

[First Reprint]

**ASSEMBLY, No. 3994**

**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

INTRODUCED MARCH 7, 2024

**Sponsored by:**

**Assemblyman MICHAEL VENEZIA**

**District 34 (Essex)**

**Assemblyman WILLIAM B. SAMPSON, IV**

**District 31 (Hudson)**

**Co-Sponsored by:**

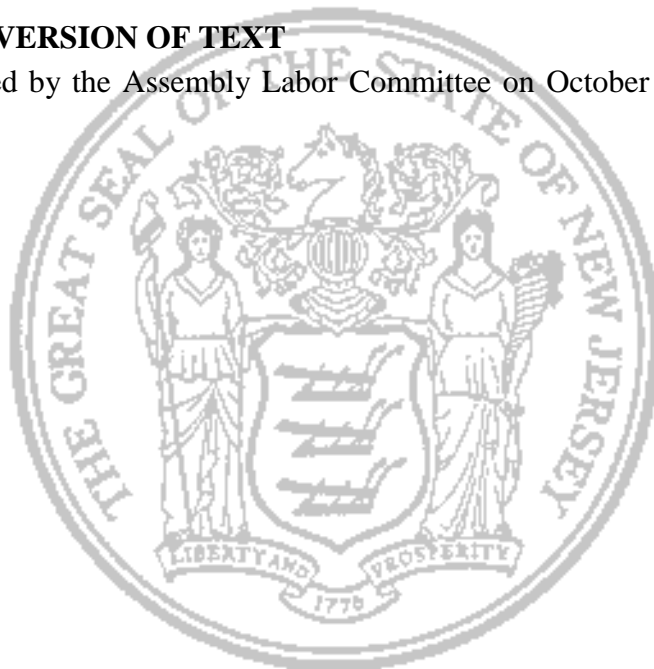
**Assemblywomen Hall, Fantasia, Assemblymen Miller, Hutchison, Kanitra  
and Inganamort**

**SYNOPSIS**

Expands scope of public works subject to prevailing wage requirements; concerns prevailing wage law requirements for public institutions of higher education.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Labor Committee on October 24, 2024, with amendments.



**(Sponsorship Updated As Of: 10/24/2024)**

1 AN ACT concerning prevailing wage law requirements for public  
2 institutions of higher education and amending various parts of  
3 the statutory law and supplementing Title 18A of the New Jersey  
4 Statutes.

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

8  
9 1. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to  
10 read as follows:

11 2. As used in this act:

12 (1) "Department" means the Department of Labor and  
13 Workforce Development of the State of New Jersey.

14 (2) "Locality" means any political subdivision of the State,  
15 combination of the same or parts thereof, or any geographical area  
16 or areas classified, designated and fixed by the commissioner from  
17 time to time, provided that in determining the "locality," the  
18 commissioner shall be guided by the boundary lines of political  
19 subdivisions or parts thereof, or by a consideration of the areas with  
20 respect to which it has been the practice of employers of particular  
21 crafts or trades to engage in collective bargaining with the  
22 representatives of workers in such craft or trade.

23 (3) "Maintenance work" means the repair of existing facilities  
24 when the size, type or extent of such facilities is not thereby  
25 changed or increased. "Maintenance work" also means any work on  
26 a maintenance-related project that exceeds the scope of work and  
27 capabilities of in-house maintenance personnel, requires the  
28 solicitation of bids, and has an aggregate value exceeding \$50,000.

29 (4) "Public body" means the State of New Jersey, any of its  
30 political subdivisions, any authority created by the Legislature of  
31 the State of New Jersey and any instrumentality or agency of the  
32 State of New Jersey or of any of its political subdivisions.

33 (5) "Public work" means construction, reconstruction,  
34 demolition, alteration, custom fabrication, duct cleaning, or repair  
35 work, or maintenance work, including painting, and decorating,  
36 done under contract and paid for in whole or in part out of the funds  
37 of a public body, or under a contract with a for-profit or not-for-  
38 profit entity associated with the public body when the for-profit or  
39 not-for-profit entity exists for the purpose of raising or managing  
40 public or private financial support, or otherwise managing real or  
41 financial assets, on behalf of the public body, such as a not-for-  
42 profit foundation associated with a public college or university,  
43 where the construction, reconstruction, demolition, alteration,  
44 custom fabrication or repair work, or maintenance work, including  
45 painting or decorating, undertaken under contract with the 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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ALA committee amendments adopted October 24, 2024.

