

SENATE, No. 2617

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 31, 2018

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Revises standards for contracting at State colleges to mirror standards applicable to public research universities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2018)

1 AN ACT concerning State college contracts and revising various
2 parts of the statutory law and supplementing chapter 64 of Title
3 18A of the New Jersey Statutes.

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

7
8 1. N.J.S.18A:64-6 is amended to read as follows:

9 18A:64-6. The board of trustees of a State college shall have
10 general supervision over and shall be vested with the conduct of the
11 college. It shall have the power and duty to:

12 a. Adopt and use a corporate seal;

13 b. Determine the educational curriculum and program of the
14 college consistent with the programmatic mission of the institution
15 or approved by the **【Commission on】** Secretary of Higher
16 Education;

17 c. Determine policies for the organization, administration and
18 development of the college;

19 d. Study the educational and financial needs of the college;
20 annually acquaint the Governor and Legislature with the condition
21 of the college; and prepare and present the annual budget to the
22 Governor, the Division of Budget and Accounting in the
23 Department of the Treasury and the Legislature in accordance with
24 law;

25 e. Disburse all moneys appropriated to the college by the
26 Legislature and all moneys received from tuition, fees, auxiliary
27 services and other sources;

28 f. Direct and control expenditures and transfers of funds
29 appropriated to the college and tuition received by the college, in
30 accordance with the provisions of the State budget and
31 appropriation acts of the Legislature, reporting changes and
32 additions thereto and transfers thereof to the Director of the
33 Division of Budget and Accounting in the State Department of the
34 Treasury and as to funds received from other sources, direct and
35 control expenditures and transfers in accordance with the terms of
36 any applicable trusts, gifts, bequests, or other special provisions.
37 All accounts of the college shall be subject to audit by the State at
38 any time;

39 g. In accordance with the provisions of the State budget and
40 appropriation acts of the Legislature, appoint and fix the
41 compensation of a president of the college, who shall be the
42 executive officer of the college and an ex officio member of the
43 board of trustees, without vote, and shall serve at the pleasure of the
44 board of trustees;

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 h. Notwithstanding the provisions of Title **11**, Civil Service,
2 of the Revised **11A** of the New Jersey Statutes, upon nomination
3 by the president appoint a treasurer and such deans and other
4 professional members of the academic, administrative and teaching
5 staffs as defined in section 13 of P.L.1986, c.42 (C.18A:64-21.2) as
6 shall be required and fix their compensation and terms of
7 employment in accordance with salary ranges and policies which
8 shall prescribe qualifications for various classifications and shall
9 limit the percentage of the educational staff that may be in any
10 given classification;

11 i. Upon nomination by the president, appoint, remove, promote
12 and transfer such other officers, agents or employees as may be
13 required for carrying out the purposes of the college and assign
14 their duties, determine their salaries and prescribe qualifications for
15 all positions, all in accordance with the provisions of Title **11**,
16 Civil Service, of the Revised **11A** of the New Jersey Statutes;

17 j. Grant diplomas, certificates and degrees;

18 k. **Pursuant to the provisions of the "State College Contracts**
19 **Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and**
20 **agreements for the purchase of lands, buildings, equipment,**
21 **materials, supplies and services; enter Enter into contracts and**
22 **agreements with the State or any of its political subdivisions or with**
23 **the United States, or with any public body, department or other**
24 **agency of the State or the United States or with any individual,**
25 **firm, or corporation, which are deemed necessary or advisable by**
26 **the board for carrying out the purposes of the college. A contract or**
27 **agreement pursuant to this subsection may require a municipality to**
28 **undertake obligations and duties to be performed subsequent to the**
29 **expiration of the term of office of the elected governing body of**
30 **such municipality which initially entered into or approved said**
31 **contract or agreement, and the obligations and duties so incurred by**
32 **such municipality shall be binding and of full force and effect,**
33 **notwithstanding that the term of office of the elected governing**
34 **body of such municipality which initially entered into or approved**
35 **said contract or agreement, shall have expired;**

36 l. If necessary, take and condemn land and other property in
37 the manner provided by the "Eminent Domain Act of 1971,"
38 P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to
39 purchase land or other property;

40 m. Adopt, after consultation with the president and faculty,
41 bylaws and make and promulgate such rules, regulations and orders,
42 not inconsistent with the provisions of this article, that are
43 necessary and proper for the administration and operation of the
44 college and the carrying out of its purposes;

