

[Third Reprint]

**SENATE, No. 865**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Assemblyman LOUIS D. GREENWALD**

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**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senators Singleton, Cruz-Perez, Ruiz, Assemblywoman Handlin,  
Assemblymen Eustace, A.M.Bucco, Thomson, Assemblywoman  
B.DeCroce, Assemblyman Benson, Assemblywoman Chaparro,  
Assemblymen Holley, Harold J. Wirths, Schaer, Houghtaling, Tully,  
Assemblywomen Swain and Murphy**

**SYNOPSIS**

Permits public-private partnership agreements for certain building and highway infrastructure projects; provides for EDA oversight.

**CURRENT VERSION OF TEXT**

As amended by the Senate on June 25, 2018.

**(Sponsorship Updated As Of: 6/26/2018)**

1 AN ACT concerning public-private partnerships for certain building  
2 and highway infrastructure projects, and amending and  
3 supplementing various parts of the statutory law.  
4

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

7  
8 <sup>2</sup>[1. (New section) a. As used in this section:

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

12 <sup>1</sup>["Availability payment" means a periodic payment made by a  
13 local government unit to a private entity in exchange for making  
14 available the use of a public building, road, structure, infrastructure,  
15 or facility at a predetermined level of service, operation, or  
16 maintenance.]<sup>1</sup>

17 “Bundling” means the use of a solicitation for multiple projects  
18 in one single contract, through a public-private partnership project  
19 delivery method, the result of which restricts competition.

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

31 “Project” means the development, construction, reconstruction,  
32 repair, alteration, improvement, extension, operation, and  
33 maintenance of any building, road, structure, infrastructure, or  
34 facility constructed or acquired by a local government unit to house  
35 local government functions, including any infrastructure or facility  
36 used or to be used by the public or in support of a public purpose or  
37 activity; provided that, with respect to a roadway or highway  
38 project, a qualifying project shall include an expenditure of at least  
39 \$10 million in public funds, or any expenditure in solely private  
40 funds.

41 “Public-private partnership agreement” means an agreement  
42 entered into by a local government unit and a private entity  
43 pursuant to this section for the purpose of permitting a private entity  
44 to assume financial and administrative responsibility for the

**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>Senate SBA committee amendments adopted June 11, 2018.

<sup>2</sup>Senate floor amendments adopted June 21, 2018.

<sup>3</sup>Senate floor amendments adopted June 25, 2018.

1 development, construction, reconstruction, repair, alteration,  
2 improvement, extension, operation, and maintenance of a project of,  
3 or for the benefit of, the local government unit.

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

10 (2) A public-private partnership agreement may include an  
11 agreement under which a local government unit and a private entity  
12 enter into a lease of a public building, road, structure, infrastructure,  
13 or facility in exchange for up-front or structured financing by the  
14 private entity for the project. Under the lease agreement, the  
15 private entity may be responsible for the management, operation,  
16 and maintenance of the building, road, structure, infrastructure, or  
17 facility. The private entity may receive some or all, as per the  
18 agreement, of the revenue generated by the building, road, structure,  
19 infrastructure, or facility, and may operate the building, road  
20 structure, infrastructure, or facility in accordance with local  
21 government unit standards. At the end of the lease term, subsequent  
22 revenue generated by the building, road, structure, infrastructure, or  
23 facility, along with management, operation, and maintenance  
24 responsibility, shall revert to the local government unit. <sup>1</sup>A lease  
25 agreement entered into pursuant to this section shall be limited in  
26 duration to a term of not more than 30 years. A lease agreement  
27 shall be subject to all applicable provisions of current law  
28 governing leases by a local government unit not inconsistent with  
29 the provisions of this section.<sup>1</sup>

30 (3) <sup>1</sup>A public-private partnership agreement may include the  
31 use of availability payments if deemed to be in the best interest of  
32 the public and the local government unit, provided the private entity  
33 shall operate the building, road, structure, infrastructure or facility  
34 in accordance with local government unit standards.

35 (4) <sup>1</sup>Bundling of projects shall be prohibited under this section.

36 c. (1) Unless otherwise set forth herein, a private entity that  
37 assumes financial and administrative responsibility for a project  
38 pursuant to this section shall not be subject to the procurement and  
39 contracting requirements of all statutes applicable to the local  
40 government unit at which the project is completed, including, but  
41 not limited to, the "Local Public Contracts Law," P.L.1971, c.198  
42 (C.40A:11-1 et seq.).

43 (2) For the purposes of facilitating the financing of a project  
44 pursuant to this section, a public entity may become the owner or  
45 lessee of the project or the lessee of the land, or both, may become  
46 the lessee of a revenue-producing building, structure, or facility to  
47 which the local government unit holds title, may issue indebtedness  
48 in accordance with the public entity's enabling legislation and,  
49 notwithstanding any provision of law to the contrary, shall be

1 empowered to enter into contracts with a private entity and its  
2 affiliates without being subject to the procurement and contracting  
3 requirements of any statute applicable to the public entity provided  
4 that the private entity has been selected by the local government  
5 unit pursuant to a solicitation of proposals or qualifications from at  
6 least two private entities. For the purposes of this subsection, a  
7 public entity shall include the New Jersey Economic Development  
8 Authority, and any project undertaken pursuant to this section of  
9 which the authority becomes the owner or lessee, or which is  
10 situated on land of which the authority becomes the lessee, shall be  
11 deemed a "project" under the "The New Jersey Economic  
12 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

13 (3) As the carrying out of any project described pursuant to this  
14 section constitutes the performance of an essential public function,  
15 all projects used in furtherance of the purposes of the local  
16 government unit undertaken pursuant to this section, provided the  
17 project is owned by or leased to a public entity, non-profit business  
18 entity, foreign or domestic, or a business entity wholly owned by  
19 such non-profit business entity, shall at all times be exempt from  
20 property taxation and special assessments of the State, or any  
21 municipality, or other political subdivision of the State and,  
22 notwithstanding the provisions of section 15 of P.L.1974,  
23 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or  
24 any other section of law to the contrary, shall not be required to  
25 make payments in lieu of taxes. The land upon which the project is  
26 located shall also at all times be exempt from property taxation.  
27 The project and land upon which the project is located shall not be  
28 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-  
29 1.10) regarding the tax liability of private parties conducting for  
30 profit activities on tax exempt land, or section 1 of P.L.1949,  
31 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in  
32 exempt property that are held by nonexempt parties.

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

47 d. Each worker employed in the construction, rehabilitation, or  
48 building maintenance services of facilities by a private entity that  
49 has entered into a public-private partnership agreement with a local

1 government unit pursuant to this section shall be paid not less than  
2 the prevailing wage rate for the worker's craft or trade as  
3 determined by the Commissioner of Labor and Workforce  
4 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
5 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

21 (2) All projects proposed in accordance with this section shall  
22 be submitted to the New Jersey Economic Development Authority  
23 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
24 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
25 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
26 are encouraged to adhere to the Leadership in Energy and  
27 Environmental Design Green Building Rating System as adopted by  
28 the United States Green Building Council, the Green Globes  
29 Program adopted by the Green Building Initiative, or a comparable  
30 nationally recognized, accepted, and appropriate sustainable  
31 development rating system.

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

37 f. (1) All projects proposed in accordance with this section  
38 shall be submitted to the New Jersey Economic Development  
39 Authority for the authority's review and approval <sup>1</sup>, which shall be  
40 conducted in consultation with the Commissioner of the Department  
41 of Community Affairs<sup>1</sup>. The projects are encouraged, when  
42 practicable, to adhere to the green building manual prepared by the  
43 Commissioner of Community Affairs pursuant to section 1 of  
44 P.L.2007, c.132 (C.52:27D-130.6).

45 (2) (a) In order for an application to be complete and  
46 considered by the authority, the application shall include, but not be  
47 limited to: (i) a full description of the proposed public-private  
48 partnership agreement between the local government unit and the  
49 private developer; (ii) a full description of the project, including a

1 description of any agreement for the lease of a revenue-producing  
2 facility related to the project; (iii) the estimated costs and financial  
3 documentation for the project; (iv) a timetable for completion of the  
4 construction of the project extending no more than five years after  
5 consideration and approval; and (v) any other requirements that the  
6 authority deems appropriate or necessary. <sup>1</sup>The application shall  
7 also include a resolution by the local government unit's governing  
8 body of its intent to enter into a public-private partnership  
9 agreement pursuant to this section.<sup>1</sup>

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

18 (3) The authority shall review all completed applications, and  
19 request additional information as is needed to make a complete  
20 assessment of the project. <sup>1</sup>The criteria for assessing the project  
21 shall include, but may not be limited to: (i) feasibility and design of  
22 the project; (ii) experience and qualifications of the private entity;  
23 (iii) soundness of the financial plan; (iv) adequacy of the required  
24 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
25 existence of a clear public benefit; and (vii) a resolution by the local  
26 government unit's governing body of its intent to enter into a  
27 public-private partnership agreement for the project.<sup>1</sup> No project  
28 shall commence the procurement process until **1[final]**<sup>1</sup> approval  
29 has been granted by the authority <sup>1</sup>. Following the procurement  
30 process, but before the local government unit enters into a public-  
31 private partnership agreement, the project and the resultant short list  
32 of private entities shall be submitted to the authority for final  
33 approval<sup>1</sup>; provided, however, that the authority shall retain the  
34 right to revoke approval if it determines that the project has  
35 <sup>1</sup>substantially<sup>1</sup> deviated from the plan submitted pursuant to  
36 paragraph (2) of this subsection, and shall retain the right to cancel  
37 a procurement after a short list of private entities is developed if  
38 deemed in the public interest as specified under subsection j. of this  
39 section. Notwithstanding any provision of this section to the  
40 contrary, all roadway or highway projects shall be subject to review  
41 and approval by the State Treasurer, <sup>1</sup>which shall be conducted in  
42 consultation with the Commissioner of the Department of  
43 Transportation,<sup>1</sup> and the authority shall not approve any roadway or  
44 highway project disapproved by the State Treasurer.  
45 (4) The authority may promulgate any rules and regulations  
46 necessary to implement this subsection, including provisions for  
47 fees to cover administrative costs.

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

7 h. The power of eminent domain shall not be delegated to any  
8 private entity under the provisions of P.L. , c. (C. )  
9 (pending before the Legislature as this bill); however, a local  
10 government unit may dedicate any property interest, including land,  
11 improvements, and tangible personal property of the local  
12 government unit for public use in a qualifying project if the local  
13 government unit finds that so doing will serve the public purpose of  
14 the project by minimizing the cost of the project to the local  
15 government unit or reducing the delivery time of a project.

16 i. Any public-private partnership agreement, if appropriate,  
17 shall include provisions affirming that the agreement and any work  
18 performed under the agreement are subject to the provisions of the  
19 "Construction Industry Independent Contractor Act," P.L.2007,  
20 c.114 (C.34:20-1 et seq.).

21 j. (1) A private entity seeking to enter into a public-private  
22 partnership agreement with the local government unit shall be  
23 qualified by the local government unit as part of the procurement  
24 process, provided such process ensures that the private entity meets  
25 at least the minimum local government unit standards for  
26 qualification for professional services, construction contracting, and  
27 other qualifications applicable to the project, prior to submitting a  
28 proposal under the procurement process. <sup>1</sup>The local governing  
29 unit's governing body shall issue a request for proposals, which  
30 shall close within 45 days.<sup>1</sup> The qualification process <sup>1</sup>shall be  
31 conducted within 45 days after the closing date for the receipt of  
32 proposals, and<sup>1</sup> shall result in a list of qualified private entities, that  
33 may be ranked in order to generate a short list of private entities  
34 requested to submit a final proposal.

35 (2) The local government unit may accept unsolicited proposals  
36 from private entities for public-private partnership agreements. If  
37 the local government unit receives an unsolicited proposal and  
38 determines that it meets the standards of this section, the local  
39 government unit shall publish a notice of the receipt of the proposal  
40 on the Internet site of the local government unit, or through  
41 advertisements in newspapers. If a notice is published exclusively  
42 in newspapers, the notice shall appear in two or more newspapers  
43 circulated wholly or in part in the county where the proposed  
44 project is to be located. The notice shall provide that the local  
45 government unit will accept, for <sup>1</sup>**[45]** 120<sup>1</sup> days after the initial  
46 date of publication, proposals meeting the standards of this section  
47 from other private entities for eligible projects that satisfy the same  
48 basic purpose and need. A copy of the notice shall be mailed to

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

3 (3) After the proposal or proposals have been received, and any  
4 public notification period has expired, the local government unit  
5 shall rank the proposals in order of preference. In ranking the  
6 proposals, the local government unit may consider factors that  
7 include, but may not be limited to, professional qualifications,  
8 general business terms, innovative engineering, architectural  
9 services, or cost-reduction terms, finance plans, and the need for  
10 local government funds to deliver the project and discharge the  
11 agreement. If only one proposal is received, the local government  
12 unit shall negotiate in good faith and, if not satisfied with the results  
13 of the negotiations, the local government unit may, at its sole  
14 discretion, terminate negotiations.

15 (4) The local government unit may require that the private entity  
16 assume responsibility for all costs incurred by the local government  
17 unit before execution of the public-private partnership agreement,  
18 including costs of retaining independent experts to review, analyze,  
19 and advise the local government unit with respect to the proposal.

20 (5) If the authority or State Treasurer deem it in the public's  
21 interest to cancel a procurement after a short list of private entities  
22 is developed, the authority shall pay for documented third party  
23 costs, including, but not limited to, design services, legal advisors,  
24 financial advisors, and reasonable expenditures.

25 (6) Stipends may be used on public private partnership projects  
26 when there is a substantial opportunity for innovation and the costs  
27 for developing a proposal are significant. The local government unit  
28 may elect to pay unsuccessful proposers for the work product they  
29 submit with their proposal in response to a request for proposals.  
30 The use by the local government unit of any design element  
31 contained in an unsuccessful proposal shall be at the sole risk and  
32 discretion of the local government unit and shall not confer liability  
33 on the recipient of the stipulated stipend amount. After payment of  
34 the stipulated stipend amount, the local government unit and the  
35 unsuccessful proposer shall jointly own the rights to, and may make  
36 use of any work product contained in the proposal, including the  
37 technologies, techniques, methods, processes, ideas, and  
38 information contained in the proposal, project design, and project  
39 financial plan. The use by the unsuccessful proposer of any part of  
40 the work product contained in the proposal shall be at the sole risk  
41 of the unsuccessful proposer and shall not confer liability on the  
42 local government unit. ]<sup>2</sup>

43

44 <sup>2</sup>1. (New section) a. As used in this section:

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



1       “Bundling” means the use of a solicitation for multiple projects  
2 in one single contract, through a public-private partnership project  
3 delivery method, the result of which restricts competition.

4       “Local government unit” means a county, a municipality, or any  
5 board, commission, committee, authority or agency thereof that is  
6 subject to the provisions of the “Local Public Contracts Law,”  
7 P.L.1971, c.198 (C.40A:11-1 et seq.), including a housing authority  
8 or redevelopment agency created or continued under the “Local  
9 Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1  
10 et seq.). A local government unit shall not include a public entity  
11 that has entered into a contract with a private firm or a public  
12 authority pursuant to the “New Jersey Wastewater Treatment  
13 Public-Private Contracting Act,” P.L.1995, c.216 (C.58:27-19 et  
14 al.), for the provision of wastewater treatment services.

15       “Project” means the development, construction, reconstruction,  
16 repair, alteration, improvement, extension, operation, and  
17 maintenance of any building, local or county road, vertical  
18 structure, or facility constructed or acquired by a local government  
19 unit to operate local government functions, including any  
20 infrastructure or facility used or to be used by the public or in  
21 support of a public purpose or activity; and including any site  
22 acquisition, provided that, with respect to a project, a qualifying  
23 project shall include an expenditure of at least \$10 million in public  
24 funds, or any expenditure in solely private funds.