1 associated with the public body is to be used by or for the benefit of  
2 the public body<sup>1</sup> [;] .<sup>1</sup> except <sup>1</sup>[that “public work” shall not  
3 include]<sup>1</sup> work performed under a rehabilitation program. “Public  
4 work” shall include construction, reconstruction, demolition,  
5 alteration, custom fabrication or repair work, or maintenance work,  
6 including painting or decorating, that is paid for in whole or in part  
7 through “take-out financing” provided by a public body, whether  
8 directly or obtained through a lender. "Public work" shall also mean  
9 construction, reconstruction, demolition, alteration, custom  
10 fabrication, duct cleaning, or repair work, done on any property or  
11 premises, whether or not the work is paid for from public funds, if,  
12 at the time of the entering into of the contract the property or  
13 premises is owned by the public body or under agreement to be  
14 purchased by the public body, or:

15 (a) Not less than 55% of the property or premises is leased by a  
16 public body, or is subject to an agreement to be subsequently leased  
17 by the public body; and

18 (b) The portion of the property or premises that is leased or  
19 subject to an agreement to be subsequently leased by the public  
20 body measures more than 20,000 square feet.

21 <sup>1</sup>“Public work” also means any work undertaken on a project that  
22 has received financial assistance in the form of: grants; loans; loan  
23 guarantees; expenditures; investments; tax abatements, exemptions,  
24 incentives, or rebates; incentives; or other financial assistance, any  
25 of which are provided, authorized, facilitated, or administered by  
26 public bodies, or by agencies or authorities of public bodies.<sup>1</sup>

27 (6) "Commissioner" means the Commissioner of Labor and  
28 Workforce Development or his duly authorized representatives.

29 (7) "Workman" or "worker" includes laborer, mechanic, skilled  
30 or semi-skilled, laborer and apprentices or helpers employed by any  
31 contractor or subcontractor and engaged in the performance of  
32 services directly upon a public work, regardless of whether their  
33 work becomes a component part thereof, but does not include  
34 material suppliers or their employees who do not perform services  
35 at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25  
36 et seq.), contractors or subcontractors engaged in custom fabrication  
37 shall not be regarded as material suppliers.

38 <sup>1</sup>“Public work” also means any work undertaken on a project  
39 that has received financial assistance in the form of: grants; loans;  
40 loan guarantees; expenditures; investments; tax abatements,  
41 exemptions, incentives, or rebates; incentives; or other financial  
42 assistance, any of which are provided, authorized, facilitated, or  
43 administered by public bodies, or by agencies or authorities of  
44 public bodies, except that no work on a project that has received  
45 financial assistance provided, authorized, facilitated, or  
46 administered solely by the New Jersey Housing and Mortgage  
47 Finance Agency shall be regarded as “public work” for the purposes

1 of this section and shall not be subject to the prevailing wage  
2 requirements of P.L.1963, c.150 (C.34:11-56.25 et seq.), other than  
3 work which is subject to the prevailing wage requirements of  
4 sections 7 and 42 of P.L.1983, c.530 (C.55:14K-7 and 55:14K-42),  
5 which shall be, to the extent indicated in those sections, subject to  
6 the prevailing wage requirements of P.L.1963, c.150 (C.34:11-  
7 56.25 et seq.).<sup>1</sup>

8 (8) "Work performed under a rehabilitation program" means  
9 work arranged by and at a State institution primarily for teaching  
10 and upgrading the skills and employment opportunities of the  
11 inmates of such institutions.

12 (9) "Prevailing wage" means the wage rate paid by virtue of  
13 collective bargaining agreements by employers employing a  
14 majority of workers of that craft or trade subject to said collective  
15 bargaining agreements, in the locality in which the public work is  
16 done. <sup>1</sup>In the case of public work on residential buildings the  
17 "prevailing wage" rate shall be the lesser of 65% of the wage rate  
18 paid by virtue of collective bargaining agreements by employers  
19 employing a majority of workers of that craft or trade subject to  
20 those collective bargaining agreements in the locality in which the  
21 public work is done, or the prevailing rate determined by the  
22 Secretary of the United States Department of Labor in accordance  
23 with the Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-5)  
24 for work on residential buildings. For the purposes of this  
25 subsection (9), "public work on residential buildings" means the  
26 construction, reconstruction, demolition, alteration, custom  
27 fabrication, or repair of residential buildings, and "residential  
28 buildings" means structures that are less than five stories in height,  
29 and are single or multi-family residences, apartment buildings,  
30 condominiums, and townhomes, except that "residential buildings"  
31 does not include institutional housing.<sup>1</sup>

32 (10) "Act" means the provisions of P.L.1963, c.150  
33 (C.34:11-56.25 et seq.) and the rules and regulations issued  
34 hereunder.

35 (11) "Prevailing wage contract threshold amount" means:

36 (a) In the case of any public work paid for in whole or in part  
37 out of the funds of a municipality in the State of New Jersey or  
38 done on property or premises owned by a public body or leased or  
39 to be leased by the municipality, the dollar amount established for  
40 the then current calendar year by the commissioner through rules  
41 and regulations promulgated pursuant to the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which  
43 amount shall be equal to \$9,850 on July 1, 1994 and which amount  
44 shall be adjusted on July 1 every five calendar years thereafter in  
45 direct proportion to the rise or fall in the average of the Consumer  
46 Price Indices for Urban Wage Earners and Clerical Workers for the  
47 New York metropolitan and the Philadelphia metropolitan regions  
48 as reported by the United States Department of Labor during the

1 last full calendar year preceding the date upon which the adjustment  
2 is made; and

3 (b) In the case of any public work other than a public work  
4 described in paragraph (a) of this subsection, an amount equal to  
5 \$2,000.