45 n. Establish fees for room and board sufficient for the
46 operation, maintenance, and rental of student housing and food
47 service facilities;

- 1 o. Fix and determine tuition rates and other fees to be paid by
2 students;
- 3 p. Accept from any government or governmental department,
4 agency or other public or private body or from any other source
5 grants or contributions of money or property, which the board may
6 use for or in aid of any of its purposes;
- 7 q. Acquire by gift, purchase, condemnation or otherwise, own,
8 lease, dispose of, use and operate property, whether real, personal
9 or mixed, or any interest therein, which is necessary or desirable for
10 college purposes;
- 11 r. Employ architects to plan buildings; secure bids for the
12 construction of buildings and for the equipment thereof; make
13 contracts for the construction of buildings and for equipment; and
14 supervise the construction of buildings;
- 15 s. Manage and maintain, and provide for the payment of all
16 charges and expenses in respect to all properties utilized by the
17 college;
- 18 t. Borrow money for the needs of the college, as deemed
19 requisite by the board, in such amounts, and for such time and upon
20 such terms as may be determined by the board, provided that this
21 borrowing shall not be deemed or construed to create or constitute a
22 debt, liability, or a loan or pledge of the credit, or be payable out of
23 property or funds, other than moneys appropriated for that purpose,
24 of the State;
- 25 u. Authorize any new program, educational department or
26 school consistent with the institution's programmatic mission or
27 approved by the **【commission】** Secretary of Higher Education;
- 28 v. (Deleted by amendment, P.L.1994, c.48);
- 29 w. **【Pursuant to the "State College Contracts Law," P.L.1986,**
30 **c.43 (C.18A:64-52 et seq.), award contracts and agreements for the**
31 **purchase of goods and services, as distinct from contracts or**
32 **agreements for the construction of buildings and other**
33 **improvements, to that responsible bidder whose bid, conforming to**
34 **the invitation for bids, will be most advantageous to the State**
35 **college, price and other factors considered; and】** (Deleted by
36 amendment, P.L. , c.) (pending before the Legislature as this
37 bill);
- 38 x. **【Pursuant to the "State College Contracts Law," P.L.1986,**
39 **c.43 (C.18A:64-52 et seq.), award contracts and agreements for the**
40 **construction of buildings and other improvements to the lowest**
41 **responsible bidder, whose bid, conforming to the invitation for bids,**
42 **will be the most advantageous to the State college】** (Deleted by
43 amendment, P.L. , c.) (pending before the Legislature as this
44 bill);
- 45 y. Adopt standing operating rules and procedures for the
46 purchase of all equipment, materials, supplies and services;
47 however, no contract on behalf of the college shall be entered into

1 for the purchase of services, materials, equipment and supplies, for
2 the performance of any work, or for the hiring of equipment or
3 vehicles, where the sum to be expended exceeds \$33,000 or the
4 amount determined by the Governor as provided herein, unless the
5 college shall first publicly advertise for bids and shall award the
6 contract to that responsible bidder whose bid, conforming to the
7 invitation for bids, will be most advantageous to the college, price
8 and other factors considered. Such advertising shall not be required
9 in those exceptions created by the board of trustees of the college,
10 which shall be in substance those exceptions contained in sections 4
11 and 5 of P.L.1954, c.48 (C.52:34-9 and 10) and section 5 of
12 P.L.1986, c.43 (C.18A:64-56) or for the supplying of any product or
13 the rendering of any service by a public utility subject to the
14 jurisdiction of the Board of Public Utilities of this State and tariffs
15 and schedules of the charges made, charged, or exacted by the
16 public utility for any such products to be supplied or services to be
17 rendered which are filed with the said board. Commencing July 1,
18 2017 and every two years thereafter, the Governor, in consultation
19 with the Department of the Treasury, shall adjust the threshold
20 amount set forth in this subsection in direct proportion to the rise or
21 fall of the consumer price index for all urban consumers in the New
22 York City and the Philadelphia areas as reported by the United
23 States Department of Labor. The Governor shall notify the college
24 of the adjustment. The adjustment shall become effective on July 1
25 of the year in which it is reported.

