SENATE, No. 1439



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED FEBRUARY 16, 2016

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Establishes public-private partnership for certain transportation projects; requires 10% of public-private partnership projects to be set aside for small businesses.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning public-private partnerships for transportation projects, supplementing Title 27 of the Revised Statutes and amending various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) As used in this act:

"Commissioner" means the Commissioner of Transportation.

"Corporation" means the New Jersey Transit Corporation.

"Department" means the Department of Transportation.

"Developer" means a public or private entity or consortia thereof selected by the public partner from among proposers to develop a public-private partnership project.

"Intelligent transportation systems" means the equipment, facilities, property, information management, and communications resources which are necessary or desirable for the advancement, management, or operation of a multi-modal transportation network.

"Project agreement" or "public-private partnership project agreement" means a contract or agreement entered into by the commissioner with a developer providing the terms and conditions under which the developer shall undertake a public-private partnership project.

"Public highways" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park and ride facilities, traffic circles, grade separations, intelligent transportation systems, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights of way, easements and interests therein needed for the construction, improvement, and maintenance of highways or intelligent transportation systems.

"Public partner" means the Department of Transportation or the New Jersey Transit Corporation, as the case may be.

"Public-private partnership project" means a transportation project selected by the commissioner pursuant to section 2 of this act.

"Public transportation project" means, in connection with public transportation service, passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, motorbuses and other motor vehicles, maintenance and garage facilities, revenue handling equipment, and any other equipment, facility, or property useful for or related to the provision of public transportation service.

"Transportation project" means, in addition to public highways and public transportation projects, any equipment, facility, or property useful or related to the provision of any ground, waterborne, or air transportation for the movement of people and goods.

2. (New section) a. Commencing with the State fiscal year beginning after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), the commissioner is authorized in each State fiscal year to select any transportation project from the list of transportation projects for which monies have been appropriated in the annual appropriations act to serve as a public-private partnership project.

b. Selection by the commissioner of public-private partnership projects pursuant to subsection a. of this section which are public transportation projects shall be made with the approval of the board of the corporation.

c. If, in any State fiscal year in which the commissioner is authorized to select a transportation project pursuant to subsection a. of this section, a transportation project is not listed in the annual appropriations act, the commissioner may submit that project as a public-private partnership project to the Legislature for approval. The commissioner shall make the submission to the President of the Senate and the Speaker of the General Assembly on a day when both houses of the Legislature are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. Unless the project as described in the submission is disapproved by adoption of a concurrent resolution to this effect by the affirmative vote of a majority of the authorized membership of both houses within the time period prescribed in this subsection, the project shall be deemed approved and the public partner shall be authorized to undertake the project. The time period shall commence on the day of submission and expire on the 45th day after submission or for a house not meeting on the 45th day, on the next meeting day of that house.

d. Notwithstanding the provisions of this section to the contrary, a public-private partnership project shall be subject to the approval of the Joint Budget Oversight Committee or its successor.

3. (New section) a. A public partner is authorized to solicit proposals from developers to plan, design, construct, equip, operate, finance, improve, and maintain, or any combination thereof, public-private partnership projects selected by the commissioner pursuant to section 2 of this P.L. , c. (C. ) (pending before the Legislature as this bill).

b. A public partner shall select proposals for negotiation of public-private partnership project agreements based on the overall benefit to the State, the qualifications, and financial strength of the proposer, the proposer's responsiveness to the public partner's requirements, the total project cost to be incurred by the public partner, the nature of project financing, the revenues to be generated by the project on behalf of and in support of the State, the impact of any direct or indirect user fees, and any other evaluation criteria the public partner deems appropriate. The public partner shall negotiate with one or more proposers to reach a project agreement in the best interests of the State, except that in the event that a private developer, private entity, or private consortia benefits from the use of public monies for the construction of a public-private partnership project pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), the project agreement with the developer shall provide that any construction contract entered into by the developer, a private entity, or private consortia, to effectuate the agreement shall conform to those requirements concerning advertisement, pre-qualification, bid, and award provided for by law for construction contracts entered into by the department or corporation, as the case may be.