6 (12) "Custom fabrication" means:

7 (a) the fabrication of any of the following: plumbing, heating,  
8 cooling, ventilation or exhaust duct systems, mechanical insulation,  
9 or one or more signs in a project which cost a total of more than  
10 \$30,000 and are part of a project upon completion; or

11 (b) any other fabrication which is one or more entire modules or  
12 structures pre-fabricated to specifications for a particular project of  
13 public work with minimal construction work remaining other than  
14 installation, regardless of whether unforeseen construction work is  
15 required on the public work site to modify the custom fabricated  
16 item for the purpose of installation, for use in a project of public  
17 work or for use in a type or classification of a project of public  
18 work. "Custom fabrication" shall not include components or  
19 materials, such as structural steel members or precast concrete, or  
20 smaller prefabricated components.

21 (13) "Take-out financing" means a long-term loan on property  
22 from a lender used to pay off or replace a short-term construction  
23 loan.

24 (cf: P.L.2023, c.133)

25

26 2. Section 16 of P.L.1963, c.150 (C.34:11-56.40) is amended to  
27 read as follows:

28 16. If any workman is paid by an employer less than the  
29 prevailing wage to which such workman is entitled, including if the  
30 public body did not award a contract that is compliant with the  
31 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25  
32 et seq.) to an employer when the public body was required to, under  
33 the provisions of this act such workman may recover in a civil  
34 action the full amount of such prevailing wage less any amount  
35 actually paid to him or her by the employer together with costs and  
36 such reasonable attorney's fees as may be allowed by the court, and  
37 any agreement between such workman and the employer to work  
38 for less than such prevailing wage shall be no defense to the action.  
39 Any workman shall be entitled to maintain such action for and on  
40 behalf of himself or other workmen similarly situated, and such  
41 workman and workmen may designate an agent or representative to  
42 maintain such action for and on behalf of all workmen similarly  
43 situated. At the request of any workman paid less than the  
44 prevailing wage to which such workman was entitled under the  
45 provisions of this act the commissioner may take an assignment of  
46 the wage claim in trust for the assigning workman and may bring  
47 any legal action necessary to collect the claim, and the employer

1 shall be required to pay the costs and such reasonable attorney's  
2 fees as may be allowed by the court.

3 (cf: P.L.1963, c.150, s.16)

4

5 3. Section 1 of P.L.1996, c.71 (C.34:11-56.47) is amended to  
6 read as follows:

7 1. a. Any person who submits a bid directly to a public body for  
8 a contract for any public work subject to the provisions of the "New  
9 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et  
10 seq.) and is not awarded the contract and whose bid is the lowest  
11 bid other than the bid accepted by the public body or, if, pursuant to  
12 law, the contract is awarded on the basis of factors other than or in  
13 addition to the lowest bid, whose bid is the highest in rank other  
14 than the bid accepted by the public body (hereinafter referred to in  
15 this section as the "plaintiff") may bring an action for damages in a  
16 court of competent jurisdiction against the contractor who was  
17 directly awarded the contract by the public body or any  
18 subcontractor of that contractor (hereinafter referred to in this  
19 section as the "defendant") alleging that the defendant has, in  
20 connection with work performed pursuant to the contract, violated  
21 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed  
22 to pay any contribution, tax, assessment or benefit required by any  
23 other applicable law. If there is more than one losing bidder, a  
24 bidder with a higher bid than the second lowest bidder or lower  
25 rank than the second highest rank, if, pursuant to law, the contract is  
26 awarded on the basis of factors other than or in addition to the  
27 lowest bid, may bring the action if that bidder gives written notice  
28 of his intention to bring an action, sent by first-class mail and  
29 certified mail, return receipt requested, to every other losing bidder  
30 whose bid was lower than his or whose bid was higher in rank than  
31 his and none of the bidders notified files an action within 30 days  
32 following the date of their receipt of notice. The written notice of  
33 intention to bring an action must contain the following: (1) a  
34 statement of the specific violations or failures to pay allegedly  
35 committed, which shall not preclude, in the course of the action,  
36 consideration of other violations or failures to pay as may be  
37 revealed in the course of discovery, (2) a statement that the action is  
38 to be filed pursuant to this act, and (3) a statement that the recipient  
39 of the notice may have the right to file an action and will be  
40 precluded from doing so if he does not file an action within 30 days  
41 of his receipt of the notice. If no other losing bidder so notified  
42 files an action within 30 days of his receipt of the notice, the losing  
43 bidder who sent the notice shall file an action pursuant to this act  
44 within 15 days of the last day any of the recipients of the notice  
45 could have filed an action. If more than one bidder files an action,  
46 all actions other than that filed by the bidder whose bid is the lowest  
47 of the bidders who filed actions, or, if, pursuant to law, the contract  
48 is awarded on the basis of factors other than or in addition to the

1 lowest bid, whose bid is the highest in rank of the bidders who filed  
2 actions, shall be dismissed.