26 This subsection shall not prevent the college from having any
27 work performed by its own employees, nor shall it apply to repairs,
28 or to the furnishing of materials, supplies or labor, or the hiring of
29 equipment or vehicles, when the safety or protection of its or other
30 public property or the public convenience requires or the exigency
31 of the college's service will not admit of such advertisement. In
32 such case, the college shall, by resolution passed by the affirmative
33 vote of its board of trustees, declare the exigency or emergency to
34 exist, and set forth in the resolution the nature and approximate
35 amount to be expended; shall maintain appropriate records as to the
36 reason for such awards; and shall report regularly to its board of
37 trustees on all such purchases, the amounts and the reasons therefor;

38 z. Invest certain moneys in such obligations, securities and
39 other investments as the board shall deem prudent, consistent with
40 the purposes and provisions of this act and in accordance with State
41 and federal law, as follows:

42 Investment in not-for-profit corporations or for-profit
43 corporations organized and operated pursuant to the provisions of
44 subsection aa. of this section may utilize income realized from the
45 sale or licensing of intellectual property as well as the reinvestment
46 of earnings on intellectual property. Investment in not-for-profit
47 corporations may also utilize income from the operation of clinical
48 counseling practices of the college and income from overhead grant

1 fund recovery as permitted by federal law as well as other college
2 funds except those specified in paragraph 5 of subsection aa. of this
3 section;

4 aa. (1) Participate as the general partner or as a limited
5 partner, either directly or through a subsidiary corporation created
6 by the college, in limited partnerships, general partnerships, or joint
7 ventures engaged in the development, manufacture, or marketing of
8 products, technology, scientific information or services and create
9 or form for-profit or not-for-profit corporations to engage in such
10 activities; provided that any such participation shall be consistent
11 with the mission of the college and the board shall have determined
12 that such participation is prudent;

13 (2) The decision to participate in any activity described in
14 paragraph (1) of this subsection, including the creation or formation
15 of for-profit or not-for-profit corporations, shall be articulated in the
16 minutes of the board of trustees meeting in which the action was
17 approved;

18 (3) The provisions of P.L.1971, c.182 (C.52:13D-12 et seq.)
19 shall continue to apply to the college, its employees, and officers;

20 (4) Nothing herein shall be deemed or construed to create or
21 constitute a debt, liability, or a loan or pledge of the credit or be
22 payable out of property or funds of the State;

23 (5) Funds directly appropriated to the college from the State or
24 derived from the college's academic programs shall not be utilized
25 by the for-profit or not-for-profit corporations organized and
26 operated pursuant to this subsection in the development,
27 manufacture, or marketing of products, technology or scientific
28 information;

29 (6) Employees of any joint venture, subsidiary corporation,
30 partnership, or other jural entity entered into or owned wholly or in
31 part by the college shall not be deemed public employees;

32 (7) A joint venture, subsidiary corporation, partnership, or other
33 jural entity entered into or owned wholly or in part by the college
34 shall not be deemed an instrumentality of the State of New Jersey;

35 (8) Income realized by the college as a result of participation in
36 the development, manufacture, or marketing of products,
37 technology, or scientific information may be invested or reinvested
38 pursuant to subsection z. of this section or any other provision of
39 this act or State or federal law or retained by the board for use in
40 furtherance of any of the purposes of this act or of other applicable
41 statutes;

42 (9) The board shall annually report to the State Treasurer on the
43 operation of all joint ventures, subsidiary corporations,
44 partnerships, or such other jural entities entered into or owned
45 wholly or in part by the college.

46 (cf: P.L.2005, c.369, s.1)

47

48 2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to
49 read as follows:

