

[First Reprint]

SENATE, No. 3829

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 1, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

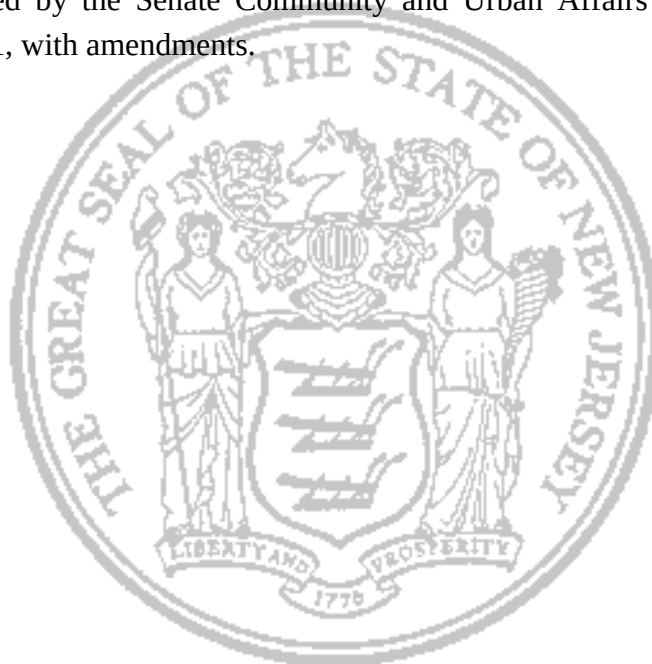
Senator Singleton

SYNOPSIS

Requires use of design-bid-build or design-build delivery system for certain local government construction projects.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on June 10, 2021, with amendments.



(Sponsorship Updated As Of: 12/2/2021)

1 AN ACT requiring certain delivery systems for certain local
 2 government construction projects, amending various parts of the
 3 statutory law, and supplementing P.L.1960, c.183 (C.40:37A-
 4 44 et seq.) and P.L.1992, c.79 (C.40A:12A-1 et al.).

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

8
 9 1. (New section) a. For the purpose of any construction project,
 10 an authority, including any governmental unit that aids the authority
 11 by directly entering into contracts for a construction project with any
 12 person, shall use either a design-bid-build or a design-build delivery
 13 system. If an authority or governmental unit selects a design-bid-build
 14 delivery system, the authority or governmental unit shall solicit
 15 proposals and award design-bid-build contracts in accordance with the
 16 requirements of P.L.1971, c.198 (C.40A:11-1 et seq.), and the
 17 authority or governmental unit shall act as a “contracting unit” under
 18 that law. If an authority or governmental unit selects a design-build
 19 delivery system, the authority or governmental unit shall solicit
 20 proposals and award design-build contract in accordance with the
 21 requirements of P.L.2021, c.71 ¹**[(C. _____) (Assembly Bill No.**
 22 **1285 (4R) of 2020-2021, enacted by the Governor on April 30,**
 23 **2021)]** (C.52:35B-1 et seq.)¹, and the authority shall act as a
 24 “contracting unit” under that law.

25 b. As used in this section:

26 “Construct” and “construction” shall connote and include acts of
 27 clearance, demolition, construction, development or redevelopment,
 28 reconstruction, replacement, extension, improvement, and betterment.

29 “Construction project” means the construction of any public
 30 facility, improvement, or project under P.L.1960, c.183 (C.40:37A-44
 31 et seq.), including an development or redevelopment project or plan
 32 undertaken pursuant to section 34 of P.L.1979, c.275 (C.40:37A-55.1)
 33 or P.L.1992, c.879 (C.40A:12A-1 et al.)

34 “Delivery system” means the procedure used to develop and
 35 construct a construction project.

36 “Design-bid-build” means the delivery system used in a
 37 construction project in which a licensed and prequalified design
 38 professional develops the project design in its entirety; and the
 39 authority or governmental unit then solicits bids and awards the
 40 contract to the lowest responsible bidder that demonstrates the ability
 41 to complete the project specified in the design.

42 “Design-build” means the delivery system in which a design-
 43 builder provides labor, materials, and other construction services for a
 44 construction project under a contract with an authority or
 45 governmental unit.

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:

¹**Senate SCU committee amendments adopted June 10, 2021.**

1 “Design-builder” means the entity, whether natural person,
2 partnership, joint stock company, corporation, trust, professional
3 corporation, business association, or other legal business entity or
4 successor, that proposes to design and construct any construction
5 project who is registered pursuant to the provisions of P.L.1999, c.238
6 (C.34:11-56.48 et seq.), and classified by the New Jersey Division of
7 Property Management and Construction or the New Jersey Department
8 of Transportation, where applicable, to perform work on a design-
9 build project.

10 “Design professional” means the entity, whether natural person,
11 partnership, joint stock company, corporation, trust, professional
12 corporation, business association, or other legal business entity or
13 successor that provides licensed and prequalified architectural,
14 engineering, or surveying services in accordance with R.S.45:3-1 et
15 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
16 responsible for planning, designing, and observing the construction of
17 the construction project.

