ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 4082

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4082 (1R).

The bill, the "Governmental Energy Reliability and Savings Public-Private Partnership Act," permits private entities to propose to governmental entities certain energy-related projects at governmental facilities through a public-private partnership agreement.

The bill leverages the expertise and financial resources of the private sector to foster the development of a broad array of energy-related projects, including cogeneration facilities, that might not otherwise be pursued due to budgetary constraints. The bill provides that private entities are responsible for designing, building, financing, operating, or maintaining energy-related projects for governmental entity facilities in a manner similar to the approach authorized by the "Economic Stimulus Act of 2009," which, in part, authorized State colleges and universities to offer certain financial and other incentives to prospective private sector developers.

The bill creates an "Energy P3 Unit" situated within the Board of Public Utilities that is responsible for the formulation and execution of a comprehensive Statewide policy for public-private partnership agreements that will facilitate the development of energy-related projects and for the development, promotion, coordination, oversight, and approval of public-private partnership agreements. In doing so, the bill provides that the Energy P3 Unit is to consult and coordinate with representatives of other State departments, agencies, boards, and authorities, including, but not limited to, the New Jersey Economic Development Authority, the Department of the Treasury, the Department of Environmental Protection, and the Department of Community Affairs, to accomplish the goals of the bill and facilitate public-private partnership agreements. The bill authorizes the Energy P3 Unit to retain professional advisers and to charge certain fees to fund positions in the Energy P3 Unit and retained professional advisers.

The bill provides criteria by which a governmental entity is to award an energy-related project public-private partnership agreement to a private entity whose proposal is determined to be the most advantageous to the governmental entity. This determination includes, but is not limited to:

--the general reputation, industry experience, technical capability, and expertise of the private entity;

--the cost of the proposed energy-related project;

--the responsiveness, creativity, innovativeness, and comprehensiveness of the private entity's proposal;

--if applicable, the ability of the private entity to arrange financing on terms favorable to the governmental entity;

--the proposed allocation of risks and performance guarantees;

--the incorporation of innovative terms and conditions that would not otherwise be available to, or would not be available upon a comparable basis to the governmental entity;

--any cost savings, if applicable given the nature of the energy-related project;

-- the public benefits of the energy-related project, including economic development, job creation, and reduced environmental impacts; and

--the experience and capability of the private entity in implementing comparable energy-related projects outside of the State.

The bill prescribes competitive contracting procedures to govern energy-related project public-private partnership agreements, including procurements and prevailing wage requirements for workers engaged in construction activities and other worker protections, and provides necessary oversight authority to the Energy P3 Unit to protect the interests of participating governmental entities.

The purpose of the bill is to enable governmental entities to develop needed energy-related projects that will improve the reliability, efficiency, and cost of the energy service provided to critical governmental facilities, including medical facilities, police and fire departments, colleges and universities, and water and wastewater treatment facilities, and to prevent the occurrence of power outages during extreme weather events. The bill encourages the development of a state-of-the-art energy infrastructure for governmental entities and improvement of the reliability, efficiency, and cost of energy service to the State's critical facilities.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the fiscal impact of the bill is indeterminate at this time. The OLS does not have access to information about the number of public facilities that would be attractive for energy-related public-private partnerships. It is also impossible to know what each entity will require in partnership negotiations, making it extremely difficult to estimate the number of potential partnerships that will result in actual agreements and the revenues to be realized under such agreements.

The program exempts the partnership based activity of private partners on public land from property taxes, including an exemption from any payment in lieu of taxes (pilot) agreements. This exemption will result in reduced property tax revenue for localities in which these agreements take place. The amount of the reduction will depend upon whether a private partner would have been willing to engage in a similar project without a public partner, or whether the public partner is a local entity that achieves enough increased revenue from the partnership to offset the reduction in revenues from property taxes or pilot agreements. State partners will not face any such tax revenue reduction, making potential deals more advantageous for State entities than local entities.

Government entities that participate in the new public-private partnerships may realize increased revenues from these partnerships. The program permits public or private entities to propose partnerships; however, the public partner is able to negotiate with all bidders in descending order of bid, and can reject all bids if it is unsatisfied with the terms of any agreement. This allows each government entity to take on as much or little risk as it desires and these entities are expected to agree to contracts that require no financial contribution and provide a guaranteed return.