- 1 2. As used in **[this article]** section 5 of P.L.1986, c.43
2 (C.18A:64-56), unless the context otherwise indicates:
- 3 a. "Board of trustees" means the board of a State college;
- 4 b. "Contracting agent" means the business officer of the State
5 college having the power to prepare advertisements, to advertise for
6 and receive bids, and to make awards for the State college in
7 connection with the purchases, contracts or agreements permitted
8 by this article or the officer, committee or employee to whom the
9 power has been delegated by the State college;
- 10 c. "Contracts" means contracts or agreements for the
11 performance of work or the furnishing or hiring of services,
12 materials or supplies, as distinguished from contracts of
13 employment;
- 14 d. "Legal newspaper" means a newspaper circulating in this
15 State which has been printed and published in the English language
16 at least once a week for at least one year continuously;
- 17 e. "Materials" includes goods and property subject to chapter 2
18 of Title 12A of the New Jersey Statutes, apparatus or any other
19 tangible thing, except real property or any interest therein;
- 20 f. "Extraordinary unspecifiable services" means services or
21 products which cannot be reasonably described by written
22 specifications;
- 23 g. "Professional services" means services rendered or
24 performed by a person authorized by law to practice a recognized
25 profession and whose practice is regulated by law and the
26 performance of which services requires knowledge of an advanced
27 type in a field of learning acquired by a prolonged formal course of
28 specialized instruction and study as distinguished from general
29 academic instruction or apprenticeship and training. Professional
30 services also means services rendered in the performance of work
31 that is original and creative in character in a recognized field of
32 artistic endeavor;
- 33 h. "Project" means any work, undertaking, construction or
34 alteration;
- 35 i. "Purchases" are transactions, for a valuable consideration,
36 creating or acquiring an interest in goods, services and property
37 except real property or any interest therein;
- 38 j. "State college" means an institution of higher education
39 established pursuant to chapter 64 of Title 18A of the New Jersey
40 Statutes;
- 41 k. "Work" includes services and any other activity of a tangible
42 or intangible nature performed or assumed pursuant to a contract or
43 agreement with a State college;
- 44 l. "Information technology" means telecommunication goods
45 and services, including, but not limited to, software, hardware and
46 systems implementation and support for voice, data and video.
47 (cf: P.L.2005, c.369, s.2)

1 3. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to
2 read as follows:

3 5. **【Any】** The standing operating procedures adopted pursuant
4 to N.J.S.18A:64-6 shall provide that any purchase, contract or
5 agreement **【of the character described in section 4 of P.L.1986, c.43**
6 **(C.18A:64-55)】** may be made, negotiated or awarded by the State
7 college by resolution at a public meeting of its board of trustees
8 without public advertising for bids or bidding therefor if:

9 a. The subject matter thereof consists of:

10 (1) Professional services; or

11 (2) Extraordinary unspecifiable services and products which
12 cannot reasonably be described by written specifications, subject,
13 however, to procedures consistent with open public bidding
14 whenever possible; or

15 (3) Materials or supplies which are not available from more than
16 one potential bidder, including without limitation materials or
17 supplies which are patented or copyrighted; or

18 (4) The doing of any work by employees of the State college; or

19 (5) The printing of all legal notices and legal briefs, records and
20 appendices to be used in any legal proceeding to which the State
21 college may be a party and the use of electronic data or media
22 services, including the internet, for the printing of these legal
23 notices and legal briefs, records and appendices; or

24 (6) Textbooks, copyrighted materials, student produced
25 publications and services incidental thereto, library materials
26 including without limitation books, periodicals, newspapers,
27 documents, pamphlets, photographs, reproductions, microfilms,
28 pictorial or graphic works, musical scores, maps, charts, globes,
29 sound recordings, slides, films, filmstrips, video and magnetic
30 tapes, other printed or published matter and audiovisual and other
31 materials of a similar nature, necessary binding or rebinding of
32 library materials and specialized library services, including
33 electronic databases and digital formats; or

34 (7) Food supplies and services, including food supplies and
35 management contracts for student centers, dining rooms and
36 cafeterias; or

37 (8) The supplying of any product or the rendering of any service
38 by the public utility which is subject to the jurisdiction of the Board
39 of Public Utilities, in accordance with tariffs and schedules of
40 charges made, charged and exacted, filed with that board; or

41 (9) Equipment repair service if in the nature of an extraordinary
42 unspecifiable service and necessary parts furnished in connection
43 with the services; or

44 (10) Specialized machinery or equipment of a technical nature
45 which will not reasonably permit the drawing of specifications, and
46 the procurement thereof without advertising is in the public interest;
47 or