25       “Public building, road, structure, infrastructure, or facility”  
26 means any site building, road, structure, infrastructure, or facility  
27 used or to be used by a local government unit to house a local  
28 government function or functions, including any infrastructure or  
29 facility used or to be used by the public, or in support of a public  
30 purpose or activity.

31       “Public-private partnership agreement” means an agreement  
32 entered into by a local government unit and a private entity  
33 pursuant to this section for the purpose of permitting a private entity  
34 to assume full financial and administrative responsibility for the  
35 development, construction, reconstruction, repair, alteration,  
36 improvement, extension, operation, and maintenance of a project of,  
37 or for the benefit of, the local government unit.

38       b. (1) A local government unit may enter into a contract with  
39 a private entity, subject to subsection f. of this section, to be  
40 referred to as a public-private partnership agreement, that permits  
41 the private entity to assume full financial and administrative  
42 responsibility for a project of, or for the benefit of, the local  
43 government unit, provided that the project is financed in whole by  
44 the private entity and the local unit retains full ownership of the  
45 land upon which the project is located.

46       (2) A public-private partnership agreement may include an  
47 agreement under which a local government unit and a private entity  
48 enter into a lease of a revenue-producing public building, road,  
49 structure, infrastructure, or facility in exchange for up-front or

1 structured financing by the private entity for the project. Under the  
2 lease agreement, the private entity shall be responsible for the  
3 management, operation, and maintenance of the building, road,  
4 structure, infrastructure, or facility. The private entity shall receive  
5 some or all, as per the agreement, of the revenue generated by the  
6 building, road, structure, infrastructure, or facility, and shall operate  
7 the building, road structure, infrastructure, or facility in accordance  
8 with local government unit standards. At the end of the lease term,  
9 subsequent revenue generated by the building, road, structure,  
10 infrastructure, or facility, along with management, operation, and  
11 maintenance responsibility, shall revert to the local government  
12 unit. A lease agreement entered into pursuant to this section shall be  
13 limited in duration to a term of not more than 30 years. A lease  
14 agreement shall be subject to all applicable provisions of current  
15 law governing leases by a local government unit not inconsistent  
16 with the provisions of this section. For the purposes of this section,  
17 “revenue-producing” shall include leaseback arrangements.

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

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

27 c. (1) Unless otherwise set forth herein, a private entity that  
28 assumes full financial and administrative responsibility for a project  
29 pursuant to this section shall not be subject to the procurement and  
30 contracting requirements of all statutes applicable to the local  
31 government unit at which the project is completed, including, but  
32 not limited to, the "Local Public Contracts Law," P.L.1971, c.198  
33 (C.40A:11-1 et seq.).

34 (2) Notwithstanding any provision of law to the contrary, a  
35 public entity shall be empowered to enter into contracts with a  
36 private entity and its affiliates without being subject to the  
37 procurement and contracting requirements of any statute applicable  
38 to the public entity provided that the private entity has been selected  
39 by the local government unit pursuant to a solicitation of proposals  
40 or qualifications from at least two private entities, or it has received  
41 an unsolicited proposal and followed the procedure set forth in  
42 paragraph (4) of subsection j. of this section. A local government  
43 unit shall be the owner or lessee of any project being financed by a  
44 local government unit.

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

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

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

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

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

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

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

3 (4) Prior to being submitted to the State Treasurer for review  
4 and approval, all projects proposed in accordance with this section  
5 shall be subject to a public hearing, the record of which shall be  
6 made available to the public within seven days following the  
7 conclusion of the hearing, after the ranking of proposals takes place  
8 pursuant to paragraph (5) of subsection j. of this section. The local  
9 government unit shall provide notice of the public hearing no less  
10 than 14 days prior to the date of the hearing. The notice shall  
11 prominently state the purpose and nature of the proposed project,  
12 and shall be published on the official Internet website of the local  
13 government unit and at least once in one or more newspapers with  
14 statewide circulation.

15 (5) Prior to entering into a public -private partnership, the local  
16 government unit shall determine: (i) the benefits to be realized by  
17 the project; (ii) the cost of project if it is developed by the public  
18 sector supported by comparisons to comparable projects; (iii) the  
19 maximum public contribution that local government unit will allow  
20 under the public -private partnership; (iv) a comparison of the  
21 financial and non-financial benefits of the public-private  
22 partnership compared to other options including the public sector  
23 option; (v) a list of risks, liabilities and responsibilities to be  
24 transferred to the private entity and those to be retained by the local  
25 government unit; and (vi) if the project has a high, medium or low  
26 level of project delivery risk and how the public is protected from  
27 these risks.

28 (6) Prior to entering into a public-private partnership, the local  
29 government unit at a public hearing shall find that the project is in  
30 the best interest of the public by finding that (i) it will cost less than  
31 the public sector option, or if it costs more there are factors that  
32 warrant the additional expense; (ii) there is a public need for the  
33 project and the project is consistent with existing long-term plans;  
34 (iii) there are specific significant benefits to the project; (iv) there  
35 are specific significant benefits to using the public-private  
36 partnership instead of other options including No-Build; (v) the  
37 private development will result in timely and efficient development  
38 and operation; and (vi) the risks, liabilities and responsibilities  
39 transferred to the private entity provide sufficient benefits to  
40 warrant not using other means of procurement.

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

48 (2) All projects proposed in accordance with this section that  
49 have a transportation component or impact the transportation

1 infrastructure shall be submitted to the State Treasurer, in  
2 consultation with the Commissioner of the Department of  
3 Transportation, for review and approval.

4 (3) (a) In order for an application to be complete and  
5 considered by the State Treasurer, the application shall include, but  
6 not be limited to: (i) a full description of the proposed public-  
7 private partnership agreement between the local government unit  
8 and the private developer, including all information obtained by and  
9 findings of the local government unit pursuant to paragraphs (4) and  
10 (5) of subsection e. of this section; (ii) a full description of the  
11 project, including a description of any agreement for the lease of a  
12 revenue-producing facility related to the project; and (iii) the  
13 estimated costs and financial documentation for the project showing  
14 the underlying financial models and assumptions that determined  
15 the estimated costs. The financial documentation shall include at  
16 least three different projected estimated costs showing scenarios in  
17 which materially different economic circumstances are assumed and  
18 an explanation for how the estimated costs were determined based  
19 on the three scenarios; (iv) a timetable for completion of the  
20 construction of the project; (v) an analysis of all available funding  
21 options for the project, including an analysis of the financial  
22 viability and advisability of such project, along with evidence of the  
23 public benefit in advancing the project as a public-private  
24 partnership; (vi) a record of the public hearing held pursuant to  
25 paragraph (4) of subsection e. of this section, which shall have been  
26 made available to the public within seven days following the  
27 conclusion of the hearing; and (vii) any other requirements that the  
28 State Treasurer deems appropriate or necessary. The application  
29 shall also include a resolution by the local government unit's  
30 governing body of its intent to enter into a public-private  
31 partnership agreement pursuant to this section.

32 (b) As part of the estimated costs and financial documentation  
33 for the project, the application shall contain a long-range  
34 maintenance plan and a long-range maintenance bond and shall  
35 specify the expenditures that qualify as an appropriate investment in  
36 maintenance. The long-range maintenance plan shall be approved  
37 by the State Treasurer pursuant to regulations promulgated by the  
38 State Treasurer that reflect national building maintenance standards  
39 and other appropriate building maintenance benchmarks.

40 (4) The State Treasurer, in consultation with the authority and  
41 the Commissioner of the Department of Community Affairs, shall  
42 review all completed applications, and request additional  
43 information as is needed to make a complete assessment of the  
44 project. No public-private partnership agreement shall be executed  
45 until approval has been granted by the State Treasurer. Prior to a  
46 final decision by the State Treasurer on the application, the  
47 authority and the Department of Community Affairs shall be  
48 afforded the opportunity to provide comments on the application  
49 that they deem appropriate, and the State Treasurer shall consider

1 any comments submitted by the authority and the Department of  
2 Community Affairs with respect to the application. In order to  
3 approve the application, the State Treasurer shall find that: (i) the  
4 local government unit's assumptions regarding the project's scope,  
5 its benefits, its risks and the cost of the public sector option were  
6 fully and reasonably developed; (ii) the design of the project is  
7 feasible; (iii) the experience and qualifications of the private entity;  
8 (iv) the financial plan is sound; (v) the long-range maintenance plan  
9 is adequate to protect the investment; (vi) the project is in the best  
10 interest of the public, using the criteria in paragraph (6) of  
11 subsection e. of this section; (vii) a resolution by the local  
12 government unit's governing body of its intent to enter into a  
13 public-private partnership agreement for the project has been  
14 received; and (viii) the term sheet for any proposed procurement  
15 contains all necessary elements. The State Treasurer shall retain the  
16 right to revoke approval if the project has substantially deviated  
17 from the plan submitted pursuant to this section, and shall retain the  
18 right to cancel a procurement after a short list of private entities is  
19 developed if deemed in the public interest .

20 (5) The State Treasurer, the authority, and division may  
21 promulgate any rules and regulations necessary to implement this  
22 subsection, including, but not limited to, provisions for fees to  
23 cover administrative costs, and for the determination of minimum  
24 local government unit standards for the operation of the project, and  
25 for the qualification for professional services, construction  
26 contracting, and other relevant qualifications.

27 g. 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 h. The power of eminent domain shall not be delegated to any  
34 private entity under the provisions of P.L. , c. (C. )  
35 (pending before the Legislature as this bill); however, a local  
36 government unit may dedicate any property interest, including  
37 improvements and tangible personal property of the local  
38 government unit for public use in a qualifying project if the local  
39 government unit finds that so doing will serve the public purpose of  
40 the project by minimizing the cost of the project to the local  
41 government unit or reducing the delivery time of a project.

42 i. 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 agreement  
47 shall also include, at a minimum: (i) the term of the agreement; (ii)  
48 the total project cost; (iii) a completion date guarantee; (iv) a  
49 provision for damages if the private entity fails to meet the

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

4 j. (1) A private entity seeking to enter into a public-private  
5 partnership agreement with the local government unit shall be  
6 qualified by the local government unit as part of the procurement  
7 process, provided such process ensures that the private entity and its  
8 subcontractors and consultants, when relevant meet at least the  
9 minimum qualifications standards promulgated by the State  
10 Treasurer, in consultation with the New Jersey Economic  
11 Development Authority, Department of Community Affairs, and  
12 such other local government unit standards for qualification for  
13 professional services, construction contracting, and other  
14 qualifications applicable to the project, prior to submitting a  
15 proposal under the procurement process.

16 (2) A request for qualifications for a public-private partnership  
17 agreement shall be advertised at least 45 days prior to the  
18 anticipated date of receipt. The advertisement of the request for  
19 qualifications shall be published on the official Internet website of  
20 the local government unit and at least one or more newspapers with  
21 statewide circulation.

22 (3) After the local government unit determines the qualified  
23 respondents utilizing, at minimum, the qualification standards  
24 promulgated by the State Treasurer, the local government entity  
25 shall issue a request for proposals to each qualified respondent no  
26 less than 45 days prior to the date established for submission of the  
27 proposals. The request for proposals shall include relevant  
28 technical submissions, documents, and the evaluation criteria to be  
29 used in the selection of the designated respondent. The evaluation  
30 criteria shall be, at minimum, criteria promulgated by the State  
31 Treasurer, in consultation with the New Jersey Economic  
32 Development Authority and Department of Community Affairs.

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

1 obtaining such permits and approvals, a statement of risks,  
2 liabilities and responsibilities to be assumed by the private entity.  
3 The notice shall provide that the local government unit shall accept,  
4 for 120 days after the initial date of publication, proposals meeting  
5 the standards of this section from other private entities for eligible  
6 projects that satisfy the same basic purpose and need. A copy of the  
7 notice shall be mailed to each municipal and county local  
8 government body in the geographic area affected by the proposal.

9 (5) After the proposal or proposals have been received, and any  
10 public notification period has expired, the local government unit  
11 shall rank the proposals in order of preference. In ranking the  
12 proposals, the local government unit shall rely upon, at minimum,  
13 the evaluation criteria promulgated by the State Treasurer, in  
14 consultation with the New Jersey Economic Development Authority  
15 and the Department of Community Affairs. In addition, the local  
16 government unit may consider factors that include, but may not be  
17 limited to, professional qualifications, general business terms,  
18 innovative engineering, architectural services, or cost-reduction  
19 terms, finance plans, and the need for local government funds to  
20 deliver the project and discharge the agreement. The private entity  
21 selected shall comply with all laws and regulations required by the  
22 State government entity, including but not limited to section 1 of  
23 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,  
24 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),  
25 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-  
26 51 et al), Executive Order No. 117 of 2008, Executive Order No.  
27 118 of 2008, Executive Order No. 189, prior to executing the public  
28 private partnership agreement. If only one proposal is received, the  
29 local government unit shall negotiate in good faith and, if not  
30 satisfied with the results of the negotiations, the local government  
31 unit may, at its sole discretion, terminate negotiations.

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

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



1 technologies, techniques, methods, processes, ideas, and  
 2 information contained in the proposal, project design, and project  
 3 financial plan. The use by the unsuccessful proposer of any part of  
 4 the work product contained in the proposal shall be at the sole risk  
 5 of the unsuccessful proposer and shall not confer liability on the  
 6 local government unit. The State Treasurer, in consultation with the  
 7 New Jersey Economic Development Authority of New Jersey and  
 8 Department of Community Affairs shall promulgate guidelines  
 9 based upon which any stipends paid by a local government unit are  
 10 to be based.

11 (8) The local government unit shall set aside one percent of each  
 12 project and remit it the Public Private Partnership Review fund  
 13 established pursuant to P.L. , c. ( C. ) (pending before the  
 14 Legislature as this bill), for purposes of plan review and analysis  
 15 required under the bill.

16 (9) Nothing in this section shall be construed as or deemed a  
 17 waiver of the sovereign immunity of the State, the local government  
 18 unit or an affected locality or public entity or any officer or  
 19 employee thereof with respect to the participation in or approval of  
 20 all or any part of the public-private project.<sup>2</sup>

21

22 <sup>2</sup>[2.(New section) a. As used in this section:

23 “Authority” means the New Jersey Economic Development  
 24 Authority established pursuant to section 4 of P.L.1974,  
 25 c.80 (C.34:1B-4).

26 <sup>1</sup>["Availability payment" means a periodic payment made by a  
 27 school district to a private entity in exchange for making available  
 28 the use of a public building, structure, infrastructure, or facility at a  
 29 predetermined level of service, operation, or maintenance.]<sup>1</sup>

30 “Bundling” means the use of a solicitation for multiple projects  
 31 in one single contract, through a public-private partnership project  
 32 delivery method, the result of which restricts competition.

33 “Project” shall have the same meaning as provided in section 3  
 34 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and  
 35 shall include any infrastructure or facility used or to be used by the  
 36 public or in support of a public purpose or activity.

37 “Public-private partnership agreement” means an agreement  
 38 entered into by a school district and a private entity pursuant to this  
 39 section for the purpose of permitting a private entity to assume  
 40 financial and administrative responsibility for the development,  
 41 construction, reconstruction, repair, alteration, improvement,  
 42 extension, operation, and maintenance of a school facilities project  
 43 of, or for the benefit of, the school district.

44 “School district” means and includes a local school district,  
 45 regional school district, or county special services school district or  
 46 county vocational school established and operating under the  
 47 provisions of Title 18A of the New Jersey Statutes. The term  
 48 “school district” shall <sup>1</sup>[not]<sup>1</sup> include a charter school established

1 under P.L.1995, c.426 (C.18A:36A-1 et seq.) <sup>1</sup>and a renaissance  
2 school established under P.L.2011. c.176 (C.18A:36C-1 et seq.)<sup>1</sup>.