c. Any power possessed by a public partner pursuant to P.L.    , c.   (C.       ) (pending before the Legislature as this bill) or any other act or any function performed by the department or the corporation, as the case may be, with respect to transportation projects may be used by that public partner to facilitate the planning, designing, construction, equipment, financing, improvement, maintenance, and operation, or any combination thereof, of public-private partnership projects selected pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill). Project agreements entered into pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) may provide for full reimbursement to the State for services rendered by the public partner or other State entities or agencies or for the provision of revenues generated to the State. The public partner is authorized to enter into financing, funding, and credit agreements on such terms as the commissioner deems favorable to the State to promote the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill). All credit agreements entered into by the public partner pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall be subject to concurrence by the State Treasurer.

d. A project agreement entered into pursuant to P.L. , c.   (C.       ) (pending before the Legislature as this bill) shall provide for a public involvement and information process to apply to each public-private partnership project. The purpose of the public involvement and information process shall be to disseminate and provide information about the public-private partnership project to the public, prospective project users, and the residents of communities affected by the project, and to establish a formal means by which interested persons may comment upon the project and make suggestions.

e. Upon entering into a project agreement pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), the public partner shall publish a notice in a newspaper circulating in the county in which the public-private partnership project will be located describing the project and the responsibilities of the developer and the public partner with respect to the project. If a public-private partnership project will be located in more than one county or have a regional impact, the notice shall also be published in a publication circulating in the region in which the public-private partnership will be located.

4. (New section) a. The department's financial participation in any public-private partnership project undertaken pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall be subject to legislative appropriation. The corporation's financial participation in any public-private partnership project undertaken pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall be subject to the availability of funds. Participation by a public partner may take the form of loans or such other financial credit arrangements as may be appropriate to advance an approved project. Agreements entered into pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) to facilitate such participation shall provide that such loans or other credit arrangements made by the public partner shall yield a reasonable return and be amortized over the term of such agreement, or such lesser period as may be agreed to by the parties.

b. A project agreement entered into pursuant to P.L. , c.   (C.      ) (pending before the Legislature as this bill) shall provide for the allocation of ownership, leasehold, and other property interests in public-private partnership projects.

c. The project agreement may authorize the developer to set and impose rents, fares, or user fees for use of a facility constructed by it and may require that over the term of the agreement, the rent, fare, or fee revenues received by the developer be applied to repayment of the developer's capital outlay costs, interest expense, costs associated with operations, fare or user fee collection, facility management, reimbursement of the State's project review and oversight costs, repayment of loans, revenues to the State, technical and law enforcement services, and a reasonable return on investment to the developer.

d. The project agreement shall specify the manner in which rents, fares, or user fees are to be established or revised, the procedures for receiving public comment on the establishment or revision of fares or user fees, including the holding of a public hearing thereon, and the procedures by which the public partner shall oversee the establishment or revision of fares or user fees provided, however, that no fares or user fees shall be subject to oversight unless the developer receives public monies for 10 percent or greater of its operating expenses.

5. (New section) Any law pertaining to traffic control and other laws applicable on the State transportation system shall be enforceable, as appropriate, on public-private partnership projects constructed by and leased by a developer pursuant to P.L. , c.   (C.      ) (pending before the Legislature as this bill).

6. (New section) a. A public-private partnership project selected pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall be designed, constructed, operated, and maintained in accordance with all applicable environmental requirements and all other applicable State and federal laws and regulations necessary to the protection of the public health, safety, and welfare.

b. Unless determined otherwise by the corporation, in its sole discretion, the plans and specifications for each public-private partnership project shall comply with the corporation's standards for public transportation projects.

c. Unless determined otherwise by the commissioner, in the commissioner’s sole discretion, the plans and specifications for each transportation project other than public transportation projects shall comply with the department's standards for transportation projects.

7. (New section) All absolute and qualified immunities and defenses provided to public entities and public employees by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq., and any other law shall apply to all interests held and activities performed by the department, the corporation and other State agencies in connection with the demonstration projects selected pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill).