- 1 (11) Insurance, including the purchase of insurance coverage
- 2 and consulting services, which exceptions shall be in accordance
- 3 with the requirements for extraordinary unspecifiable services; or
- 4 (12) Publishing of legal notices in newspapers as required by
- 5 law and the use of electronic data or media services, including the
- 6 internet, for the publication of the legal notices; or
- 7 (13) The acquisition of artifacts or other items of unique
- 8 intrinsic, artistic or historic character; or
- 9 (14) The collection of amounts due on student loans, including
- 10 without limitation loans guaranteed by or made with funds of the
- 11 United States of America, and amounts due on other financial
- 12 obligations to the State college, including but not limited to, the
- 13 amounts due on tuition and fees and room and board; or
- 14 (15) Professional consulting services; or
- 15 (16) Entertainment, including without limitation theatrical
- 16 presentations, band and other concerts, movies and other
- 17 audiovisual productions; or
- 18 (17) Contracts employing funds created by student activities
- 19 fees charged to students or otherwise raised by students and
- 20 expended by student organizations; or
- 21 (18) Printing, including without limitation catalogs, yearbooks
- 22 and course announcements and the production and reproduction of
- 23 such material in electronic and digital formats, including compact
- 24 discs; or
- 25 (19) Information technology; or
- 26 (20) Personnel recruitment and advertising, including without
- 27 limitation advertising seeking student enrollment; or
- 28 (21) Educational supplies, books, articles of clothing and other
- 29 miscellaneous articles purchased by a State college for resale to
- 30 college students and employees; or
- 31 (22) Purchase or rental of graduation caps and gowns and award
- 32 certificates or plaques; or
- 33 (23) Items available from vendors at costs below State contract
- 34 pricing for the same product or service, which meets or exceeds the
- 35 State contract terms or conditions; or
- 36 (24) Management contracts for bookstores, performing arts
- 37 centers, residence halls, parking facilities and building operations;
- 38 or
- 39 (25) Consulting services involving information technology,
- 40 curricular or programmatic review, fund raising, transportation,
- 41 safety or security; or
- 42 (26) Construction management services for construction,
- 43 alteration or repair of any building or improvement; or
- 44 (27) Purchase or rental of equipment of a technical nature when
- 45 the procurement thereof without advertising is necessary in order to
- 46 assure standardization of equipment and interchangeability of parts
- 47 in the public interest.
- 48 b. It is to be made or entered into with the United States of
- 49 America, the State of New Jersey, a county or municipality or any

1 board, body, or officer, agency or authority or any other state or
2 subdivision thereof.

3 c. The State college has advertised for bids **【pursuant to**
4 **section 4 of P.L.1986, c.43 (C.18A:64-55)】** on two occasions and
5 (i) has received no bids on both occasions in response to its
6 advertisement, or (ii) has rejected the bids on two occasions
7 because the State college has determined that they are not
8 reasonable as to price, on the basis of cost estimates prepared for or
9 by the State college prior to the advertising therefor, or have not
10 been independently arrived at in open competition, or (iii) on one
11 occasion no bids were received pursuant to (i) and on one occasion
12 all bids were rejected pursuant to (ii), in whatever sequence; any
13 contract or agreement may then be negotiated by a two-thirds
14 affirmative vote of the authorized membership of the board of
15 trustees authorizing the contract or agreement; provided that:

16 (1) A reasonable effort is just made by the contracting agent to
17 determine that the same or equivalent materials or supplies at a cost
18 which is lower than the negotiated price are not available from any
19 agency or authority of the United States, the State of New Jersey or
20 of the county in which the State college is located, or any
21 municipality in close proximity to the State college;

22 (2) The terms, conditions, restrictions and specifications set
23 forth in the negotiated contract or agreement are not substantially
24 different from those which were the subject of competitive bidding
25 **【pursuant to section 4 of this article】**; and

26 (3) Any minor amendment or modification of any of the terms,
27 conditions, restrictions and specifications, which were the subject of
28 competitive bidding **【pursuant to section 4 of P.L.1986, c.43**
29 **(C.18A:64-55)】**, shall be stated in the resolution awarding the
30 contract or agreement; except that if on the second occasion the
31 bids received are rejected as unreasonable as to price, the State
32 college shall notify each responsible bidder submitting bids on the
33 second occasion of its intention to negotiate and afford each bidder
34 a reasonable opportunity to negotiate, but the State college shall not
35 award the contract or agreement unless the negotiated price is lower
36 than the lowest rejected bid price submitted on the second occasion
37 by a responsible bidder, is the lowest negotiated price offered by
38 any reasonable vendor, and is a reasonable price for the work,
39 materials, supplies or services. Whenever a State college shall
40 determine that a bid was not arrived at independently in open
41 competition pursuant to subsection c. (ii) of this section, it shall
42 thereupon notify the Attorney General of the facts upon which its
43 determination is based and, when appropriate, it may institute
44 appropriate proceedings in any State or federal court of competent
45 jurisdiction for a violation of any State or federal antitrust law or
46 laws relating to the unlawful restraint of trade.