3 b. (1) A school district may enter into a contract with a private  
4 entity, subject to subsection f. of this section, to be referred to as a  
5 public-private partnership agreement, that permits the private entity  
6 to assume financial and administrative responsibility for a project  
7 of, or for the benefit of, the school district, provided that the project  
8 is financed in whole or in part by the private entity.

9 (2) A public-private partnership agreement may include an  
10 agreement under which a school district and a private entity enter  
11 into a lease of a revenue-producing public building, structure, or  
12 facility in exchange for up-front or structured financing by the  
13 private entity for the project. Under the lease agreement, the  
14 private entity may be responsible for the management, operation,  
15 and maintenance of the building, structure, or facility. The private  
16 entity may receive some or all, as per the agreement, of the revenue  
17 generated by the building, structure, or facility, and may operate the  
18 building, structure, or facility in accordance with school district  
19 standards. At the end of the lease term, subsequent revenue  
20 generated by the building, structure, or facility, along with  
21 management, operation, and maintenance responsibility, shall revert  
22 to the school district. <sup>1</sup>A lease agreement entered into pursuant to  
23 this section shall be limited in duration to a term of not more than  
24 30 years. A lease agreement shall be subject to all applicable  
25 provisions of current law governing leases by a school district not  
26 inconsistent with the provisions of this section.<sup>1</sup>

27 (3) <sup>1</sup>】A public-private partnership agreement may include the  
28 use of availability payments if deemed to be in the best interest of  
29 the public and the school district, provided the private entity shall  
30 operate the building, structure, infrastructure or facility in  
31 accordance with school district standards.

32 (4) <sup>1</sup>】 Bundling of projects shall be prohibited under this section.

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

39 (2) For the purposes of facilitating the financing of a project  
40 pursuant to this section, a public entity may become the owner or  
41 lessee of the project or the lessee of the land, or both, may become  
42 the lessee of a building, structure, or facility to which the school  
43 district holds title, may issue indebtedness in accordance with the  
44 public entity's enabling legislation and, notwithstanding any  
45 provision of law to the contrary, shall be empowered to enter into  
46 contracts with a private entity and its affiliates without being  
47 subject to the procurement and contracting requirements of any  
48 statute applicable to the public entity provided that the private  
49 entity has been selected by the school district pursuant to a

1 solicitation of proposals or qualifications from at least two private  
2 entities. For the purposes of this subsection, a public entity shall  
3 include the New Jersey Economic Development Authority, and any  
4 project undertaken pursuant to this section of which the authority  
5 becomes the owner or lessee, or which is situated on land of which  
6 the authority becomes the lessee, shall be deemed a "project" under  
7 the "The New Jersey Economic Development Authority Act,"  
8 P.L.1974, c.80 (C.34:1B-1 et seq.).

9 (3) As the carrying out of any project described pursuant to this  
10 section constitutes the performance of an essential public function,  
11 all projects predominantly used in furtherance of the purposes of the  
12 school district undertaken pursuant to this section, provided the  
13 project is owned by or leased to a public entity, non-profit business  
14 entity, foreign or domestic, or a business entity wholly owned by  
15 such non-profit business entity, shall at all times be exempt from  
16 property taxation and special assessments of the State, or any  
17 municipality, or other political subdivision of the State and,  
18 notwithstanding the provisions of section 15 of P.L.1974,  
19 c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or  
20 any other section of law to the contrary, shall not be required to  
21 make payments in lieu of taxes. The land upon which the project is  
22 located shall also at all times be exempt from property taxation.  
23 The project and land upon which the project is located shall not be  
24 subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-  
25 1.10) regarding the tax liability of private parties conducting for  
26 profit activities on tax exempt land, or section 1 of P.L.1949,  
27 c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in  
28 exempt property that are held by nonexempt parties.

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

43 d. Each worker employed in the construction, rehabilitation, or  
44 building maintenance services of facilities by a private entity that  
45 has entered into a public-private partnership agreement with a  
46 school district pursuant to this section shall be paid not less than the  
47 prevailing wage rate for the worker's craft or trade as determined by  
48 the Commissioner of Labor and Workforce Development pursuant

1 to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,  
2 c.379 (C.34:11-56.58 et seq.).

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

18 (2) All projects proposed in accordance with this section shall  
19 be submitted to the New Jersey Economic Development Authority  
20 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
21 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
22 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
23 are encouraged to adhere to the Leadership in Energy and  
24 Environmental Design Green Building Rating System as adopted by  
25 the United States Green Building Council, the Green Globes  
26 Program adopted by the Green Building Initiative, or a comparable  
27 nationally recognized, accepted, and appropriate sustainable  
28 development rating system.

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

34 f. (1) All projects proposed in accordance with this section  
35 shall be submitted to the New Jersey Economic Development  
36 Authority for the authority's review and approval <sup>1</sup>, which shall be  
37 conducted in consultation with the Commissioner of the Department  
38 of Education<sup>1</sup>. 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,  
41 c.132 (C.52:27D-130.6).

42 (2) (a) In order for an application to be complete and considered  
43 by the authority, the application shall include, but not be limited to:  
44 (i) a full description of the proposed public-private partnership  
45 agreement between the school district and the private developer; (ii)  
46 a full description of the project, including a description of any  
47 agreement for the lease of a revenue-producing facility related to  
48 the project; (iii) the estimated costs and financial documentation for  
49 the project; (iv) a timetable for completion of the construction of

1 the project extending no more than five years after consideration  
2 and approval; and (v) any other requirements that the authority  
3 deems appropriate or necessary. <sup>1</sup>The application shall also include  
4 a resolution by the school district's governing body of its intent to  
5 enter into a public-private partnership agreement pursuant to this  
6 section.<sup>1</sup>

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

15 (3) The authority shall review all completed applications, and  
16 request additional information as is needed to make a complete  
17 assessment of the project. <sup>1</sup>The criteria for assessing the project  
18 shall include, but may not be limited to: (i) feasibility and design of  
19 the project; (ii) experience and qualifications of the private entity;  
20 (iii) soundness of the financial plan; (iv) adequacy of the required  
21 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
22 existence of a clear public benefit; and (vii) a resolution by the  
23 school district's governing body of its intent to enter into a public-  
24 private partnership agreement for the project.<sup>1</sup> No project shall  
25 commence the procurement process until <sup>1</sup>**[final]**<sup>1</sup> approval has  
26 been granted by the authority <sup>1</sup>. Following the procurement process,  
27 but before the school district enters into a public-private partnership  
28 agreement, the project and the resultant short list of private entities  
29 shall be submitted to the authority for final approval<sup>1</sup>; provided,  
30 however, that the authority shall retain the right to revoke approval  
31 if it determines that the project has <sup>1</sup>substantially<sup>1</sup> deviated from the  
32 plan submitted pursuant to paragraph (2) of this subsection, and  
33 shall retain the right to cancel a procurement after a short list of  
34 private entities is developed if deemed in the public interest as  
35 specified under subsection j. of this section.

36 (4) The authority may promulgate any rules and regulations  
37 necessary to implement this subsection, including provisions for  
38 fees to cover administrative costs.

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

45 h. The power of eminent domain shall not be delegated to any  
46 private entity under the provisions of P.L. , c. (C. )  
47 (pending before the Legislature as this bill); however, a school  
48 district may dedicate any property interest, including land,  
49 improvements, and tangible personal property of the school district

1 for public use in a qualifying project if the school district finds that  
2 so doing will serve the public purpose of the project by minimizing  
3 the cost of the project to the school district or reducing the delivery  
4 time of a project.

5 i. Any public-private partnership agreement, if appropriate,  
6 shall include provisions affirming that the agreement and any work  
7 performed under the agreement are subject to the provisions of the  
8 “Construction Industry Independent Contractor Act,” P.L.2007,  
9 c.114 (C.34:20-1 et seq.).

10 j. (1) A private entity seeking to enter into a public-private  
11 partnership agreement with the school district shall be qualified by  
12 the school district as part of the procurement process, provided such  
13 process ensures that the private entity meets at least the minimum  
14 school district standards for qualification for professional services,  
15 construction contracting, and other qualifications applicable to the  
16 project, prior to submitting a proposal under the procurement  
17 process. <sup>1</sup>The school district’s governing body shall issue a request  
18 for proposals, which shall close within 45 days. <sup>1</sup> The qualification  
19 process <sup>1</sup>shall be conducted within 45 days after the closing date for  
20 the receipt of proposals, and<sup>1</sup> shall result in a list of qualified  
21 private entities, that may be ranked in order to generate a short list  
22 of private entities requested to submit a final proposal.

23 (2) The school district may accept unsolicited proposals from  
24 private entities for public-private partnership agreements. If the  
25 school district receives an unsolicited proposal and determines that  
26 it meets the standards of this section, the school district shall  
27 publish a notice of the receipt of the proposal on the Internet site of  
28 the school district, or through advertisements in newspapers. If a  
29 notice is published exclusively in newspapers, the notice shall  
30 appear in two or more newspapers circulated wholly or in part in  
31 the county where the proposed project is to be located. The notice  
32 shall provide that the school district will accept, for <sup>1</sup>~~[45]~~ 120<sup>1</sup>  
33 days after the initial date of publication, proposals meeting the  
34 standards of this section from other private entities for eligible  
35 projects that satisfy the same basic purpose and need. A copy of the  
36 notice shall be mailed to each municipal and county local  
37 government body in the geographic area affected by the proposal.

38 (3) After the proposal or proposals have been received, and any  
39 public notification period has expired, the school district shall rank  
40 the proposals in order of preference. In ranking the proposals, the  
41 school district may consider factors that include, but may not be  
42 limited to, professional qualifications, general business terms,  
43 innovative engineering, architectural services, or cost-reduction  
44 terms, finance plans, and the need for school district funds to  
45 deliver the project and discharge the agreement. If only one  
46 proposal is received, the school district shall negotiate in good faith  
47 and, if not satisfied with the results of the negotiations, the school  
48 district may, at its sole discretion, terminate negotiations.

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

6 (5) If the authority or State Treasurer deem it in the public's  
7 interest to cancel a procurement after a short list of private entities  
8 is developed, the authority shall pay for documented third party  
9 costs, including, but not limited to, design services, legal advisors,  
10 financial advisors, and reasonable expenditures.

11 (6) Stipends may be used on public private partnership projects  
12 when there is a substantial opportunity for innovation and the costs  
13 for developing a proposal are significant. The school district may  
14 elect to pay unsuccessful proposers for the work product they  
15 submit with their proposal in response to a request for proposals.  
16 The use by the school district of any design element contained in an  
17 unsuccessful proposal shall be at the sole risk and discretion of the  
18 school district and shall not confer liability on the recipient of the  
19 stipulated stipend amount. After payment of the stipulated stipend  
20 amount, the school district and the unsuccessful proposer shall  
21 jointly own the rights to, and may make use of any work product  
22 contained in the proposal, including the technologies, techniques,  
23 methods, processes, ideas, and information contained in the  
24 proposal, project design, and project financial plan. The use by the  
25 unsuccessful proposer of any part of the work product contained in  
26 the proposal shall be at the sole risk of the unsuccessful proposer  
27 and shall not confer liability on the school district.】<sup>2</sup>

28  
29 <sup>2</sup>2. (New section) a. As used in this section:

30 “Authority” means the New Jersey Economic Development  
31 Authority established pursuant to section 4 of P.L.1974,  
32 c.80 (C.34:1B-4).

33 “Bundling” means the use of a solicitation for multiple projects  
34 in one single contract, through a public-private partnership project  
35 delivery method, the result of which restricts competition.

36 “Project” shall have the same meaning as provided in section 3  
37 of P.L.2000, c.72 (C.18A:7G-3) for schools facilities project, and  
38 shall include any infrastructure or facility used or to be used by the  
39 public or in support of a public purpose or activity.

40 “Public-private partnership agreement” means an agreement  
41 entered into by a school district and a private entity pursuant to this  
42 section for the purpose of permitting a private entity to assume full  
43 financial and administrative responsibility for the development,  
44 construction, reconstruction, repair, alteration, improvement,  
45 extension, operation, and maintenance of a school facilities project  
46 of, or for the benefit of, the school district.

47 “School district” shall have the same meaning as provided in  
48 section 3 of P.L.2000, c.72 (C.18A:7G-3) and includes a local  
49 school district, regional school district, or county special services

1 school district or county vocational school established and  
2 operating under the provisions of Title 18A of the New Jersey  
3 Statutes that can demonstrate to the satisfaction of the  
4 Commissioner of Education and the Chief Executive Officer of the  
5 Schools Development Authority that a school facility is necessary  
6 due to overcrowding or is in need of replacement. The term "school  
7 district" shall include a charter school established under P.L.1995,  
8 c.426 (C.18A:36A-1 et seq.)

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

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

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

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

41 (2) For the purposes of facilitating the financing of a project  
42 pursuant to this section, a public entity may become the owner or  
43 lessee of the project or the lessee of the land, or both, may become  
44 the lessee of a building, structure, or facility to which the school  
45 district holds title, may issue indebtedness in accordance with the  
46 public entity's enabling legislation and, notwithstanding any  
47 provision of law to the contrary, shall be empowered to enter into  
48 contracts with a private entity and its affiliates without being  
49 subject to the procurement and contracting requirements of any



1 statute applicable to the public entity provided that the private  
2 entity has been selected by the school district pursuant to a  
3 solicitation of proposals or qualifications from at least two private  
4 entities. For the purposes of this subsection, a public entity shall  
5 include the New Jersey Economic Development Authority, and any  
6 project undertaken pursuant to this section of which the authority  
7 becomes the owner or lessee, or which is situated on land of which  
8 the authority becomes the lessee, shall be deemed a "project" under  
9 the "The New Jersey Economic Development Authority Act,"  
10 P.L.1974, c.80 (C.34:1B-1 et seq.).

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

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

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

48 (2) All projects proposed in accordance with this section shall  
49 be submitted to the State Treasurer, in consultation with the

1 Department of Education, Schools Development Authority, and the  
2 New Jersey Economic Development Authority for a review and  
3 approval in accordance with subsection f. of this section prior to the  
4 execution of the public-private partnership agreement and, when  
5 practicable, are encouraged to adhere to the Leadership in Energy  
6 and Environmental Design Green Building Rating System as  
7 adopted by the United States Green Building Council, the Green  
8 Globes Program adopted by the Green Building Initiative, or a  
9 comparable nationally recognized, accepted, and appropriate  
10 sustainable development rating system.

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

16 (4) Prior to being submitted to the State Treasurer for review  
17 and approval, all projects proposed in accordance with this section  
18 shall be subject to a public hearing, the record of which shall have  
19 been kept open for a period of seven days following the conclusion  
20 of the hearing, after the ranking of proposals takes place pursuant to  
21 paragraph (5) of subsection j. of this section. The school district  
22 shall provide notice of the public hearing no less than 14 days prior  
23 to the date of the hearing. The notice shall prominently state the  
24 purpose and nature of the proposed project, and shall be published  
25 on the official Internet website of the school district and at least one  
26 in one or more newspapers with statewide circulation.