8. (New section) a. The public partner may agree to defend and indemnify any person, who, pursuant to a written agreement with the public partner entered into in accordance with P.L. , c.   (C.      ) (pending before the Legislature as this bill), designs, constructs, operates, maintains, leases, or otherwise holds an interest in a public-private partnership project, against claims, causes of action, demands, costs, or judgments against that person arising as a direct result of the design, construction, interest, operation, or maintenance of that public-private partnership project. The public partner is authorized to reach agreements to defend and indemnify a person upon the terms and limitations the public partner deems reasonable and appropriate.

b. A determination by the public partner to defend and indemnify pursuant to this section does not bar, reduce, limit, or affect any remedies which the public partner may have to enforce the agreement between the public partner and the developer to assert a claim for damages to which the public partner may be entitled arising out of the developer's failure to perform the agreement, or for the recovery of funds expended for the defense of the developer if the defense was undertaken in response to a claim or cause of action brought against the developer which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal conduct.

c. No one other than the person operating, maintaining, leasing, or otherwise holding an interest in the public-private partnership project pursuant to an agreement with the public partner has the right to enforce any agreement for defense or indemnification between that person and the public partner.

9. (New section) a. Notwithstanding the provisions of any State bidding or public contracts laws to the contrary, but subject to any supervening federal statutes or rules, a public partner may designate a project agreement, or a portion thereof, entered into between a public partner and a developer pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) as a small business set-aside contract. The designation shall be made prior to the advertisement for bids.

b. A public partner shall award at least 10 percent of their contracts to a small business. For purposes of meeting this requirement, a public partner shall, when necessary, specifically set aside a contract or a portion of a contract for which only a small business may bid.

10. (New section) The advertisement for bids on a set-aside contract shall indicate the invitation to bid as a set-aside. The advertisement shall be in such newspaper or newspapers as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the project agreement to promote competitive bidding among those businesses for whom the project agreement is being set aside. The newspaper or newspapers in which the advertisement shall appear shall be selected by the public partner. The advertisement shall designate the time and place at which sealed proposals shall be received and publicly opened and read, the amount of the cash or certified check, if any, which shall accompany each bid and such other items as the public partner may deem proper. The advertisement shall be made by the public partner pursuant to the procedure set forth in the law governing State contracts, where this act is inconsistent with that law.

11. Section 5 of P.L.1966, c.301 (C.27:1A-5) is amended to read as follows:

5. The commissioner, as head of the department, shall have all of the functions, powers and duties heretofore vested in the State Highway Commissioner and shall, in addition to the functions, powers and duties vested in him by this act or by any other law:

(a) Develop and maintain a comprehensive master plan for all modes of transportation development, with special emphasis on public transportation. Such plan shall be revised and updated at least every five years;

(b) Develop and promote programs to foster efficient and economical transportation services in the State;

(c) Prepare plans for the preservation, improvement and expansion of the public transportation system, with special emphasis on the coordination of transit modes and the use of rail rights of way, highways and public streets for public transportation purposes;

(d) Enter into contracts with the New Jersey Transit Corporation for the provision and improvement of public transportation services;

(e) Coordinate the transportation activities of the department with those of other public agencies and authorities;

(f) Cooperate with interstate commissions and authorities, State departments, councils, commissions and other State agencies, with appropriate federal agencies, and with interested private individuals and organizations in the coordination of plans and policies for the development of air commerce and air facilities;

(g) Make an annual report to the Governor and the Legislature on the department's operations, and render such other reports as the Governor shall from time to time request or as may be required by law;

(h) Promulgate regulations providing for the charging of and setting the amount of fees for certain services performed by and permits issued by the department, including but not limited to the following:

(1) Providing copies of documents prepared by or in the custody of the department;

(2) Aeronautics permits;

(3) Right of way permits;

(4) Traffic signal control systems;

(i) Develop and promote programs for the preservation, improvement and expansion of freight railroads, with special emphasis on the use of rail rights of way for the purpose of providing rail freight service;

(j) Develop and promote a program to ensure the safety and continued operation of aviation facilities in New Jersey;