3 b. Upon a finding by the court that the plaintiff was a  
4 responsible bidder for the contract and a finding that one or more  
5 defendants violated the provisions of P.L.1963, c.150  
6 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,  
7 assessment or benefit required by any other applicable law in  
8 connection with work performed pursuant to the contract, and that  
9 the plaintiff submitted a bid for the contract which was less than the  
10 sum total of the bid accepted by the public body plus any additional  
11 amount that the defendant or defendants would have paid during the  
12 term of the contract to be in full compliance with P.L.1963, c.150  
13 (C.34:11-56.25 et seq.) and other applicable laws in connection  
14 with the contract, the court shall order the defendant or defendants  
15 to pay to the plaintiff the entire amount of damages sustained plus  
16 costs and reasonable attorney's fees or, if the court finds the  
17 noncompliance to be intentional, three times the amount of damages  
18 sustained plus costs and reasonable attorney's fees, except that the  
19 court shall order no payment to the plaintiff if the court finds that  
20 the violation or failure to pay was caused by minor record keeping  
21 mistakes or minor computational errors or by other minor mistakes.  
22 The occurrence of more than two violations or failures to pay shall  
23 lead to the rebuttable presumption that the violation or failure to  
24 pay at issue is not minor. If there are two or more defendants, the  
25 court shall allocate the payments for damages sustained and  
26 attorney's fees among the defendants in a reasonable manner.  
27 Nothing in this section shall be construed as requiring payments to  
28 a plaintiff by any contractor or subcontractor who has not violated  
29 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed  
30 to pay any contribution, tax, assessment or benefit required by any  
31 other applicable law in connection with work performed pursuant to  
32 the contract. A plaintiff may designate an agent or representative to  
33 maintain the action if the violation or failure to pay has an adverse  
34 effect on the agent or representative or, if the agent or  
35 representative is an organization or association, on any member of  
36 the organization or association. If the plaintiff prevails, the agent or  
37 representative shall be entitled to reimbursement for costs and  
38 reasonable attorney's fees of the agent or representative but not to a  
39 financial interest in the damages awarded.

40 c. For the purposes of this section, the damages sustained by a  
41 plaintiff shall include the plaintiff's costs of preparing and  
42 submitting the bid and may, if sought by the plaintiff, include  
43 profits that the court determines the plaintiff would have made if  
44 the plaintiff had been awarded the contract and complied with  
45 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws.

46 d. If the court determines that the defendant did not, in  
47 connection with work performed pursuant to the contract, violate  
48 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to

1 pay any contribution, tax, assessment or benefit required by other  
2 applicable law, the court shall order the plaintiff to pay the costs  
3 and reasonable attorney's fees of the defendant. Nothing herein  
4 shall preclude a defendant who is found to have committed minor  
5 record keeping mistakes, minor computational errors or other minor  
6 mistakes from being awarded relief pursuant to section 1 of  
7 P.L.1988, c.46 (C.2A:15-59.1).

8 e. If a construction project is undertaken by a public institution  
9 of higher education, in which the construction project is intended  
10 for use by a public institution of higher education at the time of  
11 construction, the public body shall be subject to the requirements of  
12 P.L.1963, c.150 (C.34:11-56.25 et seq.). If the public institution of  
13 higher education, the public body, violates the provisions of  
14 P.L.1963, c.150 (C.34:11-56.25 et seq.), the public institution of  
15 higher education will be subject to the penalties defined under  
16 P.L.1963, c.150 (C.34:11-56.25 et seq.).

17 f. As used in this section:

18 "Person" means any individual, corporation, company,  
19 partnership, firm, association or business;

20 "Contractor" means a person who is directly awarded a contract  
21 for a public work by a public body; and

22 "Subcontractor" means any subcontractor or lower tier  
23 subcontractor of a contractor.

24 (cf: P.L.1996, c.71, s.1)

25  
26 <sup>1</sup>[4.Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to  
27 read as follows:

28 19. All contracts or agreements for the purchase of goods and  
29 services, as distinct from contracts or agreements for the  
30 construction of buildings and other improvements, which require  
31 public advertisement for bids shall be awarded by the board of  
32 trustees to the responsible bidder whose bid, conforming to the  
33 invitation for bids, will be most advantageous to the State college,  
34 price and other factors considered, Each worker employed by the  
35 selected bidder shall be paid the prevailing wage determined by the  
36 Commissioner of Labor pursuant to the provisions of the "New  
37 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et  
38 seq.) if the project is intended for use by the State college at the  
39 time of construction.