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

40 (6) Prior to entering into a public- private partnership, the  
41 school district at a public hearing shall find that the project is in the  
42 best interest of the public by finding that (i) it will cost less than the  
43 public sector option, or if it costs more there are factors that warrant  
44 the additional expense (ii) there is a public need for the project and  
45 the project is consistent with existing long-term plans, (iii) there are  
46 specific significant benefits to the project, (iv) there are specific  
47 significant benefits to using the public-private partnership instead  
48 of other options including No-Build (v) the private development  
49 will result in timely and efficient development and operation and

- 1 (vi) the risks, liabilities and responsibilities transferred to the  
2 private entity provide sufficient benefits to warrant not using other  
3 means of procurement.
- 4 f. (1) All projects proposed in accordance with this section  
5 shall be submitted to the State Treasurer for review and approval,  
6 which shall be conducted in consultation with the Commissioner of  
7 the Department of Education and the Chief Executive Officer of the  
8 Schools Development Authority. The Commissioner of the  
9 Department of Education shall determine if a project is subject to  
10 voter approval pursuant to N.J.S.A. 18A:24-10. If a project is  
11 subject to voter approval, such approval is required prior to  
12 progressing thru the procurement process. The projects are  
13 encouraged, when practicable, to adhere to the green building  
14 manual prepared by the Commissioner of Community Affairs  
15 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).
- 16 (2) All projects proposed in accordance with this section that  
17 have a transportation component or impact the transportation  
18 infrastructure shall be submitted to the Department of  
19 Transportation. The State Treasurer shall consult with the  
20 Department of Transportation in making its final determination.
- 21 (3) (a) In order for an application to be complete and considered  
22 by the State Treasurer, the application shall include, but not be  
23 limited to: (i) a full description of the proposed public-private  
24 partnership agreement between the school district and the private  
25 developer, including all information obtained by and findings of the  
26 school district pursuant to paragraphs (4) and (5) of subsection (e)  
27 of this section; (ii) a full description of the project, including a  
28 description of any agreement for the lease of a revenue-producing  
29 facility related to the project; (iii) the estimated costs and financial  
30 documentation for the project showing the underlying financial  
31 models and assumptions that determined the estimated costs. The  
32 financial documentation must include at least three different  
33 projected estimated costs showing scenarios in which materially  
34 different economic circumstances are assumed and an explanation  
35 for how the estimated costs were determined based on the three  
36 scenarios; (iv) a timetable for completion of the construction of the  
37 project; (v) an analysis of all available funding options for the  
38 project, including an analysis of the financial viability and  
39 advisability of such project, along with evidence of the public  
40 benefit in advancing the project as a public-private partnership; (vi)  
41 a record of the public hearing held pursuant to paragraph (4) of  
42 subsection e. of this section, which shall have been kept open for a  
43 period of seven days following the conclusion of the hearing; (vii)  
44 any other requirements that the State Treasurer deems appropriate  
45 or necessary. The application shall also include a resolution by the  
46 school district's governing body of its intent to enter into a public-  
47 private partnership agreement pursuant to this section.
- 48 (b) As part of the estimated costs and financial documentation  
49 for the project, the application shall contain a long-range

1 maintenance plan and a long-range maintenance bond and shall  
2 specify the expenditures that qualify as an appropriate investment in  
3 maintenance. The long-range maintenance plan shall be approved  
4 by the State Treasurer pursuant to regulations promulgated by the  
5 State Treasurer that reflect national building maintenance standards  
6 and other appropriate building maintenance benchmarks.

7 (4) The State Treasurer, in consultation with the authority, the  
8 Commissioner of the Department of Education, and the Chief  
9 Executive Officer of the Schools Development Authority, shall  
10 review all completed applications, and request additional  
11 information as is needed to make a complete assessment of the  
12 project. No public-private partnership agreement shall be executed  
13 until approval has been granted by the State Treasurer. Prior to a  
14 final decision by the State Treasurer on the application, the  
15 authority, the Department of Education, and the Schools  
16 Development Authority shall be afforded the opportunity to provide  
17 comments on the application that they deem appropriate, and the  
18 State Treasurer shall consider any comments submitted by the  
19 authority, the Department of Education, and the Schools  
20 Development Authority with respect to the application. The State  
21 Treasurer will find that: (i) the school district's assumptions  
22 regarding the project's scope, its benefits, its risks and the cost of  
23 the public sector option were fully and reasonably developed (ii)  
24 the design of the project is feasible; (iii) the experience and  
25 qualifications of the private entity; (iv) the financial plan is sound;  
26 (v) the long-range maintenance plan is adequate to protect the  
27 investment; (vi) the project is in the best interest of the public,  
28 using the criteria in paragraph (6) of subsection e. of this section;  
29 (vii) a resolution by the school district's governing body of its  
30 intent to enter into a public-private partnership agreement for the  
31 project has been received; and (viii) the term sheet for any proposed  
32 procurement contains all necessary elements.

33 (5) The State Treasurer, in consultation with the Commissioner  
34 of the Department of Education and Chief Executive Officer of the  
35 Schools Development Authority, may promulgate any rules and  
36 regulations necessary to implement this subsection, including, but  
37 not limited to, provisions for fees to cover administrative costs, and  
38 for the determination of minimum school district standards for the  
39 operation of the project, and for the qualification for professional  
40 services, construction contracting, and other relevant qualifications.

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

47 h. The power of eminent domain shall not be delegated to any  
48 private entity under the provisions of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
49 (pending before the Legislature as this bill); however, a school

1 district may dedicate any property interest, including improvements,  
2 and tangible personal property of the school district for public use  
3 in a qualifying project if the school district finds that so doing will  
4 serve the public purpose of the project by minimizing the cost of the  
5 project to the school district or reducing the delivery time of a  
6 project.

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

18 j. (1) A private entity seeking to enter into a public-private  
19 partnership agreement with the school district shall be qualified by  
20 the school district as part of the procurement process, provided such  
21 process ensures that the private entity and its subcontractors and  
22 consultants, where relevant, meet at least the minimum  
23 qualifications standards promulgated by the State Treasurer, in  
24 consultation with the New Jersey Economic Development  
25 Authority, Department of Education, Schools Development  
26 Authority, and such other school district standards for qualification  
27 for professional services, construction contracting, and other  
28 qualifications applicable to the project, prior to submitting a  
29 proposal under the procurement process.

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

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

48 (4) The school district may accept unsolicited proposals from  
49 private entities for public-private partnership agreements. If the

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

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

46 (6) The school district may require, upon receipt of one or more  
47 proposals, that the private entity assume responsibility for all costs  
48 incurred by the school district before execution of the public-private  
49 partnership agreement, including costs of retaining independent

1 experts to review, analyze, and advise the school district with  
2 respect to the proposal.

3 (7) The school district shall set aside one percent of each project  
4 and remit it the Public-Private Partnership Review fund established  
5 pursuant to section \_\_\_ of the P.L. c. (C. ) (pending before the  
6 Legislature as this bill), for purposes of plan review and analysis  
7 required under the bill.

8 (8) Nothing in this section shall be construed as or deemed a  
9 waiver of the sovereign immunity of the State, the local government  
10 unit or an affected locality or public entity or any officer or  
11 employee thereof with respect to the participation in or approval of  
12 all or any part of the public-private project.<sup>2</sup>

13  
14 <sup>2</sup>[3. (New section) a. As used in this section:

15 “Authority” means the New Jersey Economic Development  
16 Authority established pursuant to section 4 of P.L.1974,  
17 c.80 (C.34:1B-4).

18 <sup>1</sup>["Availability payment" means a periodic payment made by a  
19 State government entity to a private entity in exchange for making  
20 available the use of a public building, road, structure, infrastructure,  
21 or facility at a predetermined level of service, operation, or  
22 maintenance.]<sup>1</sup>

23 “Building project” means the construction, reconstruction, repair,  
24 alteration, improvement, or extension of any public building,  
25 structure, or facility constructed or acquired by a State government  
26 entity to house State government functions, including any  
27 infrastructure or facility used or to be used by the public or in  
28 support of a public purpose or activity.

29 “Bundling” means the use of a solicitation for multiple projects  
30 in one single contract, through a public-private partnership project  
31 delivery method, the result of which restricts competition.

32 "Highway project" means the construction, reconstruction,  
33 repair, alteration, improvement, or extension of public expressways,  
34 freeways, and parkways, including bridges, tunnels, overpasses,  
35 underpasses, interchanges, rest areas, express bus roadways, bus  
36 pullouts and turnarounds, and park and ride facilities, including any  
37 infrastructure or facility used or to be used by the public or in  
38 support of a public purpose or activity; provided that the project  
39 shall include an expenditure of at least \$10 million in public funds,  
40 or any expenditure in solely private funds.

41 “Public-private partnership agreement” means an agreement  
42 entered into by a State government entity and a private entity  
43 pursuant to this section for the purpose of permitting a private entity  
44 to assume financial and administrative responsibility for the  
45 construction, reconstruction, repair, alteration, improvement,  
46 extension, operation, and maintenance of a building project or a  
47 highway project of, or for the benefit of, the State government  
48 entity.

1 “State government entity” means the State or any department,  
2 agency, board, commission, committee, or authority thereof subject  
3 to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et  
4 seq.), <sup>1</sup>**[but]** including the South Jersey Port Corporation created  
5 pursuant to “The South Jersey Port Corporation Act,” P.L.1968,  
6 c.60 (C.12:11A-1 et seq.). State government entity<sup>1</sup> shall not  
7 include any State institution of higher education.

8 b. (1) A State government entity may enter into a contract with  
9 a private entity, subject to subsection f. of this section, to be  
10 referred to as a public-private partnership agreement, that permits  
11 the private entity to assume financial and administrative  
12 responsibility for the construction, reconstruction, repair, alteration,  
13 improvement, extension, operation, and maintenance of a building  
14 or highway of, or for the benefit of, the State government entity,  
15 provided that the building or highway project is financed in whole  
16 or in part by the private entity.

17 (2) A public-private partnership agreement may include an  
18 agreement under which a State government entity and a private  
19 entity enter into a lease of a revenue-producing public building or  
20 highway in exchange for up-front or structured financing by the  
21 private entity for the project. Under the lease agreement, the  
22 private entity may be responsible for the management, operation,  
23 and maintenance of the building or highway. The private entity  
24 may receive some or all, as per the agreement, of the revenue  
25 generated by the building or highway, and may operate the building  
26 or highway in accordance with State government entity standards.  
27 At the end of the lease term, subsequent revenue generated by the  
28 building or highway, along with management, operation, and  
29 maintenance responsibility, shall revert to the State government  
30 entity. <sup>1</sup>A lease agreement entered into pursuant to this section shall  
31 be limited in duration to a term of not more than 30 years. A lease  
32 agreement shall be subject to all applicable provisions of current  
33 law governing leases by a State government entity not inconsistent  
34 with the provisions of this section.<sup>1</sup>

35 (3) <sup>1</sup>**[A** public-private partnership agreement may include the  
36 use of availability payments if deemed to be in the best interest of  
37 the public and the State government entity, provided the private  
38 entity shall operate the building, road, structure, infrastructure or  
39 facility in accordance with State government entity standards.

40 (4)<sup>1</sup> Bundling of projects shall be prohibited under this section.

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

48 (2) For the purposes of facilitating the financing of a project  
49 pursuant to this section, a public entity may become the owner or



1 lessee of the project or the lessee of the land, or both, may become  
2 the lessee of a building or highway to which the State government  
3 entity holds title and, notwithstanding any provision of law to the  
4 contrary, shall be empowered to enter into contracts with a private  
5 entity and its affiliates without being subject to the procurement and  
6 contracting requirements, unless otherwise set forth herein, of any  
7 statute applicable to the public entity provided that the private  
8 entity has been selected by the public entity pursuant to a  
9 solicitation of proposals or qualifications from at least two private  
10 entities. For the purposes of this subsection, a public entity shall  
11 include the New Jersey Department of Transportation, New Jersey  
12 Turnpike Authority, South Jersey Transportation Authority, New  
13 Jersey Transit, and the New Jersey Economic Development  
14 Authority, and any project undertaken pursuant to this section of  
15 which the public entity becomes the owner or lessee, or which is  
16 situated on land of which the public entity becomes the lessee, shall  
17 be deemed a "project" under the "New Jersey Economic  
18 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

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

39 (4) Prior to the commencement of work on a project, the private  
40 entity shall establish a construction account and appoint a third-  
41 party financial institution, who shall act as a collateral agent, to  
42 manage the construction account. The construction account shall  
43 include the funding, financial instruments, or both, that shall be  
44 used to fully capitalize and fund the project, and the collateral agent  
45 shall maintain a full accounting of the funds and instruments in the  
46 account. The funds and instruments in the construction account  
47 shall be held in trust for the benefit of the contractor, construction  
48 manager, and design-build team involved in the project. The funds  
49 and instruments in the construction account shall not be the

1 property of the private entity unless all amounts due to the  
2 construction account beneficiaries are paid in full. The construction  
3 account shall not be designated for more than one project.

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

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

27 (2) All projects proposed in accordance with this section shall  
28 be submitted to the New Jersey Economic Development Authority  
29 for its review and approval <sup>1</sup>in accordance with subsection f. of this  
30 section<sup>1</sup> prior to commencing procurement of the project <sup>1</sup>in  
31 accordance with subsection j. of this section<sup>1</sup> and, when practicable,  
32 are encouraged to adhere to the Leadership in Energy and  
33 Environmental Design Green Building Rating System as adopted by  
34 the United States Green Building Council, the Green Globes  
35 Program adopted by the Green Building Initiative, or a comparable  
36 nationally recognized, accepted, and appropriate sustainable  
37 development rating system.

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

43 f. (1) All projects proposed in accordance with this section  
44 shall be submitted to the New Jersey Economic Development  
45 Authority for the authority's review and approval. The projects are  
46 encouraged, when practicable, to adhere to the green building  
47 manual prepared by the Commissioner of Community Affairs  
48 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

1 (2) (a) In order for an application to be complete and  
2 considered by the authority, the application shall include, but not be  
3 limited to: (i) a full description of the proposed public-private  
4 partnership agreement between the State government entity and the  
5 private developer; (ii) a full description of the project, including a  
6 description of any agreement for the lease of a revenue-producing  
7 building or highway related to the project; (iii) the estimated costs  
8 and financial documentation for the project; (iv) a timetable for  
9 completion of the construction of the project extending no more  
10 than five years after consideration and approval; and (v) any other  
11 requirements that the authority deems appropriate or necessary.

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

21 (3) The authority shall review all completed applications, and  
22 request additional information as is needed to make a complete  
23 assessment of the project. <sup>1</sup>The criteria for assessing the project  
24 shall include, but may not be limited to: (i) feasibility and design of  
25 the project; (ii) experience and qualifications of the private entity;  
26 (iii) soundness of the financial plan; (iv) adequacy of the required  
27 exhibits; (v) adequacy of the long-range maintenance plan; and (vi)  
28 the existence of a clear public benefit.<sup>1</sup> No project shall commence  
29 the procurement process until <sup>1</sup>**[final]**<sup>1</sup> approval has been granted  
30 by the authority <sup>1</sup>. Following the procurement process, but before  
31 the State government entity enters into a public-private partnership  
32 agreement, the project and the resultant short list of private entities  
33 shall be submitted to the authority for final approval<sup>1</sup>; provided,  
34 however, that the authority shall retain the right to revoke approval  
35 if it determines that the project has <sup>1</sup>substantially<sup>1</sup> deviated from the  
36 plan submitted pursuant to paragraph (2) of this subsection, and  
37 shall retain the right to cancel a procurement after a short list of  
38 private entities is developed if deemed in the public interest as  
39 specified under subsection j. of this section. Notwithstanding any  
40 provision of this section to the contrary, all roadway or highway  
41 projects shall be subject to review and approval by the State  
42 Treasurer, <sup>1</sup>which shall be conducted in consultation with the  
43 Commissioner of the Department of Transportation,<sup>1</sup> and the  
44 authority shall not approve any roadway or highway project  
45 disapproved by the State Treasurer.

46 (4) The authority may promulgate any rules and regulations  
47 necessary to implement this subsection, including provisions for  
48 fees to cover administrative costs.

