary of Higher Education, and the New Jersey Educational  
6 Facilities Authority is to be consulted if the project is to be financed  
7 through the New Jersey Educational Facilities Authority, for review  
8 and approval. The projects are encouraged, when practicable, to  
9 adhere to the green building manual prepared by the Commissioner  
10 of Community Affairs pursuant to section 1 of P.L.2007, c.132  
11 (C.52:27D-130.6).

12 (4) All projects proposed in accordance with this section that  
13 have a transportation component or impact the transportation  
14 infrastructure shall be submitted to the State Treasurer, in  
15 consultation with the Commissioner of the Department of  
16 Transportation for review and approval.

17 (5) (a) In order for an application to be complete and  
18 considered by the State Treasurer, the application shall include, but  
19 not be limited to: (i) a full description of the proposed public-  
20 private partnership agreement between the State or county college  
21 and the private developer, including all information obtained by and  
22 findings of the State or county college pursuant to paragraphs (1)  
23 and (2) of this subsection; (ii) a full description of the project,  
24 including a description of any agreement for the lease of a revenue-  
25 producing facility related to the project; (iii) the estimated costs and  
26 financial documentation for the project showing the underlying  
27 financial models and assumptions that determined the estimated  
28 costs. The financial documentation shall include at least three  
29 different projected estimated costs showing scenarios in which  
30 materially different economic circumstances are assumed and an  
31 explanation for how the estimated costs were determined based on  
32 the three scenarios; (iv) a timetable for completion of the  
33 construction of the project; (v) an analysis of all available funding  
34 options for the project, including an analysis of the financial  
35 viability and advisability of the project, along with evidence of the  
36 public benefit in advancing the project as a public-private  
37 partnership; (vi) a record of the public hearing; and (vii) any other  
38 requirements that the State Treasurer deems appropriate or  
39 necessary. The application shall also include a resolution by the  
40 governing body of the State or county college of its intent to enter  
41 into a public-private partnership agreement pursuant to this section.

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

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

8 (6) The State Treasurer, in consultation with the Secretary of  
9 Higher Education and the New Jersey Educational Facilities  
10 Authority, shall review all completed applications, and request  
11 additional information as is needed to make a complete assessment  
12 of the project. No project shall commence the procurement process  
13 or negotiate a contract for an unsolicited proposal until approval has  
14 been granted by the State Treasurer. The State Treasurer shall find  
15 that: the criteria for assessing the project shall include, but may not  
16 be limited to: (i) the State's or county college's assumptions  
17 regarding the project's scope, its benefits, its risks and the cost of  
18 the public sector option were fully and reasonably developed; (ii)  
19 the design of the project is feasible; (iii) the experience and  
20 qualifications of the private entity are adequate; (iv) the financial  
21 plan is sound; (v) the long-range maintenance plan is adequate to  
22 protect the investment; (vi) the project is in the best interest of the  
23 public using the criteria in paragraph (2) of this subsection f.; and  
24 (vii) a resolution by the governing body of the State or county  
25 college of its intent to enter into a public-private partnership  
26 agreement for the project has been received; and (viii) the term  
27 sheet for any proposed procurement contains all necessary  
28 elements. Before the State or county college enters into a public-  
29 private partnership agreement, the project shall be submitted to the  
30 State Treasurer for final approval, provided, however, that the State  
31 Treasurer shall retain the right to revoke approval if the project has  
32 substantially deviated from the plan submitted pursuant to  
33 paragraph (2) of this subsection.

34 (7) The State Treasurer, in consultation with the Secretary of  
35 Higher Education, the New Jersey Economic Development  
36 Authority and the New Jersey Educational Facilities Authority, as  
37 to projects to be financed through the New Jersey Educational  
38 Facilities Authority, may promulgate any rules and regulations  
39 necessary to implement this subsection, including, but not limited  
40 to, provisions for fees to cover administrative costs, and for the  
41 determination of minimum State or county college standards for the  
42 operation of the project, and for the qualification for professional  
43 services, construction contracting, and other relevant qualifications.

44 g. (Deleted by amendment, P.L.2018, c.90)

45 h. A project with an expenditure of under \$50 million  
46 developed under a public-private partnership agreement shall  
47 include a requirement that precludes contractors from engaging in  
48 the project if the contractor has contributed to the private entity's

1 financing of the project in an amount of more than 10% of the  
2 project's financing costs.

3 i. The power of eminent domain shall not be delegated to any  
4 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52  
5 et al.); however, a State or county college may dedicate any  
6 property interest, including improvements, and tangible personal  
7 property of the State or county college for public use in a qualifying  
8 project if the State or county college finds that so doing will serve  
9 the public purpose of the project by minimizing the cost of the  
10 project to the State or county college or reducing the delivery time  
11 of a project.