40 Prior to the award of any contract or agreement which does not  
41 require public advertisement, the estimated cost of which is 20  
42 percent or more of the amount set forth in this act or, commencing  
43 January 1, 1985, 20 percent of the amount determined by the  
44 Governor pursuant to subsection b. of section 3 of this act, the  
45 contracting agent shall, except in the case of professional services,  
46 solicit quotations therefor whenever practicable, and the award  
47 thereof shall be made, in accordance with section 3 of this article,  
48 on the basis of the quotation, conforming to the request for



1 proposals, which is most advantageous to the State college, price  
2 and other factors considered; however, if the contracting agent  
3 deems it impractical to solicit competitive quotations or having  
4 sought the quotations determines that the award should not be made  
5 on that basis, the contracting agent shall file a statement of  
6 explanation of the reason or reasons therefor, which shall be placed  
7 on file with the purchase, contract, or agreement.

8 (cf: P.L.2021, c.417, s.7)]<sup>1</sup>

9

10 <sup>1</sup>4. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to  
11 read as follows:

12 19. All contracts or agreements for the purchase of goods and  
13 services, as distinct from contracts or agreements for the  
14 construction of buildings and other improvements, which require  
15 public advertisement for bids shall be awarded by the board of  
16 trustees to the responsible bidder whose bid, conforming to the  
17 invitation for bids, will be most advantageous to the State college,  
18 price and other factors considered, except that a bid may be  
19 disqualified due to prior negative experience pursuant to the  
20 provisions of section 10 of P.L.2021, c.417 (C.18A:64-70.1). Each  
21 worker employed by the selected bidder shall be paid the prevailing  
22 wage determined by the Commissioner of Labor and Workforce  
23 Development pursuant to the provisions of the "New Jersey  
24 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) if  
25 the project is intended for use by the State college at the time of  
26 construction.

27 Prior to the award of any contract or agreement which does not  
28 require public advertisement, the estimated cost of which is 20  
29 percent or more of the amount set forth in this act or, commencing  
30 January 1, 1985, 20 percent of the amount determined by the  
31 Governor pursuant to subsection b. of section 3 of this act, the  
32 contracting agent shall, except in the case of professional services,  
33 solicit quotations therefor whenever practicable, and the award  
34 thereof shall be made, in accordance with section 3 of this article,  
35 on the basis of the quotation, conforming to the request for  
36 proposals, which is most advantageous to the State college, price  
37 and other factors considered; however, if the contracting agent  
38 deems it impractical to solicit competitive quotations or having  
39 sought the quotations determines that the award should not be made  
40 on that basis, the contracting agent shall file a statement of  
41 explanation of the reason or reasons therefor, which shall be placed  
42 on file with the purchase, contract, or agreement.<sup>1</sup>

43 (cf: P.L.2021, c.417, s.7)

44

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

47 43. a. (1) A State college or county college may enter into a  
48 contract with a private entity, subject to subsection f. of this section,

1 to be referred to as a public-private partnership agreement, that  
2 permits the private entity to assume full financial and administrative  
3 responsibility for the on-campus or off-campus construction,  
4 reconstruction, repair, alteration, improvement, extension,  
5 management, or operation of a building, structure, or facility of, or  
6 for the benefit of, the institution, provided that the project is  
7 financed in whole or in part by the private entity and that the State  
8 or institution of higher education, as applicable, retains full  
9 ownership of the land upon which the project is completed.

10 (2) A public-private partnership agreement may include an  
11 agreement under which a State or county college and the private  
12 entity enter into a lease of a dormitory or other revenue-producing  
13 facility to which the college holds title, in exchange for up-front or  
14 structured financing by the private entity for the construction of  
15 classrooms, laboratories, or other academic or research buildings.  
16 Under the lease agreement, the college shall continue to hold title to  
17 the facility, and the private entity shall be responsible for the  
18 management, operation, and maintenance of the facility. The  
19 private entity shall receive some or all, as per the agreement, of the  
20 revenue generated by the facility and shall operate the facility in  
21 accordance with college standards. A lease agreement shall not  
22 affect the status or employment rights of college employees who are  
23 assigned to, or provide services to, the leased facility. At the end of  
24 the lease term, subsequent revenue generated by the facility, along  
25 with management, operation, and maintenance responsibility, shall  
26 revert to the college. A lease agreement entered into pursuant to  
27 this section shall be limited in duration to a term of not more than  
28 30 years. A lease agreement shall be subject to all applicable  
29 provisions of current law governing leases by a State or county  
30 college not inconsistent with the provisions of this section. For the  
31 purposes of this section, "revenue-producing" shall include  
32 leaseback arrangements.