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

7 h. The power of eminent domain shall not be delegated to any  
8 private entity under the provisions of P.L. , c. (C. )  
9 (pending before the Legislature as this bill); however, a State  
10 government entity may dedicate any property interest, including  
11 land, improvements, and tangible personal property of the State  
12 government entity for public use in a qualifying project if the State  
13 government entity finds that so doing will serve the public purpose  
14 of the project by minimizing the cost of the project to the State  
15 government entity or reducing the delivery time of a project.

16 i. Any public-private partnership agreement, if appropriate,  
17 shall include provisions affirming that the agreement and any work  
18 performed under the agreement are subject to the provisions of the  
19 "Construction Industry Independent Contractor Act," P.L.2007,  
20 c.114 (C.34:20-1 et seq.).

21 j. (1) A private entity seeking to enter into a public-private  
22 partnership agreement with the State government entity shall be  
23 qualified by the State government entity as part of the procurement  
24 process, provided such process ensures that the private entity meets  
25 at least the minimum State government entity standards for  
26 qualification for professional services, construction contracting, and  
27 other qualifications applicable to the project, prior to submitting a  
28 proposal under the procurement process. <sup>1</sup>The State government  
29 entity shall issue a request for proposals, which shall close within  
30 45 days.<sup>1</sup> The qualification process <sup>1</sup>shall be conducted within 45  
31 days after the closing date for the receipt of proposals, and<sup>1</sup> shall  
32 result in a list of qualified private entities, that may be ranked in  
33 order to generate a short list of private entities requested to submit a  
34 final proposal.

35 (2) The State government entity may accept unsolicited  
36 proposals from private entities for public-private partnership  
37 agreements. If the State government entity receives an unsolicited  
38 proposal and determines that it meets the standards of this section,  
39 the State government entity shall publish a notice of the receipt of  
40 the proposal on the Internet site of the State government entity, or  
41 through advertisements in newspapers. If a notice is published  
42 exclusively in newspapers, the notice shall appear in two or more  
43 newspapers circulated wholly or in part in the county where the  
44 proposed project is to be located. The notice shall provide that the  
45 State government entity will accept, for <sup>1</sup>[45] 120<sup>1</sup> days after the  
46 initial date of publication, proposals meeting the standards of this  
47 section from other private entities for eligible projects that satisfy  
48 the same basic purpose and need. A copy of the notice shall be

1 mailed to each municipal and county local government body in the  
2 geographic area affected by the proposal.

3 (3) After the proposal or proposals have been received, and any  
4 public notification period has expired, the State government entity  
5 shall rank the proposals in order of preference. In ranking the  
6 proposals, the State government entity may consider factors that  
7 include, but may not be limited to, professional qualifications,  
8 general business terms, innovative engineering, architectural  
9 services, or cost-reduction terms, finance plans, and the need for  
10 State government entity funds to deliver the project and discharge  
11 the agreement. If only one proposal is received, the State  
12 government entity shall negotiate in good faith and, if not satisfied  
13 with the results of the negotiations, the State government entity  
14 may, at its sole discretion, terminate negotiations.

15 (4) The State government entity may require that the private  
16 entity assume responsibility for all costs incurred by the State  
17 government entity before execution of the public-private  
18 partnership agreement, including costs of retaining independent  
19 experts to review, analyze, and advise the State government entity  
20 with respect to the proposal.

21 (5) If the authority or State Treasurer deem it in the public's  
22 interest to cancel a procurement after a short list of private entities  
23 is developed, the authority shall pay for documented third party  
24 costs, including, but not limited to, design services, legal advisors,  
25 financial advisors, and reasonable expenditures.

26 (6) Stipends may be used on public private partnership projects  
27 when there is a substantial opportunity for innovation and the costs  
28 for developing a proposal are significant. The State government  
29 entity may elect to pay unsuccessful proposers for the work product  
30 they submit with their proposal in response to a request for  
31 proposals. The use by the State government entity of any design  
32 element contained in an unsuccessful proposal shall be at the sole  
33 risk and discretion of the State government entity and shall not  
34 confer liability on the recipient of the stipulated stipend amount.  
35 After payment of the stipulated stipend amount, the State  
36 government entity and the unsuccessful proposer shall jointly own  
37 the rights to, and may make use of any work product contained in  
38 the proposal, including the technologies, techniques, methods,  
39 processes, ideas, and information contained in the proposal, project  
40 design, and project financial plan. The use by the unsuccessful  
41 proposer of any part of the work product contained in the proposal  
42 shall be at the sole risk of the unsuccessful proposer and shall not  
43 confer liability on the State government entity. **】<sup>2</sup>**

44

45 <sup>2</sup>3. (New section) a. As used in this section:

46 “Authority” means the New Jersey Economic Development  
47 Authority established pursuant to section 4 of P.L.1974, c.80  
48 (C.34:1B-4) <sup>3 3</sup>.

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

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

10       “Department” means the Department of Transportation.

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

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

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

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

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

47       (2) A public-private partnership agreement may include an  
48 agreement under which a State government entity and a private  
49 entity enter into a lease of a revenue-producing public building or

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

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

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

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

31 (2) <sup>3</sup>Any conveyance of real property, capital improvements  
32 and personal property owned by the State shall not be subject to the  
33 approval of the State House Commission pursuant to R.S.52:20-1 et  
34 seq or the State Legislature, provided the State Treasurer approves  
35 of such transfer as being necessary to meet the goals of this act,  
36 P.L. c. , (C. ) (pending before the Legislature as this bill).<sup>3</sup>  
37 Notwithstanding any provision of law to the contrary, a State  
38 government entity shall be empowered to enter into contracts with a  
39 private entity and its affiliates without being subject to the  
40 procurement and contracting requirements, unless otherwise set  
41 forth herein, of any statute applicable to the public entity provided  
42 that the private entity has been selected by the public entity  
43 pursuant to a solicitation of proposals or qualifications from at least  
44 two private entities, or it has received an unsolicited proposal and  
45 followed the procedure set forth in paragraph (2) of subsection j. of  
46 this section. A State government entity shall be the owner or lessee  
47 of any project financed by a State entity.

48 (3) Prior to the commencement of work on a project, the private  
49 entity shall establish a construction account and appoint a third-

1 party financial institution, who shall be prequalified by the State  
2 Treasurer, to act as a collateral agent, and manage the construction  
3 account. The construction account shall include the funding,  
4 financial instruments, or both, that shall be used to fully capitalize  
5 and fund the project, and the collateral agent shall maintain a full  
6 accounting of the funds and instruments in the account. The funds  
7 and instruments in the construction account shall be held in trust for  
8 the benefit of the contractor, construction manager, and design-  
9 build team involved in the project. The funds and instruments in  
10 the construction account shall not be the property of the private  
11 entity unless all amounts due to the construction account  
12 beneficiaries are paid in full. The construction account shall not be  
13 designated for more than one project.

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

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

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



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

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

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

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

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

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

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

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

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

1 Treasurer shall retain the right to revoke approval if the project has  
2 substantially deviated from the plan submitted pursuant to  
3 paragraph (2) of this subsection.

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

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

17 h. The power of eminent domain shall not be delegated to any  
18 private entity under the provisions of P.L. , c. (C. )  
19 (pending before the Legislature as this bill); however, the State  
20 Treasurer may dedicate any property interest, including  
21 improvements, and tangible personal property of the State for  
22 public use in a qualifying project if the State finds that so doing will  
23 serve the public purpose of the project by minimizing the cost of the  
24 project to the State government entity or reducing the delivery time  
25 of a project.

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

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

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

1 qualifications shall be published on the official Internet website of  
2 the State government entity and at least one or more newspapers  
3 with statewide circulation.

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

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

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

1 services, or cost-reduction terms, finance plans, and the need for  
2 State government entity funds to deliver the project and discharge  
3 the agreement and shall rely upon, at a minimum, the evaluation  
4 criteria promogulated by the State Treasurer, in consultation with  
5 the New Jersey Economic Development Authority. The Department  
6 of the Treasury may negotiate the final terms with the private  
7 entities submitting proposals, including price, term, and any other  
8 term or condition so as to make the project well-suited to the needs  
9 of the State government entity and commercially viable for the  
10 private entity. The State Treasurer shall select proposals that meet  
11 the standards of this section and that best meet the needs, price and  
12 other factors considered by the State Treasurer. The private entity  
13 selected shall comply with all laws and regulations required by the  
14 State government entity, including but not limited to section 1 of  
15 P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975,  
16 c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2),  
17 P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-  
18 51 et al), Executive Order No. 117 of 2008, Executive Order No.  
19 118 of 2008, Executive Order No. 189, prior to executing the public  
20 private partnership agreement. If only one proposal is received, the  
21 State government entity shall negotiate in good faith and, if not  
22 satisfied with the results of the negotiations, the State government  
23 entity may, at its sole discretion, terminate negotiations.

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

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

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

3 (8) The State government entity shall set aside one percent of  
4 the total cost of each project and remit it to the Public Private  
5 Partnership Review fund established pursuant to P.L. c. (C. )  
6 (pending before the Legislature as this bill), for purposes of plan  
7 review and analysis required under the bill.

8 (9) Nothing in this section shall be construed as or deemed a  
9 waiver of the sovereign immunity of the State, an affected locality  
10 or public entity or any officer or employee thereof with respect to  
11 the participation in or approval of all or any part of the public-  
12 private project.<sup>2</sup>

13

14 4. (New section) Notwithstanding the provisions of section 43  
15 of P.L.2009, c.90 (C.18A:64-85) to the contrary, the New Jersey  
16 Institute of Technology may enter into a public-private partnership  
17 agreement in accordance with the provisions of that section.

18

19 <sup>2</sup>5. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to  
20 read as follows:

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

32 (2) A public-private partnership agreement may include an  
33 agreement under which a State or county college **【leases to a**  
34 **private entity the operation】** and the private entity enter into a lease  
35 of a dormitory or other 【revenue-producing】 facility to which the  
36 college holds title, in exchange for up-front or structured financing  
37 by the private entity for the construction of classrooms,  
38 laboratories, or other academic or research buildings. Under the  
39 lease agreement, the college shall continue to hold title to the  
40 facility, and the private entity shall be responsible for the  
41 management, operation, and maintenance of the facility. The  
42 private entity shall receive some or all, as per the agreement, of the  
43 revenue generated by the facility and shall operate the facility in  
44 accordance with college standards. 【A lease agreement shall not  
45 affect the status or employment rights of college employees who are  
46 assigned to, or provide services to, the leased facility.】 A lease  
47 agreement shall not affect the status or employment rights of  
48 college employees who are assigned to, or provide services to, the  
49 leased facility. At the end of the lease term, subsequent revenue

1 generated by the facility, along with management, operation, and  
2 maintenance responsibility, shall revert to the college. <sup>1</sup>A lease  
3 agreement entered into pursuant to this section shall be limited in  
4 duration to a term of not more than 30 years. A lease agreement  
5 shall be subject to all applicable provisions of current law  
6 governing leases by a State or county college not inconsistent with  
7 the provisions of this section.<sup>1</sup>

8 (3) <sup>1</sup>["A public-private partnership agreement may include the  
9 use of availability payments if deemed to be in the best interest of  
10 the public and the State or county college, provided the private  
11 entity shall operate the building, structure, infrastructure or facility  
12 in accordance with State or county college standards.]"<sup>1</sup> Bundling  
13 of projects shall be prohibited. As used in this paragraph,  
14 <sup>1</sup>["availability payment" means a periodic payment made by a State  
15 or county college to a private entity in exchange for making  
16 available the use of a public building, structure, infrastructure, or  
17 facility at a predetermined level of service, operation, or  
18 maintenance. "Bundling" "bundling" means the use of a  
19 solicitation for multiple projects in one single contract, through a  
20 public-private partnership project delivery method, the result of  
21 which restricts competition.

22 b. (1) A private entity that assumes financial and  
23 administrative responsibility for a project pursuant to subsection a.  
24 of this section shall not be subject, unless otherwise set forth herein,  
25 to the procurement and contracting requirements of all statutes  
26 applicable to the institution of higher education at which the project  
27 is completed, including, but not limited to, the "State College  
28 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the  
29 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
30 et seq.). For the purposes of facilitating the financing of a project  
31 pursuant to subsection a. of this section, a public entity, including  
32 any State or county college or public research university, may  
33 become the owner or lessee of the project or the lessee of the land,  
34 or both, may become the lessee of a dormitory or other revenue-  
35 producing facility to which the college holds title, may issue  
36 indebtedness in accordance with the public entity's or institution's  
37 enabling legislation and, notwithstanding any provision of law to  
38 the contrary, shall be empowered to enter into contracts with a  
39 private entity and its affiliates, unless otherwise set forth herein,  
40 without being subject to the procurement and contracting  
41 requirements of any statute applicable to the public entity or  
42 institution provided that the private entity has been selected by the  
43 institution of higher education pursuant to a solicitation of  
44 proposals or qualifications from at least two private entities. For  
45 the purposes of this section, a public entity shall include the New  
46 Jersey Economic Development Authority <sup>1</sup>or the New Jersey  
47 Educational Facilities Authority<sup>1</sup>, and any project undertaken  
48 pursuant to subsection a. of this section of which the authority  
49 becomes the owner or lessee, or which is situated on land of which

1 the authority becomes the lessee, shall be deemed a "project" under  
2 the "The New Jersey Economic Development Authority Act,"  
3 P.L.1974, c.80 (C.34:1B-1 et seq.) <sup>1</sup>or the "New Jersey educational  
4 facilities authority law," N.J.S.18A:72A-1 et seq., as appropriate<sup>1</sup>.

5 (2) As the carrying out of any project described pursuant to this  
6 section constitutes the performance of an essential public function,  
7 all projects **[predominantly used in furtherance of the]** having the  
8 primary stated purpose of furthering the educational purposes of the  
9 institution undertaken pursuant to this section, provided it is owned  
10 by or leased to a public entity, any State or county college or public  
11 research university, non-profit business entity, foreign or domestic,  
12 or a business entity wholly owned by such non-profit business  
13 entity, shall at all times be exempt from property taxation and  
14 special assessments of the State, or any municipality, or other  
15 political subdivision of the State and, notwithstanding the  
16 provisions of section 15 of P.L.1974, c.80 (C.34:1B-15), section 2  
17 of P.L.1977, c.272 (C.54:4-2.2b), or any other section of law to the  
18 contrary, shall not be required to make payments in lieu of taxes.  
19 The land upon which the project is located shall also at all times be  
20 exempt from property taxation. Further, the project and land upon  
21 which the project is located shall not be subject to the provisions of  
22 section 1 of P.L.1984, c.176 (C.54:4-1.10) regarding the tax  
23 liability of private parties conducting for profit activities on tax  
24 exempt land, or section 1 of P.L.1949, c.177 (C.54:4-2.3) regarding  
25 the taxation of leasehold interests in exempt property that are held  
26 by nonexempt parties.

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

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



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

17 (2) All **【construction】** projects proposed in accordance with this  
18 **【paragraph】** section shall be submitted to the New Jersey Economic  
19 Development Authority for its review and approval <sup>1</sup>in accordance  
20 with subsection f. of this section<sup>1</sup> prior to commencing  
21 procurement of the project <sup>1</sup>in accordance with subsection k. of this  
22 section<sup>1</sup> and, when practicable, are encouraged to adhere to the  
23 Leadership in Energy and Environmental Design Green Building  
24 Rating System as adopted by the United States Green Building  
25 Council, the Green Globes Program adopted by the Green Building  
26 Initiative, or a comparable nationally recognized, accepted, and  
27 appropriate sustainable development rating system.

28 **【(2) Where no public fund has been established for the financing**  
29 **of a public improvement, the chief financial officer of the public**  
30 **owner shall require the private entity for whom the public**  
31 **improvement is being made】** (3) The general contractor,  
32 construction manager, or design-build team shall be required to post  
33 【, or cause to be posted,】 a performance bond to ensure completion  
34 of the project and a payment bond guaranteeing prompt payment of  
35 moneys due 【to the contractor, his or her subcontractors and to all  
36 persons furnishing labor or materials to the contractor or his or her  
37 subcontractors in the prosecution of the work on the public  
38 improvement】 in accordance with and conforming to the  
39 requirements of N.J.S.2A:44-143 et seq.