47 (cf: P.L.2005, c.369, s.5)

1 4. Section 30 of P.L.1986, c.43 (C.18A:64-81) is amended to
2 read as follows:

3 30. No action for damages shall lie against the **【Board of Higher**
4 **Education, the Commission on】** Secretary of Higher Education, the
5 Presidents' Council, any State official, any State college or its board
6 of trustees or any of its officers because of any action taken **【by**
7 **virtue of the provisions of this article】** in regard to contracts and
8 agreements for the purchase of lands, buildings, equipment,
9 materials, supplies and services.
10 (cf: P.L.1994, c.48, s.118)

11

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

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

25 (2) A public-private partnership agreement may include an
26 agreement under which a State or county college leases to a private
27 entity the operation of a dormitory or other revenue-producing
28 facility to which the college holds title, in exchange for up-front or
29 structured financing by the private entity for the construction of
30 classrooms, laboratories, or other academic buildings. Under the
31 lease agreement, the college shall continue to hold title to the
32 facility, and the private entity shall be responsible for the
33 management, operation, and maintenance of the facility. The
34 private entity shall receive some or all, as per the agreement, of the
35 revenue generated by the facility and shall operate the facility in
36 accordance with college standards. A lease agreement shall not
37 affect the status or employment rights of college employees who are
38 assigned to, or provide services to, the leased facility. At the end of
39 the lease term, subsequent revenue generated by the facility, along
40 with management, operation, and maintenance responsibility, shall
41 revert to the college.

42 b. (1) A private entity that assumes financial and
43 administrative responsibility for a project pursuant to subsection a.
44 of this section shall not be subject to the procurement and
45 contracting requirements of all statutes applicable to the institution
46 of higher education at which the project is completed, including, but
47 not limited to, the **【"State College Contracts Law," P.L.1986, c.43**
48 **(C.18A:64-52 et seq.), and the】** "County College Contracts Law,"

1 P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of
2 facilitating the financing of a project pursuant to subsection a. of
3 this section, a public entity may become the owner or lessee of the
4 project or the lessee of the land, or both, may become the lessee of a
5 dormitory or other revenue-producing facility to which the college
6 holds title, may issue indebtedness in accordance with the public
7 entity's enabling legislation and, notwithstanding any provision of
8 law to the contrary, shall be empowered to enter into contracts with
9 a private entity and its affiliates without being subject to the
10 procurement and contracting requirements of any statute applicable
11 to the public entity provided that the private entity has been selected
12 by the institution of higher education pursuant to a solicitation of
13 proposals or qualifications. For the purposes of this section, a
14 public entity shall include the New Jersey Economic Development
15 Authority, and any project undertaken pursuant to subsection a. of
16 this section of which the authority becomes the owner or lessee, or
17 which is situated on land of which the authority becomes the lessee,
18 shall be deemed a "project" under the "New Jersey Economic
19 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

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

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

48 d. (1) All construction projects under a public-private
49 partnership agreement entered into pursuant to this section shall

1 contain a project labor agreement. The project labor agreement
2 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
3 seq.), and shall be in a manner that to the greatest extent possible
4 enhances employment opportunities for individuals residing in the
5 county of the project's location. Further, the general contractor,
6 construction manager, design-build team, or subcontractor for a
7 construction project proposed in accordance with this paragraph
8 shall be registered pursuant to the provisions of P.L.1999, c.238
9 (C.34:11-56.48 et seq.), and shall be classified by the Division of
10 Property Management and Construction to perform work on a
11 public-private partnership higher education project. All
12 construction projects proposed in accordance with this paragraph
13 shall be submitted to the New Jersey Economic Development
14 Authority for its review and approval and, when practicable, are
15 encouraged to adhere to the Leadership in Energy and
16 Environmental Design Green Building Rating System as adopted by
17 the United States Green Building Council.

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

26 e. A general contractor, construction manager, design-build
27 team, or subcontractor shall be registered pursuant to the provisions
28 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified
29 by the Division of Property Management and Construction to
30 perform work on a public-private partnership higher education
31 project.