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

37 b. (1) A private entity that assumes full financial and  
38 administrative responsibility for a project pursuant to subsection a.  
39 of this section shall not be subject, unless otherwise set forth herein,  
40 to the procurement and contracting requirements of all statutes  
41 applicable to the institution of higher education at which the project  
42 is completed, including, but not limited to, the "State College  
43 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the  
44 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
45 et seq.). Any capital improvements and conveyance of personal  
46 property owned by the State shall not be subject to the approval of  
47 the State House Commission pursuant to R.S.52:20-1 et seq., or the  
48 State Legislature, provided the State Treasurer approves of such

1 transfer as being necessary to meet the goals of this act, P.L.2018,  
2 c.90 (C.40A:11-52 et al.). Notwithstanding any provision of law to  
3 the contrary, any State or county college or public research  
4 university shall be empowered to enter into contracts with a private  
5 entity and its affiliates, unless otherwise set forth herein, without  
6 being subject to the procurement and contracting requirements of  
7 any statute applicable to the public entity or institution provided  
8 that the private entity has been selected by the institution of higher  
9 education pursuant to a solicitation of proposals or qualifications  
10 from at least two private entities, or it has received an unsolicited  
11 proposal and followed the procedure set forth in paragraph (2) of  
12 subsection k. of this section. For the purposes of this section, a  
13 public entity shall include the New Jersey Economic Development  
14 Authority or the New Jersey Educational Facilities Authority, and  
15 any project undertaken pursuant to subsection a. of this section of  
16 which the authority becomes the owner or lessee, or which is  
17 situated on land of which either of those authorities becomes the  
18 lessee, shall be deemed a "project" under "The New Jersey  
19 Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1  
20 et seq.) or the "New Jersey educational facilities authority law,"  
21 N.J.S.18A:72A-1 et seq., as appropriate.

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

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 to manage the  
47 construction account. The construction account shall include the  
48 funding, financial instruments, or both, that shall be used to fully

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

10 c. Each worker employed in the construction, rehabilitation, or  
11 building maintenance services of facilities by a private entity that  
12 has entered into a public-private partnership agreement with a State  
13 or county college pursuant to subsection a. of this section shall be  
14 paid not less than the prevailing wage rate for the worker's craft or  
15 trade as 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.), including if the work  
18 completed during the partnership is intended for use by the State or  
19 county college at the time of construction.

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

35 (2) All building projects proposed in accordance with this  
36 section shall be submitted to the State Treasurer, in consultation  
37 with the Secretary of Higher Education, and to the New Jersey  
38 Educational Facilities Authority, as to projects to be financed  
39 through the New Jersey Educational Facilities Authority, for review  
40 and approval in accordance with subsection f. of this section prior  
41 to the execution of the public-private partnership agreement in  
42 accordance with subsection k. of this section and, when practicable,  
43 are encouraged to adhere to the Leadership in Energy and  
44 Environmental Design Green Building Rating System as adopted by  
45 the United States Green Building Council, the Green Globes  
46 Program adopted by the Green Building Initiative, or a comparable  
47 nationally recognized, accepted, and appropriate sustainable  
48 development rating system.

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

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

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

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

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

42 (4) All projects proposed in accordance with this section that  
43 have a transportation component or impact the transportation  
44 infrastructure shall be submitted to the State Treasurer, in  
45 consultation with the Commissioner of the Department of  
46 Transportation for review and approval.

47 (5) (a) In order for an application to be complete and considered  
48 by the State Treasurer, the application shall include, but not be

1 limited to: (i) a full description of the proposed public-private  
2 partnership agreement between the State or county college and the  
3 private developer, including all information obtained by and  
4 findings of the State or county college pursuant to paragraphs (1)  
5 and (2) of this subsection; (ii) a full description of the project,  
6 including a description of any agreement for the lease of a revenue-  
7 producing facility related to the project; (iii) the estimated costs and  
8 financial documentation for the project showing the underlying  
9 financial models and assumptions that determined the estimated  
10 costs. The financial documentation shall include at least three  
11 different projected estimated costs showing scenarios in which  
12 materially different economic circumstances are assumed and an  
13 explanation for how the estimated costs were determined based on  
14 the three scenarios; (iv) a timetable for completion of the  
15 construction of the project; (v) an analysis of all available funding  
16 options for the project, including an analysis of the financial  
17 viability and advisability of the project, along with evidence of the  
18 public benefit in advancing the project as a public-private  
19 partnership; (vi) a record of the public hearing; and (vii) any other  
20 requirements that the State Treasurer deems appropriate or  
21 necessary. The application shall also include a resolution by the  
22 governing body of the State or county college of its intent to enter  
23 into a public-private partnership agreement pursuant to this 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. All  
32 contracts to implement a long-range maintenance plan pursuant to  
33 this paragraph shall contain a project labor agreement. The project  
34 labor agreement shall be subject to the provisions of P.L.2002, c.44  
35 (C.52:38-1 et seq.), and shall be in a manner that to the greatest  
36 extent possible enhances employment opportunities for individuals  
37 residing in the county of the project's location.