40 e. **【A general contractor, construction manager, design-build**  
41 **team, or subcontractor shall be registered pursuant to the provisions**  
42 **of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified**  
43 **by the Division of Property Management and Construction to**  
44 **perform work on a public-private partnership higher education**  
45 **project.】** (Deleted by amendment, P.L. , c. ) (pending before the  
46 Legislature as this bill)

47 f. (1) **【On or before August 1, 2015, all】** All projects  
48 proposed in accordance with this section shall be submitted to the

1 New Jersey Economic Development Authority for the authority's  
2 review and approval **】**; except that in the case of projects proposed  
3 in accordance with paragraph (2) of subsection a. of this section, all  
4 projects shall be submitted on or before August 1, 2016**】**. The  
5 projects are encouraged, when practicable, to adhere to the green  
6 building manual prepared by the Commissioner of Community  
7 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).  
8 **【**Any application that is deemed to be incomplete on August 2,  
9 2015, or on August 2, 2016 in the case of an application submitted  
10 pursuant to paragraph (2) of subsection a. of this section, shall not  
11 be eligible for consideration.**】**

12 (2) (a) In order for an application to be complete and  
13 considered by the authority, the application shall include, but not be  
14 limited to: (i) a full description of the proposed public-private  
15 partnership agreement between the State or county college and the  
16 private developer; (ii) a full description of the project, including a  
17 description of any agreement for the lease of a revenue-producing  
18 facility related to the project; (iii) the estimated costs and financial  
19 documentation for the project; (iv) a timetable for completion of the  
20 construction of the project extending no more than five years after  
21 consideration and approval; and (v) any other requirements that the  
22 authority deems appropriate or necessary. <sup>1</sup>The application shall  
23 also include a resolution by the governing body of the State or  
24 county college of its intent to enter into a public-private partnership  
25 agreement pursuant to this section.<sup>1</sup>

26 (b) As part of the estimated costs and financial documentation  
27 for the project, the application shall contain a long-range  
28 maintenance plan and a long-range maintenance bond and shall  
29 specify the expenditures that qualify as an appropriate investment in  
30 maintenance. The long-range maintenance plan shall be approved  
31 by the authority pursuant to regulations promulgated by the  
32 authority that reflect national building maintenance standards and  
33 other appropriate building maintenance benchmarks. All contracts  
34 to implement a long-range maintenance plan pursuant to this  
35 paragraph shall contain a project labor agreement. The project  
36 labor agreement shall be subject to the provisions of P.L.2002,  
37 c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest  
38 extent possible enhances employment opportunities for individuals  
39 residing in the county of the project's location.

40 (3) The authority shall review all completed applications, and  
41 request additional information as is needed to make a complete  
42 assessment of the project. <sup>1</sup>The criteria for assessing the project  
43 shall include, but may not be limited to: (i) feasibility and design of  
44 the project; (ii) experience and qualifications of the private entity;  
45 (iii) soundness of the financial plan; (iv) adequacy of the required  
46 exhibits; (v) adequacy of the long-range maintenance plan; (vi) the  
47 existence of a clear public benefit; and (vii) a resolution by the  
48 governing body of the State or county college of its intent to enter  
49 into a public-private partnership agreement for the project.<sup>1</sup> No

1 project shall ~~be undertaken~~ commence the procurement process  
2 until ~~final~~ approval has been granted by the authority <sup>1</sup>.  
3 Following the procurement process, but before the State or county  
4 college enters into a public-private partnership agreement, the  
5 project and the resultant short list of private entities shall be  
6 submitted to the authority for final approval<sup>1</sup>; provided, however,  
7 that the authority shall retain the right to revoke approval if it  
8 determines that the project has <sup>1</sup>substantially<sup>1</sup> deviated from the  
9 plan submitted pursuant to paragraph (2) of this subsection, and  
10 shall retain the right to cancel a procurement after a short list of  
11 private entities is developed if deemed in the public interest as  
12 specified under subsection k. of this section.

13 (4) The authority may promulgate any rules and regulations  
14 necessary to implement this subsection, including provisions for  
15 fees to cover administrative costs.

16 **Where no public fund has been established for the financing of**  
17 **a public improvement, the chief financial officer of the public**  
18 **owner shall require the private entity for whom the public**  
19 **improvement is being made to post, or cause to be posted, a bond**  
20 **guaranteeing prompt payment of moneys due to the contractor, his**  
21 **or her subcontractors and to all persons furnishing labor or**  
22 **materials to the contractor or his or her subcontractors in the**  
23 **prosecution of the work on the public improvement.**

24 g. **The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall**  
25 **not apply to any project carried out pursuant to this section.**  
26 (Deleted by amendment, P.L. , c. ) (pending before the  
27 Legislature as this bill)

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

34 i. The power of eminent domain shall not be delegated to any  
35 private entity under the provisions of P.L. , c. (C. )  
36 (pending before the Legislature as this bill); however, a State or  
37 county college may dedicate any property interest, including land,  
38 improvements, and tangible personal property of the State or county  
39 college for public use in a qualifying project if the State or county  
40 college finds that so doing will serve the public purpose of the  
41 project by minimizing the cost of the project to the State or county  
42 college or reducing the delivery time of a project.

43 j. Any public-private partnership agreement, if appropriate,  
44 shall include provisions affirming that the agreement and any work  
45 performed under the agreement are subject to the provisions of the  
46 "Construction Industry Independent Contractor Act," P.L.2007,  
47 c.114 (C.34:20-1 et seq.).

48 k. (1) A private entity seeking to enter into a public-private  
49 partnership agreement with the State or county college shall be

1 qualified by the State or county college as part of the procurement  
2 process, provided such process ensures that the private entity meets  
3 at least the minimum State or county college standards for  
4 qualification for professional services, construction contracting, and  
5 other qualifications applicable to the project, prior to submitting a  
6 proposal under the procurement process. <sup>1</sup>The State or county  
7 college shall issue a request for proposals, which shall close within  
8 45 days.<sup>1</sup> The qualification process <sup>1</sup>shall be conducted within 45  
9 days after the closing date for the receipt of proposals, and<sup>1</sup> shall  
10 result in a list of qualified private entities, that may be ranked in  
11 order to generate a short list of private entities requested to submit a  
12 final proposal.

13 (2) The State or county college may accept unsolicited proposals  
14 from private entities for public-private partnership agreements. If  
15 the State or county college receives an unsolicited proposal and  
16 determines that it meets the standards of this section, the State or  
17 county college shall publish a notice of the receipt of the proposal  
18 on the Internet site of the State or county college, or through  
19 advertisements in newspapers. If a notice is published exclusively  
20 in newspapers, the notice shall appear in two or more newspapers  
21 circulated wholly or in part in the county where the proposed  
22 project is to be located. The notice shall provide that the State or  
23 county college will accept, for <sup>1</sup>[45] 120<sup>1</sup> days after the initial date  
24 of publication, proposals meeting the standards of this section from  
25 other private entities for eligible projects that satisfy the same basic  
26 purpose and need. A copy of the notice shall be mailed to each  
27 municipal and county local government body in the geographic area  
28 affected by the proposal.

29 (3) After the proposal or proposals have been received, and any  
30 public notification period has expired, the State or county college  
31 shall rank the proposals in order of preference. In ranking the  
32 proposals, the State or county college may consider factors that  
33 include, but may not be limited to, professional qualifications,  
34 general business terms, innovative engineering, architectural  
35 services, or cost-reduction terms, finance plans, and the need for  
36 State or county college funds to deliver the project and discharge  
37 the agreement. If only one proposal is received, the State or county  
38 college shall negotiate in good faith and, if not satisfied with the  
39 results of the negotiations, the State or county college may, at its  
40 sole discretion, terminate negotiations.

41 (4) The State or county college may require that the private  
42 entity assume responsibility for all costs incurred by the State or  
43 county college before execution of the public-private partnership  
44 agreement, including costs of retaining independent experts to  
45 review, analyze, and advise the State or county college with respect  
46 to the proposal.

47 (5) If the authority or State Treasurer deem it in the public's  
48 interest to cancel a procurement after a short list of private entities  
49 is developed, the authority shall pay for documented third party

1 costs, including, but not limited to, design services, legal advisors,  
2 financial advisors, and reasonable expenditures.

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

21 (cf: P.L.2013, c.161, s.26)]<sup>2</sup>

22  
23 <sup>25.</sup> Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to  
24 read as follows:

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

36 (2) A public-private partnership agreement may include an  
37 agreement under which a State or county college **【**leases to a  
38 private entity the operation**】** and the private entity enter into a lease  
39 of a dormitory or other revenue-producing facility to which the  
40 college holds title, in exchange for up-front or structured financing  
41 by the private entity for the construction of classrooms,  
42 laboratories, or other academic or research buildings. Under the  
43 lease agreement, the college shall continue to hold title to the  
44 facility, and the private entity shall be responsible for the  
45 management, operation, and maintenance of the facility. The  
46 private entity shall receive some or all, as per the agreement, of the  
47 revenue generated by the facility and shall operate the facility in  
48 accordance with college standards. **【**A lease agreement shall not  
49 affect the status or employment rights of college employees who are

1 assigned to, or provide services to, the leased facility.】 A lease  
2 agreement shall not affect the status or employment rights of  
3 college employees who are assigned to, or provide services to, the  
4 leased facility. At the end of the lease term, subsequent revenue  
5 generated by the facility, along with management, operation, and  
6 maintenance responsibility, shall revert to the college. A lease  
7 agreement entered into pursuant to this section shall be limited in  
8 duration to a term of not more than 30 years. A lease agreement  
9 shall be subject to all applicable provisions of current law  
10 governing leases by a State or county college not inconsistent with  
11 the provisions of this section. For the purposes of this section,  
12 “revenue-producing” shall include leaseback arrangements.

13 (3) Bundling of projects shall be prohibited. As used in this  
14 paragraph, “bundling” means the use of a solicitation for multiple  
15 projects in one single contract, through a public-private partnership  
16 project delivery method, the result of which restricts competition.

17 b. (1) A private entity that assumes full financial and  
18 administrative responsibility for a project pursuant to subsection a.  
19 of this section shall not be subject, unless otherwise set forth herein,  
20 to the procurement and contracting requirements of all statutes  
21 applicable to the institution of higher education at which the project  
22 is completed, including, but not limited to, the "State College  
23 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the  
24 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
25 et seq.). **【**For the purposes of facilitating the financing of a project  
26 pursuant to subsection a. of this section, a public entity may become  
27 the owner or lessee of the project or the lessee of the land, or both,  
28 may become the lessee of a dormitory or other revenue-producing  
29 facility to which the college holds title, may issue indebtedness in  
30 accordance with the public entity's or institution's enabling  
31 legislation and, notwithstanding **】** Any capital improvements and  
32 conveyance of personal property owned by the State shall not be  
33 subject to the approval of the State House Commission pursuant to  
34 R.S.52:20-1 et seq., or the State Legislature, provided the State  
35 Treasurer approves of such transfer as being necessary to meet the  
36 goals of this act, P.L. c. (pending before the Legislature as this  
37 bill). Notwithstanding any provision of law to the contrary, any  
38 State or county college or public research university shall be  
39 empowered to enter into contracts with a private entity and its  
40 affiliates, unless otherwise set forth herein, without being subject to  
41 the procurement and contracting requirements of any statute  
42 applicable to the public entity or institution provided that the  
43 private entity has been selected by the institution of higher  
44 education pursuant to a solicitation of proposals or qualifications  
45 from at least two private entities, or it has received an unsolicited  
46 proposal and followed the procedure set forth in paragraph (2) of  
47 subsection k. of this section. For the purposes of this section, a  
48 public entity shall include the New Jersey Economic Development  
49 Authority or the New Jersey Educational Facilities Authority, and

1 any project undertaken pursuant to subsection a. of this section of  
2 which the authority becomes the owner or lessee, or which is  
3 situated on land of which **the authority** either of those authorities  
4 becomes the lessee, shall be deemed a "project" under the "The  
5 New Jersey Economic Development Authority Act," P.L.1974, c.80  
6 (C.34:1B-1 et seq.) or the "New Jersey educational facilities  
7 authority law," N.J.S.18A:72A-1 et seq., as appropriate.

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

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

45 c. Each worker employed in the construction, rehabilitation, or  
46 building maintenance services of facilities by a private entity that  
47 has entered into a public-private partnership agreement with a State  
48 or county college pursuant to subsection a. of this section shall be  
49 paid not less than the prevailing wage rate for the worker's craft or

1 trade as determined by the Commissioner of Labor and Workforce  
2 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
3 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

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

34 **【(2) Where no public fund has been established for the financing**  
35 **of a public improvement, the chief financial officer of the public**  
36 **owner shall require the private entity for whom the public**  
37 **improvement is being made】** (3) The general contractor,  
38 construction manager, or design-build team shall be required to post  
39 **【, or cause to be posted,】** a performance bond to ensure completion  
40 of the project and a payment bond guaranteeing prompt payment of  
41 moneys due 【to the contractor, his or her subcontractors and to all  
42 persons furnishing labor or materials to the contractor or his or her  
43 subcontractors in the prosecution of the work on the public  
44 improvement】 in accordance with and conforming to the  
45 requirements of N.J.S.2A:44-143 et seq.

46 e. **【A general contractor, construction manager, design-build**  
47 **team, or subcontractor shall be registered pursuant to the provisions**  
48 **of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified**



1 by the Division of Property Management and Construction to  
2 perform work on a public-private partnership higher education  
3 project. **】** (Deleted by amendment, P.L. , c. ) (pending before the  
4 Legislature as this bill)

5 f. **【**(1) On or before August 1, 2015, all projects proposed in  
6 accordance with this section shall be submitted to the New Jersey  
7 Economic Development Authority for the authority's review and  
8 approval ; except that in the case of projects proposed in accordance  
9 with paragraph (2) of subsection a. of this section, all projects shall  
10 be submitted on or before August 1, 2016. The projects are  
11 encouraged, when practicable, to adhere to the green building  
12 manual prepared by the Commissioner of Community Affairs  
13 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any  
14 application that is deemed to be incomplete on August 2, 2015, or  
15 on August 2, 2016 in the case of an application submitted pursuant  
16 to paragraph (2) of subsection a. of this section, shall not be eligible  
17 for consideration.

18 (2) (a) In order for an application to be complete and  
19 considered by the authority, the application shall include, but not be  
20 limited to: (i) a public-private partnership agreement between the  
21 State or county college and the private developer; (ii) a full  
22 description of the project, including a description of any agreement  
23 for the lease of a revenue-producing facility related to the project;  
24 (iii) the estimated costs and financial documentation for the project;  
25 (iv) a timetable for completion of the project extending no more  
26 than five years after consideration and approval; and (v) any other  
27 requirements that the authority deems appropriate or necessary.

28 (b) As part of the estimated costs and financial documentation  
29 for the project, the application shall contain a long-range  
30 maintenance plan and shall specify the expenditures that qualify as  
31 an appropriate investment in maintenance. The long-range  
32 maintenance plan shall be approved by the authority pursuant to  
33 regulations promulgated by the authority that reflect national  
34 building maintenance standards and other appropriate building  
35 maintenance benchmarks. All contracts to implement a long-range  
36 maintenance plan pursuant to this paragraph shall contain a project  
37 labor agreement. The project labor agreement shall be subject to  
38 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in  
39 a manner that to the greatest extent possible enhances employment  
40 opportunities for individuals residing in the county of the project's  
41 location.