32 f. (1) On or before August 1, 2015, all projects proposed in
33 accordance with this section shall be submitted to the New Jersey
34 Economic Development Authority for the authority's review and
35 approval; except that in the case of projects proposed in accordance
36 with paragraph (2) of subsection a. of this section, all projects shall
37 be submitted on or before August 1, 2016. The projects are
38 encouraged, when practicable, to adhere to the green building
39 manual prepared by the Commissioner of Community Affairs
40 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any
41 application that is deemed to be incomplete on August 2, 2015, or
42 on August 2, 2016 in the case of an application submitted pursuant
43 to paragraph (2) of subsection a. of this section, shall not be eligible
44 for consideration.

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 public-private partnership agreement between the
48 State or county college and the private developer; (ii) a full
49 description of the project, including a description of any agreement

1 for the lease of a revenue-producing facility related to the project;
2 (iii) the estimated costs and financial documentation for the project;
3 (iv) a timetable for completion of the project extending no more
4 than five years after consideration and approval; and (v) any other
5 requirements that the authority deems appropriate or necessary.

6 (b) As part of the estimated costs and financial documentation
7 for the project, the application shall contain a long-range
8 maintenance plan and shall specify the expenditures that qualify as
9 an appropriate investment in maintenance. The long-range
10 maintenance plan shall be approved by the authority pursuant to
11 regulations promulgated by the authority that reflect national
12 building maintenance standards and other appropriate building
13 maintenance benchmarks. All contracts to implement a long-range
14 maintenance plan pursuant to this paragraph shall contain a project
15 labor agreement. The project labor agreement shall be subject to
16 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in
17 a manner that to the greatest extent possible enhances employment
18 opportunities for individuals residing in the county of the project's
19 location.

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

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

30 Where no public fund has been established for the financing of a
31 public improvement, the chief financial officer of the public owner
32 shall require the private entity for whom the public improvement is
33 being made to post, or cause to be posted, a bond guaranteeing
34 prompt payment of moneys due to the contractor, his or her
35 subcontractors and to all persons furnishing labor or materials to the
36 contractor or his or her subcontractors in the prosecution of the
37 work on the public improvement.

38 g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall
39 not apply to any project carried out pursuant to this section.

40 (cf: P.L.2013, c.161, s.26)

41

42 6. Section 60 of P.L.2001, c.137 (C.18A:73-43.4) is amended
43 to read as follows:

44 60. a. The State Treasurer shall disburse to Thomas Edison
45 State College the amount of funds appropriated in the direct State
46 services portion of the annual appropriation for the State Library.
47 The funds shall be paid to the college in four equal installments
48 beginning on July 1 of each year. Thomas Edison State College

1 shall deposit all such funds into separate accounts to be used solely
2 for State Library purposes.

3 b. The State Treasurer shall disburse to Thomas Edison State
4 College the amount of funds appropriated in the State aid portion of
5 the annual appropriation for the State Library. The funds shall be
6 paid to the college on a drawdown schedule to be prepared by
7 Thomas Edison State College and approved by the Office of
8 Management and Budget. Thomas Edison State College shall
9 deposit all such funds into separate accounts to be used solely for
10 State Library purposes.

11 c. Each year, Thomas Edison State College shall prepare and
12 submit to the Office of Management and Budget in the Department
13 of the Treasury a proposed budget for the operation of the State
14 Library during the following fiscal year at the same time that
15 Thomas Edison State College prepares and submits to the Secretary
16 of State for submission to Office of Management and Budget a
17 proposed budget for the operation of the college during the
18 following fiscal year.

19 d. Funds disbursed to Thomas Edison State College for the
20 operations of the State Library, although maintained in separated
21 accounts, shall be considered college funds for all purposes related
22 to purchasing¹, including for the purposes of the "State College
23 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.)¹.

24 e. Thomas Edison State College is authorized to accept
25 donations on behalf of the State Library and those donated funds
26 shall be maintained in separate accounts to be used solely for State
27 Library purposes.

28 f. Thomas Edison State College shall be entitled to use, solely
29 for State Library purposes, the interest income from any public or
30 private fund established to support the programs and services of the
31 State Library to the extent permitted by law and the terms of the
32 fund.