38 (6) The State Treasurer, in consultation with the Secretary of  
39 Higher Education and the New Jersey Educational Facilities  
40 Authority, shall review all completed applications, and request  
41 additional information as is needed to make a complete assessment  
42 of the project. No project shall commence the procurement process  
43 or negotiate a contract for an unsolicited proposal until approval has  
44 been granted by the State Treasurer. The State Treasurer shall find  
45 that: the criteria for assessing the project shall include, but may not  
46 be limited to: (i) the State's or county college'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)

1 the design of the project is feasible; (iii) the experience and  
2 qualifications of the private entity are adequate; (iv) the financial  
3 plan is sound; (v) the long-range maintenance plan is adequate to  
4 protect the investment; (vi) the project is in the best interest of the  
5 public using the criteria in paragraph (2) of this subsection f.; and  
6 (vii) a resolution by the governing body of the State or county  
7 college of its intent to enter into a public-private partnership  
8 agreement for the project has been received; and (viii) the term  
9 sheet for any proposed procurement contains all necessary  
10 elements. Before the State or county college enters into a public-  
11 private partnership agreement, the project shall be submitted to the  
12 State Treasurer for final approval, provided, however, that the State  
13 Treasurer shall retain the right to revoke approval if the project has  
14 substantially deviated from the plan submitted pursuant to  
15 paragraph (2) of this subsection.

16 (7) The State Treasurer, in consultation with the Secretary of  
17 Higher Education, the New Jersey Economic Development  
18 Authority and the New Jersey Educational Facilities Authority, as  
19 to projects to be financed through the New Jersey Educational  
20 Facilities Authority, may promulgate any rules and regulations  
21 necessary to implement this subsection, including, but not limited  
22 to, provisions for fees to cover administrative costs, and for the  
23 determination of minimum State or county college standards for the  
24 operation of the project, and for the qualification for professional  
25 services, construction contracting, and other relevant qualifications.

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

27 h. A project with an expenditure of under \$50 million  
28 developed under a public-private partnership agreement shall  
29 include a requirement that precludes contractors from engaging in  
30 the project if the contractor has contributed to the private entity's  
31 financing of the project in an amount of more than 10% of the  
32 project's financing costs.

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

42 j. Any public-private partnership agreement, if appropriate,  
43 shall include provisions affirming that the agreement and any work  
44 performed under the agreement are subject to the provisions of the  
45 "Construction Industry Independent Contractor Act," P.L.2007,  
46 c.114 (C.34:20-1 et seq.). Any public-private partnership  
47 agreement shall also include, at a minimum: (i) the term of the  
48 agreement; (ii) the total project cost; (iii) a completion date

1 guarantee; (iv) a provision for damages if the private entity fails to  
2 meet the completion date; and (v) a maximum rate of return to the  
3 private entity and a provision for the distribution of excess earnings  
4 to the local government unit or to the private party for debt  
5 reduction.

6 k. (1) A private entity seeking to enter into a public-private  
7 partnership agreement with the State or county college shall be  
8 qualified by the State or county college as part of the procurement  
9 process, provided such process ensures that the private entity meets  
10 at least the minimum State or county college standards for  
11 qualification for professional services, construction contracting, and  
12 other qualifications applicable to the project, prior to submitting a  
13 proposal under the procurement process.

14 (2) A request for qualifications for a public-private partnership  
15 agreement shall be advertised at least 45 days prior to the  
16 anticipated date of receipt. The advertisement of the request for  
17 qualifications shall be published on the official Internet website of  
18 the State or county college and at least one or more newspapers  
19 with Statewide circulation.

20 (3) After the State or county college determines the qualified  
21 respondents utilizing, at minimum, the qualification standards  
22 promulgated by the State Treasurer, the State or county college  
23 shall issue a request for proposals to each qualified respondent no  
24 less than 90 days prior to the date established for submission of the  
25 proposals. The request for proposals shall include relevant  
26 technical submissions, documents, and the evaluation criteria to be  
27 used in the selection of the designated respondent. The evaluation  
28 criteria shall be, at minimum, criteria promulgated by the State  
29 Treasurer, in consultation with the New Jersey Economic  
30 Development Authority.

31 (4) The State or county college may accept unsolicited proposals  
32 from private entities for public-private partnership agreements. If  
33 the State or county college receives an unsolicited proposal and  
34 determines that it meets the standards of this section, the State or  
35 county college shall publish a notice of the receipt of the proposal  
36 on the Internet site of the State or county college, or through at least  
37 one or more newspapers with Statewide circulation, and provide  
38 notice of the proposal at its next scheduled public meeting and to  
39 the State Treasurer. To qualify as an unsolicited proposal, the  
40 unsolicited proposal shall at a minimum include a description of the  
41 public-private project, the estimated construction and life-cycle  
42 costs, a timeline for development, proposed plan of financing,  
43 including projected revenues, public or private, debt, equity  
44 investment or availability payments, description of how the project  
45 meets needs identified in existing plans, the permits and approvals  
46 needed to develop the project from local, state and federal agencies  
47 and a projected schedule for obtaining such permits and approvals,  
48 a statement of risks, liabilities and responsibilities to be assumed by



1 the private entity. If a notice is published exclusively in  
2 newspapers, the notice shall appear in at least one or more  
3 newspapers with Statewide circulation where the proposed project  
4 is to be located. The notice shall provide that the State or county  
5 college will accept, for 120 days after the initial date of publication,  
6 proposals meeting the standards of this section from other private  
7 entities for eligible projects that satisfy the same basic purpose and  
8 need. A copy of the notice shall be mailed to each municipal and  
9 county local government body in the geographic area affected by  
10 the proposal.