42 (3) The authority shall review all completed applications, and  
43 request additional information as is needed to make a complete  
44 assessment of the project. No project shall be undertaken until final  
45 approval has been granted by the authority; provided, however, that  
46 the authority shall retain the right to revoke approval if it  
47 determines that the project has deviated from the plan submitted  
48 pursuant to paragraph (2) of this subsection.

1       (4) The authority may promulgate any rules and regulations  
2 necessary to implement this subsection, including provisions for  
3 fees to cover administrative costs. **】** (1) Prior to entering into a  
4 public-private partnership, the State or county college shall  
5 determine: (i) the benefits to be realized by the project; (ii) the cost  
6 of project if it is developed by the public sector supported by  
7 comparisons to comparable projects; (iii) the maximum public  
8 contribution that the State or county college will allow under the  
9 public-private partnership; (iv) a comparison of the financial and  
10 non-financial benefits of the public-private partnership compared  
11 to other options including the public sector option; (v) a list of  
12 risks, liabilities and responsibilities to be transferred to the private  
13 entity and those to be retained by the state or county college; and  
14 (vi) if the project has a high, medium or low level of project  
15 delivery risk and how the public is protected from these risks.

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

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

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

43       (5) (a) In order for an application to be complete and considered  
44 by the State Treasurer, the application shall include, but not be  
45 limited to: (i) a full description of the proposed public-private  
46 partnership agreement between the State or county college and the  
47 private developer, including all information obtained by and  
48 findings of the state or county college pursuant to paragraphs (1)  
49 and (2) of this subsection; (ii) a full description of the project,

1 including a description of any agreement for the lease of a revenue-  
2 producing facility related to the project; (iii) the estimated costs and  
3 financial documentation for the project showing the underlying  
4 financial models and assumptions that determined the estimated  
5 costs. The financial documentation shall include at least three  
6 different projected estimated costs showing scenarios in which  
7 materially different economic circumstances are assumed and an  
8 explanation for how the estimated costs were determined based on  
9 the three scenarios; (iv) a timetable for completion of the  
10 construction of the project; (v) an analysis of all available funding  
11 options for the project, including an analysis of the financial  
12 viability and advisability of the project, along with evidence of the  
13 public benefit in advancing the project as a public-private  
14 partnership; (vi) a record of the public hearing; and (vii) any other  
15 requirements that the State Treasurer deems appropriate or  
16 necessary. The application shall also include a resolution by the  
17 governing body of the State or county college of its intent to enter  
18 into a public-private partnership agreement pursuant to this section.

19 (b) As part of the estimated costs and financial documentation  
20 for the project, the application shall contain a long-range  
21 maintenance plan and a long-range maintenance bond and shall  
22 specify the expenditures that qualify as an appropriate investment in  
23 maintenance. The long-range maintenance plan shall be approved  
24 by the State Treasurer pursuant to regulations promulgated by the  
25 State Treasurer that reflect national building maintenance standards  
26 and other appropriate building maintenance benchmarks. All  
27 contracts to implement a long-range maintenance plan pursuant to  
28 this paragraph shall contain a project labor agreement. The project  
29 labor agreement shall be subject to the provisions of P.L.2002, c.44  
30 (C.52:38-1 et seq.), and shall be in a manner that to the greatest  
31 extent possible enhances employment opportunities for individuals  
32 residing in the county of the project's location.

33 (6) The State Treasurer, in consultation with the Secretary of  
34 Higher Education and the New Jersey Educational Facilities  
35 Authority, shall review all completed applications, and request  
36 additional information as is needed to make a complete assessment  
37 of the project. No project shall commence the procurement process  
38 or negotiate a contract for an unsolicited proposal until approval has  
39 been granted by the State Treasurer. The State Treasurer shall find  
40 that: the criteria for assessing the project shall include, but may not  
41 be limited to: (i) the State's or county college's assumptions  
42 regarding the project's scope, its benefits, its risks and the cost of  
43 the public sector option were fully and reasonably developed; (ii)  
44 the design of the project is feasible; (iii) the experience and  
45 qualifications of the private entity are adequate; (iv) the financial  
46 plan is sound; (v) the long-range maintenance plan is adequate to  
47 protect the investment; (vi) the project is in the best interest of the  
48 public using the criteria in paragraph (2) of this subsection f.; and  
49 (vii) a resolution by the governing body of the State or county

1 college of its intent to enter into a public-private partnership  
2 agreement for the project has been received; and (viii) the term  
3 sheet for any proposed procurement contains all necessary  
4 elements. Before the State or county college enters into a public-  
5 private partnership agreement, the project shall be submitted to the  
6 State Treasurer for final approval, provided, however, that the State  
7 Treasurer shall retain the right to revoke approval if the project has  
8 substantially deviated from the plan submitted pursuant to  
9 paragraph (2) of this subsection.

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

20 **【Where no public fund has been established for the financing of**  
21 **a public improvement, the chief financial officer of the public**  
22 **owner shall require the private entity for whom the public**  
23 **improvement is being made to post, or cause to be posted, a bond**  
24 **guaranteeing prompt payment of moneys due to the contractor, his**  
25 **or her subcontractors and to all persons furnishing labor or**  
26 **materials to the contractor or his or her subcontractors in the**  
27 **prosecution of the work on the public improvement.】**

28 **g. 【The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall**  
29 **not apply to any project carried out pursuant to this section.】**  
30 **(Deleted by amendment, P.L. , c. ) (pending before the**  
31 **Legislature as this bill)**

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

38 **i. The power of eminent domain shall not be delegated to any**  
39 **private entity under the provisions of P.L. , c. (C. )**  
40 **(pending before the Legislature as this bill); however, a State or**  
41 **county college may dedicate any property interest, including**  
42 **improvements, and tangible personal property of the State or county**  
43 **college for public use in a qualifying project if the State or county**  
44 **college finds that so doing will serve the public purpose of the**  
45 **project by minimizing the cost of the project to the State or county**  
46 **college or reducing the delivery time of a project.**

47 **j. Any public-private partnership agreement, if appropriate,**  
48 **shall include provisions affirming that the agreement and any work**  
49 **performed under the agreement are subject to the provisions of the**

1 “Construction Industry Independent Contractor Act,” P.L.2007,  
2 c.114 (C.34:20-1 et seq.). Any public-private partnership agreement  
3 shall also include, at a minimum: (i) the term of the agreement; (ii)  
4 the total project cost; (iii) a completion date guarantee; (iv) a  
5 provision for damages if the private entity fails to meet the  
6 completion date; and (v) a maximum rate of return to the private  
7 entity and a provision for the distribution of excess earnings to the  
8 local government unit or to the private party for debt reduction.

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

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

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

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

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

13 (5) After the proposal or proposals have been received, and any  
14 public notification period has expired, the State or county college  
15 shall rank the proposals in order of preference. In ranking the  
16 proposals, the State or county college may consider factors that  
17 include, but may not be limited to, professional qualifications,  
18 general business terms, innovative engineering, architectural  
19 services, or cost-reduction terms, finance plans, and the need for  
20 State or county college funds to deliver the project and discharge  
21 the agreement. The private entity selected shall comply with all  
22 laws and regulations required by the State government entity,  
23 including but not limited to section 1 of P.L.2001, c.134 (C.52:32-  
24 44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38),  
25 section 1 of P.L.1977, c.33 (C.52:25.24-2), P.L.2005, c.51  
26 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al),  
27 Executive Order No. 117 of 2008, Executive Order No. 118 of  
28 2008, Executive Order No. 189, prior to executing the public  
29 private partnership agreement. If only one proposal is received, the  
30 State or county college shall negotiate in good faith and, if not  
31 satisfied with the results of the negotiations, the State or county  
32 college may, at its sole discretion, terminate negotiations.

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

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

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

8 (8) The State or county college shall set aside one percent of  
9 each project and remit it to the Public Private Partnership Review  
10 fund established pursuant to P.L. c. (C. ) (pending before the  
11 Legislature as this bill), for purposes of plan review and analysis  
12 required under the bill.

13 (9) Nothing in this section shall be construed as or deemed a  
14 waiver of the sovereign immunity of the State, the State or county  
15 college, or an affected locality or public entity or any officer or  
16 employee thereof with respect to the participation in or approval of  
17 all or any part of the public-private project.<sup>2</sup>  
18 (cf: P.L.2013, c.161, s.26)

19  
20 <sup>2</sup>[6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to  
21 read as follows:

22 5. The authority shall have the following powers:

23 a. To adopt bylaws for the regulation of its affairs and the  
24 conduct of its business;

25 b. To adopt and have a seal and to alter the same at pleasure;

26 c. To sue and be sued;

27 d. To acquire in the name of the authority by purchase or  
28 otherwise, on such terms and conditions and such manner as it may  
29 deem proper, or by the exercise of the power of eminent domain in  
30 the manner provided by the "Eminent Domain Act of 1971,"  
31 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or  
32 other property which it may determine is reasonably necessary for  
33 any project; provided, however, that the authority in connection  
34 with any project shall not take by exercise of the power of eminent  
35 domain any real property except upon consent thereto given by  
36 resolution of the governing body of the municipality in which such  
37 real property is located; and provided further that the authority shall  
38 be limited in its exercise of the power of eminent domain in  
39 connection with any project in qualifying municipalities as defined  
40 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to  
41 municipalities which had a population, according to the latest  
42 federal decennial census, in excess of 10,000;

43 e. To enter into contracts with a person upon such terms and  
44 conditions as the authority shall determine to be reasonable,  
45 including, but not limited to, reimbursement for the planning,  
46 designing, financing, construction, reconstruction, improvement,  
47 equipping, furnishing, operation and maintenance of the project and  
48 to pay or compromise any claims arising therefrom;

- 1 f. To establish and maintain reserve and insurance funds with  
2 respect to the financing of the project or the school facilities project  
3 and any project financed pursuant to the "Municipal Rehabilitation  
4 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et  
5 al.);
- 6 g. To sell, convey or lease to any person all or any portion of a  
7 project for such consideration and upon such terms as the authority  
8 may determine to be reasonable;
- 9 h. To mortgage, pledge or assign or otherwise encumber all or  
10 any portion of a project, or revenues, whenever it shall find such  
11 action to be in furtherance of the purposes of this act, P.L.2000,  
12 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
13 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
14 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
15 P.L.2009, c.90 (C.52:27D-489c et al.);
- 16 i. To grant options to purchase or renew a lease for any of its  
17 projects on such terms as the authority may determine to be  
18 reasonable;
- 19 j. To contract for and to accept any gifts or grants or loans of  
20 funds or property or financial or other aid in any form from the  
21 United States of America or any agency or instrumentality thereof,  
22 or from the State or any agency, instrumentality or political  
23 subdivision thereof, or from any other source and to comply,  
24 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),  
25 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,  
26 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
27 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
28 and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and  
29 conditions thereof;
- 30 k. In connection with any action undertaken by the authority in  
31 the performance of its duties and any application for assistance or  
32 commitments therefor and modifications thereof, to require and  
33 collect such fees and charges as the authority shall determine to be  
34 reasonable, including but not limited to fees and charges for the  
35 authority's administrative, organizational, insurance, operating,  
36 legal, and other expenses;
- 37 l. To adopt, amend and repeal regulations to carry out the  
38 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of  
39 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),  
40 the "Municipal Rehabilitation and Economic Recovery Act,"  
41 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007,  
42 c.137 (C.52:18A-235 et al.);
- 43 m. To acquire, purchase, manage and operate, hold and dispose  
44 of real and personal property or interests therein, take assignments  
45 of rentals and leases and make and enter into all contracts, leases,  
46 agreements and arrangements necessary or incidental to the  
47 performance of its duties;



- 1 n. To purchase, acquire and take assignments of notes,  
2 mortgages and other forms of security and evidences of  
3 indebtedness;
- 4 o. To purchase, acquire, attach, seize, accept or take title to any  
5 project or school facilities project by conveyance or by foreclosure,  
6 and sell, lease, manage or operate any project or school facilities  
7 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1  
8 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"  
9 P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-  
10 235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-  
11 489c et al.);
- 12 p. To borrow money and to issue bonds of the authority and to  
13 provide for the rights of the holders thereof, as provided in  
14 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,  
15 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the  
16 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,  
17 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
18 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 19 q. To extend credit or make loans to any person for the  
20 planning, designing, acquiring, constructing, reconstructing,  
21 improving, equipping and furnishing of a project or school facilities  
22 project, which credits or loans may be secured by loan and security  
23 agreements, mortgages, leases and any other instruments, upon such  
24 terms and conditions as the authority shall deem reasonable,  
25 including provision for the establishment and maintenance of  
26 reserve and insurance funds, and to require the inclusion in any  
27 mortgage, lease, contract, loan and security agreement or other  
28 instrument, of such provisions for the construction, use, operation  
29 and maintenance and financing of a project or school facilities  
30 project as the authority may deem necessary or desirable;
- 31 r. To guarantee up to 90% of the amount of a loan to a person,  
32 if the proceeds of the loan are to be applied to the purchase and  
33 installation, in a building devoted to industrial or commercial  
34 purposes, or in an office building, of an energy improvement  
35 system;
- 36 s. To employ consulting engineers, architects, attorneys, real  
37 estate counselors, appraisers, and such other consultants and  
38 employees as may be required in the judgment of the redevelopment  
39 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et  
40 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,  
41 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and  
42 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),  
43 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
44 P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their  
45 compensation from funds available to the redevelopment utility  
46 therefor, all without regard to the provisions of Title 11A of the  
47 New Jersey Statutes;
- 48 t. To do and perform any acts and things authorized by  
49 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001,

- 1 c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the  
2 "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,  
3 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
4 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.),  
5 under, through or by means of its own officers, agents and  
6 employees, or by contract with any person;
- 7 u. To procure insurance against any losses in connection with  
8 its property, operations or assets in such amounts and from such  
9 insurers as it deems desirable;
- 10 v. To do any and all things necessary or convenient to carry out  
11 its purposes and exercise the powers given and granted in P.L.1974,  
12 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-  
13 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal  
14 Rehabilitation and Economic Recovery Act," P.L.2002,  
15 c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.),  
16 and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
- 17 w. To construct, reconstruct, rehabilitate, improve, alter, equip,  
18 maintain or repair or provide for the construction, reconstruction,  
19 improvement, alteration, equipping or maintenance or repair of any  
20 development property and lot, award and enter into construction  
21 contracts, purchase orders and other contracts with respect thereto,  
22 upon such terms and conditions as the authority shall determine to  
23 be reasonable, including, but not limited to, reimbursement for the  
24 planning, designing, financing, construction, reconstruction,  
25 improvement, equipping, furnishing, operation and maintenance of  
26 any such development property and the settlement of any claims  
27 arising therefrom and the establishment and maintenance of reserve  
28 funds with respect to the financing of such development property;
- 29 x. When authorized by the governing body of a municipality  
30 exercising jurisdiction over an urban growth zone, to construct,  
31 cause to be constructed or to provide financial assistance to projects  
32 in an urban growth zone which shall be exempt from the terms and  
33 requirements of the land use ordinances and regulations, including,  
34 but not limited to, the master plan and zoning ordinances, of such  
35 municipality;
- 36 y. To enter into business employment incentive agreements as  
37 provided in the "Business Employment Incentive Program Act,"  
38 P.L.1996, c.26 (C.34:1B-124 et al.);
- 39 z. To enter into agreements or contracts, execute instruments,  
40 and do and perform all acts or things necessary, convenient or  
41 desirable for the purposes of the redevelopment utility to carry out  
42 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-  
43 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,  
44 c.137 (C.52:18A-235 et al.), including, but not limited to, entering  
45 into contracts with the State Treasurer, the Commissioner of  
46 Education, districts, the New Jersey Schools Development  
47 Authority, and any other entity which may be required in order to  
48 carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.),