(k) Enter into agreements with a public or private entity or consortia thereof to provide for the development of demonstration projects through the use of public-private partnerships pursuant to **[**sections 1 through 9 of P.L.1997, c.136 (C.27:1D-1 et seq.)**]** sections 1 through 10 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(l) Do any and all things necessary, convenient or desirable to effectuate the purposes of P.L.1966, c.301 (C.27:1A-1 et seq.) and to exercise the powers given and granted in that act; and

(m) Enter into agreements or contracts with a private entity and charge and collect fees or other payments for the placement of sponsorship acknowledgment and advertising on signs, equipment, materials, and vehicles used for a safety service patrol or emergency service patrol program operated by the department, or operated by a private entity under contract with the department or through the use of a public-private partnership or demonstration project.

(cf: P.L.2011, c.133, s.1)

12. Section 5 of P.L.1979, c.150 (C.27:25-5) is amended to read as follows:

5. In addition to the powers and duties conferred upon it elsewhere in this act, the corporation may do all acts necessary and reasonably incident to carrying out the objectives of this act, including but not in limitation thereof the following:

a. Sue and be sued;

b. Have an official seal and alter the same at pleasure;

c. Make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

d. Maintain an office at such place or places within the State as it may determine;

e. Adopt, amend and repeal such rules and regulations as it may deem necessary to effectuate the purposes of this act, which shall have the force and effect of law; it shall publish the same and file them in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B 1 et seq.) with the Director of the Office of Administrative Law;

f. Call to its assistance and avail itself of the service of such employees of any federal, State, county or municipal department or agency as it may require and as may be available to it for said purpose;

g. Apply for, accept and expend money from any federal, State, county or municipal agency or instrumentality and from any private source; comply with federal statutes, rules and regulations, and qualify for and receive all forms of financial assistance available under federal law to assure the continuance of, or for the support or improvement of public transportation and as may be necessary for that purpose to enter into agreements, including federally required labor protective agreements;

h. Plan, design, construct, equip, operate, improve and maintain, either directly or by contract with any public or private entity, public transportation services, capital equipment and facilities or any parts or functions thereof, and other transportation projects, or any parts or functions thereof, which may be funded under section 3 of the federal Urban Mass Transportation Act of 1964, Pub.L.88 365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions; the operation of the facilities of the corporation, by the corporation or any public or private entity, may include appropriate and reasonable limitations on competition in order that maximum service may be provided most efficiently to the public;

i. Apply for and accept, from appropriate regulatory bodies, authority to operate public transportation services where necessary;

j. Purchase, lease as lessee, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, from any public or private entity, wherever situated;

k. Lease as lessor, sell or otherwise dispose of on terms which the corporation may prescribe, real and personal property, including tangible or intangible property and consumable goods, or any interest therein, to any public or private entity, in the exercise of its powers and the performance of its duties under this act. In order to provide or encourage adequate and efficient public transportation service, the corporation may lease or otherwise permit the use or occupancy of property without cost or at a nominal rental;

l. Restrict the rights of persons to enter upon or construct any works in or upon any property owned or leased by the corporation, except under such terms as the corporation may prescribe; perform or contract for the performance of all acts necessary for the management, maintenance and repair of real or personal property leased or otherwise used or occupied pursuant to this act;

m. Establish one or more operating divisions as deemed necessary. Upon the establishment of an operating division, there shall be established a geographically coincident advisory committee to be appointed by the Governor with the advice and consent of the Senate. The committee shall consist of county and municipal government representatives and concerned citizens, in the number and for such terms as may be fixed by the corporation, and shall advise the corporation as to the public transportation service provided in the operating division. At least two members of each advisory committee shall be public transportation riders, including but not limited to urban transit users and suburban commuters as appropriate. One public member from the board of the corporation shall serve as a liaison to each advisory committee;

n. Set and collect fares and determine levels of service for service provided by the corporation either directly or by contract including, but not limited to, such reduced fare programs as deemed appropriate by the corporation; revenues derived from such service may be collected by the corporation and shall be available to the corporation for use in furtherance of any of the purposes of this act;