33 g. Thomas Edison State College shall conduct an independent
34 financial audit of the State Library accounts each year, including
35 accounts that receive federal funds, and shall submit copies of the
36 same to the Department of the Treasury, with the cost of such audits
37 funded from the direct State services portion of the annual
38 appropriation for the State Library.

39 h. Thomas Edison State College shall be responsible for the
40 maintenance of all financial records that involve the operations of
41 the State Library, including those records that relate to federal
42 funds.

43 (cf: P.L.2001, c.137, s.60)

44

45 7. Section 3 of P.L.1969, c.104 (C.52:25-16.1) is amended to
46 read as follows:

47 3. The Director of the Division of Purchase and Property may,
48 at the director's discretion, include, in any such contract or contracts
49 on behalf of the State, a provision for the purchase of such

1 materials, supplies, equipment or services by any local contracting
2 unit from such contractor or contractors. Such purchase may be
3 effectuated either as an outright purchase or by installment, lease or
4 rental, so long as the vendor offers financing at an interest rate that
5 is equal to or lower than the State line of credit. The local
6 contracting unit shall have sole responsibility for any payment due
7 the vendor for any such purchase. All purchases shall be subject to
8 audit and inspection by the local contracting unit for which made.
9 The local contracting unit shall file such reports as the Director of
10 the Division of Purchase and Property may require setting forth the
11 expenditure on such contracts. For the purposes of this section,
12 "local contracting unit" means a State college or university
13 established pursuant to chapter 64 of Title 18A of the New Jersey
14 Statutes and any public agency subject to the provisions of the
15 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
16 seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,
17 **【the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52**
18 **et seq.),】** or the "County College Contracts Law," P.L.1982, c.189
19 (C.18A:64A-25.1 et seq.).
20 (cf: P.L.1999, c.440, s.91)

21

22 8. (New section) Notwithstanding any of the provisions of the
23 "New Jersey Contractual Liability Act" (N.J.S.59:13-1 et seq.) to
24 the contrary, contract claims and suits against a State college or
25 university shall be governed by that act.

26

27 9. The following sections are repealed:

28 Sections 1, 3 and 4, 6 through 28, and 33 of P.L.1986, c.43
29 (C.18A:64-52, C.18A:64-54 and C.18A:64-55, C.18A:64-57
30 through C.18A:64-79, and C.18A:64-84);

31 Section 2 of P.L.1992, c.61 (C.18A:64-76.1);

32 P.L.2013, c.147 (C.18A:64-76.2 et seq.).

33

34 10. This act shall take effect on the 60th day after enactment and
35 apply to contracts for which bids are solicited on and after the
36 effective date.

37

38

39

STATEMENT

40

41 This bill alters the requirements pursuant to which the State
42 colleges and universities purchase goods and services and construct
43 buildings in order to align the requirements governing these
44 institutions of higher education with the contracting standards
45 governing public research universities in the State. The bill will
46 allow the State colleges and universities the ability to follow the
47 more flexible requirements of the contracting process which apply
48 to the public research universities.

1 Under current law, the contracting standards for the State
2 colleges and universities are found in the “State College Contracts
3 Law,” P.L.1986, c.43 (C.18A:64-52 et seq.). This bill repeals
4 various sections of that law that are inconsistent with the
5 contracting requirements imposed on the public research
6 universities.

7 In order to have the contracting provisions for the State colleges
8 and universities mirror the provisions which apply to the public
9 research universities, the bill amends the section of law setting forth
10 the powers and duties of a board of trustees of a State college or
11 university, to grant the board the general power to adopt standing
12 operating rules and procedures for the purchase of all equipment,
13 materials, supplies, and services. The power to adopt standing
14 operating rules and procedures is limited, however, by the
15 requirement that no contract may be entered into for the purchase of
16 services, materials, equipment and supplies, for the performance of
17 any work, or for the hiring of equipment or vehicles, where the sum
18 to be expended exceeds a specified bid threshold, unless the college
19 or university first publicly advertises for bids and awards the
20 contract to that responsible bidder whose bid, conforming to the
21 invitation for bids, will be most advantageous to the college or
22 university, price and other factors considered. The college or
23 university is permitted to create exceptions to the public advertising
24 requirement, but those exceptions must be in substance those
25 exceptions found currently in the “State College Contracts Law”
26 and sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 10).