- 1 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of  
2 P.L.2009, c.90 (C.52:27D-489c et al.);
- 3 aa. (Deleted by amendment, P.L.2007, c.137);
- 4 bb. To make and contract to make loans to local units to finance  
5 the cost of school facilities projects and to acquire and contract to  
6 acquire bonds, notes or other obligations issued or to be issued by  
7 local units to evidence the loans, all in accordance with the  
8 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,  
9 c.137 (C.52:18A-235 et al.);
- 10 cc. Subject to any agreement with holders of its bonds issued to  
11 finance a project or school facilities project, obtain as security or to  
12 provide liquidity for payment of all or any part of the principal of  
13 and interest and premium on the bonds of the authority or for the  
14 purchase upon tender or otherwise of the bonds, lines of credit,  
15 letters of credit, reimbursement agreements, interest rate exchange  
16 agreements, currency exchange agreements, interest rate floors or  
17 caps, options, puts or calls to hedge payment, currency, rate, spread  
18 or similar exposure or similar agreements, float agreements,  
19 forward agreements, insurance contract, surety bond, commitment  
20 to purchase or sell bonds, purchase or sale agreement, or  
21 commitments or other contracts or agreements, and other security  
22 agreements or instruments in any amounts and upon any terms as  
23 the authority may determine and pay any fees and expenses required  
24 in connection therewith;
- 25 dd. To charge to and collect from local units, the State and any  
26 other person, any fees and charges in connection with the  
27 authority's actions undertaken with respect to school facilities  
28 projects, including, but not limited to, fees and charges for the  
29 authority's administrative, organization, insurance, operating and  
30 other expenses incident to the financing of school facilities projects;
- 31 ee. To make loans to refinance solid waste facility bonds  
32 through the issuance of bonds or other obligations and the execution  
33 of any agreements with counties or public authorities to effect the  
34 refunding or rescheduling of solid waste facility bonds, or otherwise  
35 provide for the payment of all or a portion of any series of solid  
36 waste facility bonds. Any county or public authority refunding or  
37 rescheduling its solid waste facility bonds pursuant to this  
38 subsection shall provide for the payment of not less than fifty  
39 percent of the aggregate debt service for the refunded or  
40 rescheduled debt of the particular county or public authority for the  
41 duration of the loan; except that, whenever the solid waste facility  
42 bonds to be refinanced were issued by a public authority and the  
43 county solid waste facility was utilized as a regional county solid  
44 waste facility, as designated in the respective adopted district solid  
45 waste management plans of the participating counties as approved  
46 by the department prior to November 10, 1997, and the utilization  
47 of the facility was established pursuant to tonnage obligations set  
48 forth in their respective interdistrict agreements, the public  
49 authority refunding or rescheduling its solid waste facility bonds

1 pursuant to this subsection shall provide for the payment of a  
2 percentage of the aggregate debt service for the refunded or  
3 rescheduled debt of the public authority not to exceed the  
4 percentage of the specified tonnage obligation of the host county for  
5 the duration of the loan. Whenever the solid waste facility bonds are  
6 the obligation of a public authority, the relevant county shall  
7 execute a deficiency agreement with the authority, which shall  
8 provide that the county pledges to cover any shortfall and to pay  
9 deficiencies in scheduled repayment obligations of the public  
10 authority. All costs associated with the issuance of bonds pursuant  
11 to this subsection may be paid by the authority from the proceeds of  
12 these bonds. Any county or public authority is hereby authorized to  
13 enter into any agreement with the authority necessary, desirable or  
14 convenient to effectuate the provisions of this subsection.

15 The authority shall not issue bonds or other obligations to effect  
16 the refunding or rescheduling of solid waste facility bonds after  
17 December 31, 2002. The authority may refund its own bonds issued  
18 for the purposes herein at any time;

19 ff. To pool loans for any local government units that are  
20 refunding bonds and do and perform any and all acts or things  
21 necessary, convenient or desirable for the purpose of the authority  
22 to achieve more favorable interest rates and terms for those local  
23 governmental units;

24 gg. To finance projects approved by the board, provide staff  
25 support to the board, oversee and monitor progress on the part of  
26 the board in carrying out the revitalization, economic development  
27 and restoration projects authorized pursuant to the "Municipal  
28 Rehabilitation and Economic Recovery Act," P.L.2002,  
29 c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its  
30 responsibilities pursuant thereto;

31 hh. To offer financial assistance to qualified film production  
32 companies as provided in the "New Jersey Film Production  
33 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[and]**

34 ii. To finance or develop private or public parking facilities or  
35 structures, which may include the use of solar photovoltaic  
36 equipment, in municipalities qualified to receive State aid pursuant  
37 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and  
38 municipalities that contain areas designated pursuant to P.L.1985,  
39 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),  
40 Planning Area 2 (Suburban), or a town center, and to provide  
41 appropriate assistance, including but not limited to, extensions of  
42 credit, loans, and guarantees, to municipalities qualified to receive  
43 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-  
44 178 et seq.) and municipalities that contain areas designated  
45 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning  
46 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town  
47 center, and their agencies and instrumentalities or to private entities  
48 whose projects are located in those municipalities, in order to  
49 facilitate the financing and development of parking facilities or

1 structures in such municipalities. The authority may serve as the  
2 issuing agent of bonds to finance the undertaking of a project for  
3 the purposes of this subsection; and  
4 jj. To consider, review, amend, and approve public-private  
5 partnership agreements for certain building or highway  
6 infrastructure development projects entered into by a private entity  
7 and a local government unit, a school district, a State government  
8 entity, or the New Jersey Institute of Technology pursuant to  
9 sections 1 through 4 of P.L. , c. (C. through C. ) (pending  
10 before the Legislature as this bill) or by a private entity and a State  
11 or county college pursuant to section 43 of P.L.2009, c.90  
12 (C.18A:64-85), for the purposes set forth therein, and provide to a  
13 private entity that is a party to an agreement any tax-exempt private  
14 activity bond financing under terms and conditions established by  
15 the authority and as otherwise authorized under State or federal law.  
16 (cf: P.L.2010, c.28, s.3)]<sup>2</sup>

17  
18 <sup>2</sup>6. N.J.S.18A:72A-5 is amended to read as follows:  
19 18A:72A-5. The authority shall have power:  
20 (a) To adopt bylaws for the regulation of its affairs and the  
21 conduct of its business;  
22 (b) To adopt and have an official common seal and alter the  
23 same at pleasure;  
24 (c) To maintain an office at such place or places within the State  
25 as it may designate;  
26 (d) To sue and be sued in its own name, and plead and be  
27 impleaded;  
28 (e) To borrow money and to issue bonds and notes and other  
29 obligations of the authority and to provide for the rights of the  
30 holders thereof as provided in this chapter;  
31 (f) To acquire, lease as lessee, hold and dispose of real and  
32 personal property or any interest therein, in the exercise of its  
33 powers and the performance of its duties under this chapter;  
34 (g) To acquire in the name of the authority by purchase or  
35 otherwise, on such terms and conditions and in such manner as it  
36 may deem proper, or by the exercise of the power of eminent  
37 domain, any land or interest therein and other property which it may  
38 determine is reasonably necessary for any project, including any  
39 lands held by any county, municipality or other governmental  
40 subdivision of the State; and to hold and use the same and to sell,  
41 convey, lease or otherwise dispose of property so acquired, no  
42 longer necessary for the authority's purposes;  
43 (h) To receive and accept, from any federal or other public  
44 agency or governmental entity, grants or loans for or in aid of the  
45 acquisition or construction of any project, and to receive and accept  
46 aid or contributions from any other source, of either money,  
47 property, labor or other things of value, to be held, used and applied  
48 only for the purposes for which such grants, loans and contributions  
49 may be made;

- 1 (i) To prepare or cause to be prepared plans, specifications,  
2 designs and estimates of costs for the construction and equipment of  
3 projects for participating colleges under the provisions of this  
4 chapter, and from time to time to modify such plans, specifications,  
5 designs or estimates;
- 6 (j) By contract or contracts or by its own employees to  
7 construct, acquire, reconstruct, rehabilitate and improve, and  
8 furnish and equip, projects for participating colleges; however, in  
9 any contract or contracts undertaken by the authority for the  
10 construction, reconstruction, rehabilitation or improvement of any  
11 public college project where the cost of such work will exceed  
12 \$25,000, the contracting agent shall advertise for and receive in the  
13 manner provided by law:
- 14 (1) separate bids for branches of work in the following  
15 categories:
- 16 (a) the plumbing and gas fitting work;  
17 (b) the refrigeration, heating and ventilating systems and  
18 equipment;  
19 (c) the electrical work, including any electrical power plants,  
20 tele-data, fire alarm, or security system;  
21 (d) the structural steel and ornamental iron work;  
22 (e) general construction, which shall include all other work and  
23 materials required for the completion of the project, or  
24 (2) bids for all work and materials required to complete the  
25 entire project if awarded as a single contract; or  
26 (3) both (1) and (2) above.
- 27 In the case of separate bids pursuant to paragraph (1) or (3) of  
28 this subsection, prime contractors shall not be required to name  
29 subcontractors for categories (a) through (d) in their bid. In the  
30 case of a single bid under paragraph (2) or (3), all bids submitted  
31 shall set forth the names and license numbers of, and evidence of  
32 performance security from, all subcontractors to whom the general  
33 contractor will subcontract the work described in the foregoing  
34 categories (a) through (d) in paragraph (1). Subcontractors who  
35 furnish non-specialty trade work pursuant to category (e), or  
36 subcontractors who furnish work to named subcontractors pursuant  
37 to categories (a) through (d), shall not be named in the bid.  
38 Notwithstanding the foregoing provisions of this subsection, an  
39 authority may choose to require in its bid specification that a  
40 subcontractor shall be named in a bid when, in the case of  
41 paragraph (1), separate bids for each category, the work of that  
42 subcontractor exceeds 35 percent of the authority's estimated  
43 amount of value of the work, which shall be set forth in the bid  
44 specification.
- 45 Contracts shall be awarded to the lowest responsible bidder  
46 whose bid, conforming to the invitation for bids, will be the most  
47 advantageous to the authority;
- 48 (k) To determine the location and character of any project to be  
49 undertaken pursuant to the provisions of this chapter, and to

1 construct, reconstruct, maintain, repair, operate, lease, as lessee or  
2 lessor, and regulate the same; to enter into contracts for any or all  
3 such purposes; to enter into contracts for the management and  
4 operation of a project, and to designate a participating college as its  
5 agent to determine the location and character of a project  
6 undertaken by such participating college under the provisions of  
7 this chapter and, as the agent of the authority, to construct,  
8 reconstruct, maintain, repair, operate, lease, as lessee or lessor, and  
9 regulate the same, and, as agent of the authority, to enter into  
10 contracts for any and all such purposes including contracts for the  
11 management and operation of such project;

12 (l) To establish rules and regulations for the use of a project or  
13 any portion thereof and to designate a participating college as its  
14 agent to establish rules and regulations for the use of a project  
15 undertaken by such participating college;

16 (m) Generally to fix and revise from time to time and to charge  
17 and collect rates, rents, fees and other charges for the use of and for  
18 the services furnished or to be furnished by a project or any portion  
19 thereof and to contract with holders of its bonds and with any other  
20 person, party, association, corporation or other body, public or  
21 private, in respect thereof;

22 (n) To enter into any and all agreements or contracts, execute  
23 any and all instruments, and do and perform any and all acts or  
24 things necessary, convenient or desirable for the purposes of the  
25 authority or to carry out any power expressly given in this chapter;

26 (o) To invest any moneys held in reserve or sinking funds, or  
27 any moneys not required for immediate use or disbursement, at the  
28 discretion of the authority, in such obligations as are authorized by  
29 law for the investment of trust funds in the custody of the State  
30 Treasurer;

31 (p) To enter into any lease relating to higher education  
32 equipment with a public or private institution of higher education  
33 pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et  
34 al.);

35 (q) To enter into loan agreements with any county, to hold  
36 bonds or notes of the county evidencing those loans, and to issue  
37 bonds or notes of the authority to finance county college capital  
38 projects pursuant to the provisions of the "County College Capital  
39 Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

40 (r) To issue bonds and notes and other obligations of the  
41 authority under the direction of law for the purpose of providing  
42 financial assistance for the installation of fire prevention and safety  
43 systems in dormitories.

44 (s) To consider and review public-private partnership  
45 agreements for certain building projects entered into by a private  
46 entity and the New Jersey Institute of Technology pursuant to  
47 section 4 of P.L. , c. (C. ) (pending before the Legislature as  
48 this bill) or by a private entity and a State or county college  
49 pursuant to section 43 of P.L. 2009, c. 90 (C.18A:64-85), for the

1 purposes set forth therein and to provide to a private entity that is a  
2 party to an agreement any tax exempt private activity bond  
3 financing, including but not limited to a loan of funds under terms  
4 and conditions established by the authority in consultation with the  
5 State Treasurer and as otherwise authorized under State or federal  
6 law.<sup>2</sup>

7 (cf: P.L.2012, c.59, s.4)

8  
9 7. (New section) The <sup>2</sup>State Treasurer, in consultation with  
10 the<sup>2</sup> New Jersey Economic Development Authority <sup>2</sup>, or the New  
11 Jersey Educational Facilities Authority as to projects to be financed  
12 through the New Jersey Educational Facilities Authority,<sup>2</sup> shall post  
13 on <sup>2</sup>[its] the Department of the Treasury's<sup>2</sup> official website the  
14 status of each public-private partnership agreement subject to <sup>2</sup>[its]  
15 the State Treasurer's<sup>2</sup> consideration, review, amendment, or  
16 approval <sup>2</sup>[under subsection jj. of section 5 of P.L.1974, c.80  
17 (C.34:1B-5)]<sup>2</sup>, indicating the status of each agreement by  
18 designating it as a proposed, under review, or active public-private  
19 partnership project.

20  
21 <sup>2</sup>8. (New section) a. There is hereby established in the  
22 Department of the Treasury the Public-Private Partnership Review  
23 Fund. The purpose of the fund will be to support financial and  
24 administrative review functions associated with the Public-Private  
25 Partnership plan review by the State Treasurer, along with the New  
26 Jersey Economic Development Authority, the Department of  
27 Community Affairs, the Department of Education, the Schools  
28 Development Authority, and the Department of Transportation,  
29 established by P.L. , c. (C. ) (pending before the Legislature as  
30 this bill).

31 b. Notwithstanding the provisions of any law or regulation to  
32 the contrary, upon entering into any public-private partnership  
33 agreement which is backed, in whole or in part, by New Jersey  
34 Economic Development Authority bonds pursuant to  
35 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
36 public entity shall remit one percent of the portion of the revenue  
37 established under the agreement to the Department of the Treasury  
38 to be placed in the Public-Private Partnership Review Fund.

39 c. The State Treasurer, in coordination with any relevant  
40 agency, including the New Jersey Economic Development  
41 Authority, Department of Transportation, and Department of  
42 Community Affairs, shall provide, and make available to the public  
43 on the Internet, an annual report, not later than December 31, 2019  
44 and each year after that year, a list of all projects reviewed and the  
45 percentage and amount of funds withheld and provided to the fund  
46 pursuant to this section.<sup>2</sup>



1       <sup>2</sup>9. (New section) Nothing in this act shall in any way be  
2 construed to alter, limit or repeal any authority of any State entity to  
3 enter into public-private partnership agreements as otherwise  
4 provided by law, including but not limited to P.L.1997, c.136  
5 (C.27:1D-1 et seq.) or subsection x. of section 5 of P.L.1979, c.150  
6 (C.27:25-5).<sup>2</sup>

7

8       <sup>2</sup>[8.] 10.<sup>2</sup> This act shall take effect <sup>2</sup>[immediately] 180 days  
9 following enactment<sup>2</sup>.