o. Set and collect rentals, fees, charges or other payments from the lease, use, occupancy or disposition of properties owned or leased by the corporation; such revenues shall be available to the corporation for use in furtherance of any of the purposes of this act;

p. Deposit corporate revenues in interest bearing accounts or in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A 90.4);

q. Delegate to subordinate officers of the corporation such powers and duties as the corporation shall deem necessary and proper to carry out the purposes of this act;

r. Procure and enter into contracts for any type of insurance and indemnify against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employees' liability, against any act of any member, officer, employee or servant of the corporation, whether part time, full time, compensated or noncompensated, in the performance of the duties of his office or employment or any other insurable risk. In addition, the corporation may carry its own liability insurance;

s. Promote the use of public transportation services, coordinate ticket sales and passenger information and sell, lease or otherwise contract for advertising in or on the equipment or facilities of the corporation;

t. Adopt and maintain employee benefit programs for employees of the corporation including, but not limited to, pension, deferred compensation, medical disability, and death benefits, and which programs may utilize insurance contracts, trust funds, and any other appropriate means of providing the stipulated benefits, and may involve new plans or the continuation of plans previously established by entities acquired by the corporation;

u. Own, vote, and exercise all other rights incidental to the ownership of shares of the capital stock of any incorporated entity acquired by the corporation pursuant to the powers granted by this act;

v. Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the corporation, or to carry out any power expressly or implicitly given in this act;

w. Notwithstanding the provisions of section 17 of P.L.1979, c.150 (C.27:25-17) or any other law to the contrary, (1) issue operating grant anticipation notes which shall be secured and retired from operating assistance grants authorized under section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88 365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions and (2) issue capital grant anticipation notes which shall be secured and retired from capital assistance grants authorized under section 3 or section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88 365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions. As used in this subsection, "operating grant anticipation notes" or "capital grant anticipation notes" (hereinafter referred to as "notes") means credit obligations issued in anticipation of these grants. The notes shall be authorized by a resolution or resolutions of the corporation, and may be issued in one or more series and shall bear the date, or dates, bear interest at the rate or rates of interest per annum, be in the denomination or denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in such manner as the resolution or resolutions require. The notes may be sold at public or private sale at the price or prices and in the manner that the corporation determines. The notes of the corporation, the sale or transfer thereof, and the income derived therefrom by the purchasers of the notes, shall, at all times, be free from taxation for State or local purposes, under any law of the State or any political subdivision thereof. Notes may be issued under the provisions of P.L.1979, c.150 (C.27:25-1 et seq.) without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings, conditions, or things which are specifically required by P.L.1979, c.150 (C.27:25-1 et seq.). The notes issued pursuant to P.L.1979, c.150 (C.27:25-1 et seq.) shall not in any way create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof or of the corporation, except as provided herein.

The notes shall be payable solely from (1) note proceeds, to the extent not disbursed to the corporation, (2) grant payments if, as, and when received from the federal government, and (3) investment earnings on note proceeds, to the extent not disbursed to the corporation. Each note shall contain on its face a statement to the effect that the corporation is obligated to pay the principal thereof or the interest thereon only from these grants to the corporation and from the proceeds of the notes and investment earnings on the proceeds of the notes, to the extent not disbursed to the corporation, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof or of the corporation is pledged to the payment of the principal and interest on these notes. Neither the members of the corporation's board nor any person executing the transactions are personally liable on those notes nor are they otherwise liable for their actions; and

x. Enter into agreements with a public or private entity or consortia thereof to provide for the development of demonstration projects through the use of public-private partnerships pursuant to **[**sections 1 through 9 of P.L.1997,c.136 (C.27:1D-1 et seq.)**]** sections 1 through 10 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2004, c.1, s.1)

13. Section 12 of P.L.1995, c.108 (C.27:1B-21.5) is amended to read as follows:

12. a. Notwithstanding the provisions of any other law to the contrary, the commissioner is authorized to enter into agreements with public or private entities or consortia thereof for the loan of federal funds appropriated to the department for the purpose of financing all, or a portion of, the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project by that public or private entity or consortia thereof.