12 j. Any public-private partnership agreement, if appropriate,  
13 shall include provisions affirming that the agreement and any work  
14 performed under the agreement are subject to the provisions of the  
15 "Construction Industry Independent Contractor Act," P.L.2007,  
16 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement  
17 shall also include, at a minimum: (i) the term of the agreement; (ii)  
18 the total project cost; (iii) a completion date guarantee; (iv) a  
19 provision for damages if the private entity fails to meet the  
20 completion date; and (v) a maximum rate of return to the private  
21 entity and a provision for the distribution of excess earnings to the  
22 local government unit or to the private party for debt reduction.

23 k. (1) A private entity seeking to enter into a public-private  
24 partnership agreement with the State or county college shall be  
25 qualified by the State or county college as part of the procurement  
26 process, provided such process ensures that the private entity meets  
27 at least the minimum State or county college standards for  
28 qualification for professional services, construction contracting, and  
29 other qualifications applicable to the project, prior to submitting a  
30 proposal under the procurement process.

31 (2) A request for qualifications for a public-private partnership  
32 agreement shall be advertised at least 45 days prior to the  
33 anticipated date of receipt. The advertisement of the request for  
34 qualifications shall be published on the official Internet website of  
35 the State or county college and at least one or more newspapers  
36 with Statewide circulation.

37 (3) After the State or county college determines the qualified  
38 respondents utilizing, at minimum, the qualification standards  
39 promulgated by the State Treasurer, the State or county college  
40 shall issue a request for proposals to each qualified respondent no  
41 less than 90 days prior to the date established for submission of the  
42 proposals. The request for proposals shall include relevant  
43 technical submissions, documents, and the evaluation criteria to be  
44 used in the selection of the designated respondent. The evaluation  
45 criteria shall be, at minimum, criteria promulgated by the State  
46 Treasurer, in consultation with the New Jersey Economic  
47 Development Authority.

(4) The State or county college may accept unsolicited proposals from private entities for public-private partnership agreements. If the State or county college receives an unsolicited proposal and determines that it meets the standards of this section, the State or county college shall publish a notice of the receipt of the proposal on the Internet site of the State or county college, or through at least one or more newspapers with Statewide circulation, and provide notice of the proposal at its next scheduled public meeting and to the State Treasurer. To qualify as an unsolicited proposal, the unsolicited proposal shall at a minimum include a description of the public-private project, the estimated construction and life-cycle costs, a timeline for development, proposed plan of financing, including projected revenues, public or private, debt, equity investment or availability payments, description of how the project meets needs identified in existing plans, the permits and approvals needed to develop the project from local, state and federal agencies and a projected schedule for obtaining such permits and approvals, a statement of risks, liabilities and responsibilities to be assumed by the private entity. If a notice is published exclusively in newspapers, the notice shall appear in at least one or more newspapers with Statewide circulation where the proposed project is to be located. The notice shall provide that the State or county college will accept, for 120 days after the initial date of publication, proposals meeting the standards of this section from other private entities for eligible projects that satisfy the same basic purpose and need. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.

(5) After the proposal or proposals have been received, and any public notification period has expired, the State or county college shall rank the proposals in order of preference. In ranking the proposals, the State or county college may consider factors that include, but may not be limited to, professional qualifications, general business terms, innovative engineering, architectural services, or cost-reduction terms, finance plans, and the need for State or county college funds to deliver the project and discharge the agreement. The private entity selected shall comply with all laws and regulations required by the State government entity, including but not limited to section 1 of P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25-24.2), P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, Executive Order No. 189, prior to executing the public-private partnership agreement. If only one proposal is received, the State or county college shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State or county college may, at its sole discretion, terminate negotiations.

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

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

25 (8) The State or county college shall set aside one percent of  
26 each project and remit it to the Public Private Partnership Review  
27 fund established pursuant to P.L.2018, c.90 (C.40A:11-52 et al.),  
28 for purposes of plan review and analysis required under the bill.

29 (9) Nothing in this section shall be construed as or deemed a  
30 waiver of the sovereign immunity of the State, the State or county  
31 college, or an affected locality or public entity or any officer or  
32 employee thereof with respect to the participation in or approval of  
33 all or any part of the public-private project.

34 (cf: P.L.2018, c.90, s.5)

35  
36 5. This act shall take effect immediately.  
37  
38

#### 39 STATEMENT

40  
41 Under current law, in the event that a public entity, including  
42 local government units, school districts, State government entities,  
43 and State colleges and county colleges, enter into a contract with a  
44 private entity for certain projects, any lease concerning the public-  
45 private partnership agreement is limited in duration to a term of not  
46 more than 30 years. This bill amends the law to increase the  
47 maximum lease in a public-private partnership agreement to 40  
48 years.

1       Increasing the maximum lease in public-private partnership  
2       agreements from 30 to 40 years makes the lease duration consistent  
3       with the period of usefulness, as determined by the governing body  
4       of a local unit, for various structures under the “Local Bond Law,”  
5       N.J.S.40A:2-1 et seq., and for school districts, State government  
6       entities, and State colleges and county colleges under similar  
7       statutory requirements.