11 (5) After the proposal or proposals have been received, and any  
12 public notification period has expired, the State or county college  
13 shall rank the proposals in order of preference. In ranking the  
14 proposals, the State or county college may consider factors that  
15 include, but may not be limited to, professional qualifications,  
16 general business terms, innovative engineering, architectural  
17 services, or cost-reduction terms, finance plans, and the need for  
18 State or county college funds to deliver the project and discharge  
19 the agreement. The private entity selected shall comply with all  
20 laws and regulations required by the State government entity,  
21 including but not limited to section 1 of P.L.2001, c.134  
22 (C.52:32-44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to  
23 38), section 1 of P.L.1977, c.33 (C.52:25-24.2), P.L.2005, c.51  
24 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al.),  
25 Executive Order No. 117 of 2008, Executive Order No. 118 of  
26 2008, Executive Order No. 189, prior to executing the public-  
27 private partnership agreement. If only one proposal is received, the  
28 State or county college shall negotiate in good faith and, if not  
29 satisfied with the results of the negotiations, the State or county  
30 college may, at its sole discretion, terminate negotiations.

31 (6) The State or county college may require that the private  
32 entity assume responsibility for all costs incurred by the State or  
33 county college before execution of the public-private partnership  
34 agreement, including costs of retaining independent experts to  
35 review, analyze, and advise the State or county college with respect  
36 to the proposal.

37 (7) Stipends may be used on public-private partnership projects  
38 when there is a substantial opportunity for innovation and the costs  
39 for developing a proposal are significant. The State or county  
40 college may elect to pay unsuccessful proposers for the work  
41 product they submit with their proposal in response to a request for  
42 proposals. The use by the State or county college of any design  
43 element contained in an unsuccessful proposal shall be at the sole  
44 risk and discretion of the State or county college and shall not  
45 confer liability on the recipient of the stipulated stipend amount.  
46 After payment of the stipulated stipend amount, the State or county  
47 college and the unsuccessful proposer shall jointly own the rights  
48 to, and may make use of any work product contained in the

1 proposal, including the technologies, techniques, methods,  
2 processes, ideas, and information contained in the proposal, project  
3 design, and project financial plan. The use by the unsuccessful  
4 proposer of any part of the work product contained in the proposal  
5 shall be at the sole risk of the unsuccessful proposer and shall not  
6 confer liability on the State or county college.

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

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

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

17

18 6. Section 5 of P.L.2004, c.127 (C.18A:72A-5.1) is amended to  
19 read as follows:

20 5. Each worker employed in the construction or rehabilitation  
21 of facilities, including if the product of the construction or  
22 rehabilitation is intended for use by a public institution of higher  
23 education, undertaken in connection with loans, loan guarantees,  
24 expenditures, investments, tax exemptions or other incentives or  
25 financial assistance approved, provided, authorized, facilitated or  
26 administered by the New Jersey Educational Facilities Authority, or  
27 undertaken to fulfill any condition of receiving any of the incentives  
28 or financial assistance, shall be paid not less than the prevailing  
29 wage rate for the worker's craft or trade, as determined by the  
30 Commissioner of Labor and Workforce Development pursuant to  
31 P.L.1963, c.150 (C.34:11-56.25 et seq.).

32 The Commissioner of Labor and Workforce Development shall  
33 determine the prevailing wage rate in the locality in which the  
34 construction or rehabilitation is to be performed for each craft, trade  
35 or classification of worker employed in the construction or  
36 rehabilitation, as if the construction or rehabilitation is "public  
37 work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

38 (cf: P.L.2004, c.127, s.5)

39

40 7. (New Section) A public institution of higher education shall  
41 pay not less than the prevailing wage rate for any construction  
42 completed by the selected bidder, pursuant to P.L.1963, c.150  
43 (C.34:11-56.25 et seq.). Nothing in this act shall be construed as  
44 restricting or limiting any right established or provided to  
45 employees by any other law. If any section, subsection, clause,  
46 sentence, paragraph, or part of this act or the application thereof to  
47 any person or circumstances, shall, for any reason, be adjudged by a  
48 court of competent jurisdiction to be invalid, such judgment shall

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1 not affect, impair, or invalidate any other right or obligation to pay  
2 prevailing wage.

3

4 8. This act shall take effect immediately.