b. The commissioner, with the approval of the State Treasurer, shall establish rules and regulations governing the qualifications of the applicants, the application procedures, the criteria for awarding loans, and the standards for establishing the amount, terms and conditions of each loan. The rules and regulations shall provide that the term of the loan agreement shall be consistent with terms and conditions as provided by applicable federal law.

c. Loans granted pursuant to this section shall be considered an investment or reinvestment of Special Transportation Fund funds within the meaning of subsection a. of section 21 of P.L.1984, c.73 (C.27:1B‑21). Payments of interest and principal on loans granted pursuant to this section shall be credited to a special subaccount of the Special Transportation Fund and may be used for financing authorized projects. Monies appropriated from the special subaccount pursuant to this section shall be in addition to the total State amount authorized to be appropriated in a fiscal year pursuant to section 8 of P.L.1987, c.460 (C.27:1B‑21.1).

d. Each loan made pursuant to this section shall require the specific approval of the Joint Budget Oversight Committee, except for those loans agreed to by the commissioner as part of an agreement for a demonstration project approved pursuant to **[**P.L.1997, c.136 (C.27:1D-1 et al.)**]** sections 1 through 10 of P.L.    , c. (C. ) (pending before the Legislature as this bill). The Chairman of the Joint Budget Oversight Committee may request periodic reports from the commissioner on the status of any or all loans. The commissioner shall provide reports so requested on a timely basis.

e. Transportation projects which are the subject of a loan agreement entered into pursuant to this section shall be included in the annual report of proposed projects prepared pursuant to section 22 of P.L.1984, c.73 (C.27:1B‑22) for the fiscal year in which the loan amount for those projects is to be appropriated.

(cf: P.L.1997, c.136, s.13)

14. The Commissioner of Transportation shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act.

15. This act shall take effect on the 365th day next following enactment.

STATEMENT

This bill authorizes the Commissioner of Transportation, in each State fiscal year to select any transportation project from the list of transportation projects for which monies have been appropriated in the annual appropriations act to serve as a public-private partnership project. A public-private partnership project is a transportation project entered into between a “public partner,” which is defined as the Department of Transportation or the New Jersey Transit Corporation and a “developer,” which is defined in part as a public or private entity or consortia thereof.

The bill authorizes a public partner to solicit proposals from developers to plan, design, construct, equip, operate, finance, improve, and maintain, or any combination thereof, public-private partnership projects selected by the commissioner. A public partner then selects proposals for negotiation of public-private partnership project agreements based on the overall benefit to the State, the qualifications, and financial strength of the proposer, the proposer's responsiveness to the public partner's requirements, the total project cost to be incurred by the public partner, the nature of project financing, the revenues to be generated by the project on behalf of and in support of the State, the impact of any direct or indirect user fees, and any other evaluation criteria the public partner deems appropriate.

The public partner then negotiates with one or more proposers to reach a project agreement in the best interests of the State, except that in the event that a private developer, private entity, or private consortia benefits from the use of public monies for the construction of a public-private partnership project the project agreement with the developer shall provide that any construction contract entered into by the developer, a private entity, or private consortia, to effectuate the agreement shall conform to those requirements concerning advertisement, pre-qualification, bid, and award provided for by law for construction contracts entered into by the department or corporation, as the case may be.

Any financial participation by the Department of Transportation department's in any public-private partnership project shall be subject to legislative appropriation and financial participation by the New Jersey Transit Corporation in any public-private partnership project shall be subject to the availability of funds.

The bill authorizes a public partner to designate a project agreement, or a portion thereof, entered into between a public partner and a developer as a small business set-aside contract. The designation shall be made prior to the advertisement for bids. A public partner shall award at least 10% of their contracts for small businesses. For purposes of meeting this requirement, a public partner shall, when necessary, specifically set aside contracts or portions of contracts for which only small businesses may bid.

The advertisement for bids on a set-aside contract shall indicate the invitation to bid as a set-aside. The advertisement shall be in such newspaper or newspapers as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the project agreement to promote competitive bidding among those businesses for whom the project agreement is being set aside.