18
19 2. Section 12 of P.L.1960, c.183, s.12 (C.40:37A-55) is
20 amended to read as follows:

21 12. Every authority shall be a public body politic and corporate
22 constituting a political subdivision of the State established as an
23 instrumentality exercising public and essential governmental
24 functions to provide for the public convenience, benefit and welfare
25 and shall have perpetual succession and, for the effectuation of its
26 purposes, have the following additional powers:

27 (a) To adopt and have a common seal and to alter the same at
28 pleasure;

29 (b) To sue and be sued;

30 (c) To acquire, hold, use and dispose of its facility charges and
31 other revenues and other moneys;

32 (d) To acquire, rent, hold, use and dispose of other personal
33 property for the purposes of the authority;

34 (e) Subject to the provisions of section 26 of this act, to acquire
35 by purchase, gift, condemnation or otherwise, or lease as lessee,
36 real property and easements or interests therein necessary or useful
37 and convenient for the purposes of the authority, whether subject to
38 mortgages, deeds of trust or other liens or otherwise, and to hold
39 and to use the same, and to dispose of property so acquired no
40 longer necessary for the purposes of the authority; provided that the
41 authority may dispose of such property at any time to any
42 governmental unit or person if the authority shall receive a
43 leasehold interest in the property for such term as the authority
44 deems appropriate to fulfill its purposes;

45 (f) Subject to the provisions of section 13 of this act, to lease to
46 any governmental unit or person, all or any part of any public
47 facility for such consideration and for such period or periods of

1 time and upon such other terms and conditions as it may fix and
2 agree upon;

3 (g) To enter into agreements to lease, as lessee, public facilities
4 for such term and under such conditions as the authority may deem
5 necessary and desirable to fulfill its purposes, and to agree,
6 pursuant thereto, to be unconditionally obligated to make payments
7 for the term of the lease, without set-off or counterclaim, whether or
8 not the public facility is completed, operating or operable, and
9 notwithstanding the destruction of, damage to, or suspension,
10 interruption, interference, reduction or curtailment of the
11 availability or output of the public facility to which the agreement
12 applies;

13 (h) To extend credit or make loans to any governmental unit or
14 person for the planning, design, acquisition, construction, equipping
15 and furnishing of a public facility, upon the terms and conditions
16 that the loans be secured by loan and security agreements,
17 mortgages, leases and other instruments, the payments on which
18 shall be sufficient to pay the principal of and interest on any bonds
19 issued for the purpose by the authority, and upon such other terms
20 and conditions as the authority shall deem reasonable;

21 (i) Subject to the provisions of section 13 of this act, to make
22 agreements of any kind with any governmental unit or person for
23 the use or operation of all or any part of any public facility for such
24 consideration and for such period or periods of time and upon such
25 other terms and conditions as it may fix and agree upon;

26 (j) (1) To borrow money and issue negotiable bonds or notes or
27 other obligations and provide for and secure the payment of any
28 bonds and the rights of the holders thereof, and to purchase, hold
29 and dispose of any bonds;

30 (2) To issue bonds, notes or other obligations to provide funding
31 to a municipality that finances the purchase and installation of
32 renewable energy systems and energy efficiency improvements by
33 property owners as provided in section 2 of P.L.2011, c.187
34 (C.40:56-13.1);

35 (k) To apply for and to accept gifts or grants of real or personal
36 property, money, material, labor or supplies for the purposes of the
37 authority from any governmental unit or person, and to make and
38 perform agreements and contracts and to do any and all things
39 necessary or useful and convenient in connection with the
40 procuring, acceptance or disposition of such gifts or grants;

41 (l) To determine the location, type and character of any public
42 facility and all other matters in connection with all or any part of
43 any public facility which it is authorized to own, construct,
44 establish, effectuate or control;

45 (m) To make and enforce bylaws or rules and regulations for the
46 management and regulation of its business and affairs and for the
47 use, maintenance and operation of any public facility, and to amend
48 the same;

1 (n) To do and perform any acts and things authorized by this act
2 under, through or by means of its own officers, agents and
3 employees, or by contract with any governmental unit or person;

4 (o) To acquire, purchase, construct, lease, operate, maintain and
5 undertake any project and to fix and collect facility charges for the
6 use thereof;

7 (p) To mortgage, pledge or assign or otherwise encumber all or
8 any portion of its revenues and other income, real and personal
9 property, projects and facilities for the purpose of securing its
10 bonds, notes and other obligations or otherwise in furtherance of the
11 purpose of this act;

12 (q) To extend credit or make loans to redevelopers for the
13 planning, designing, acquiring, constructing, reconstructing,
14 improving, equipping and furnishing any redevelopment project or
15 redevelopment work;

16 (r) To conduct examinations and investigations, hear testimony
17 and take proof, under oath at public or private hearings of any
18 material matter, require the attendance of witnesses and the
19 production of books and papers and issue commissions for the
20 examination of witnesses who are out of the State, unable to attend,
21 or excused from attendance;

22 (s) To authorize a committee designated by it consisting of one
23 or more members, or counsel, or any officer or employee to conduct
24 any such investigation or examination, in which case such
25 committee, counsel, officer or employee shall have power to
26 administer oaths, take affidavits and issue subpoenas or
27 commissions;

28 (t) To enter into any and all agreements or contracts, execute
29 any and all instruments, and do and perform any and all acts or
30 things necessary, convenient or desirable for the purposes of the
31 authority or to carry out any power expressly given in this act
32 subject to the "Local Public Contracts Law," P.L.1971, c.198
33 (C.40A:11-1 et seq.);

34 (u) To pool loans for any local governmental units within the
35 county or any beneficiary county that are refunding bonds and do
36 and perform any and all acts or things necessary, convenient or
37 desirable for the purpose of the authority to achieve more favorable
38 interest rates and terms for those local governmental units; and

39 (v) To act as and exercise the powers of a land bank entity
40 pursuant to P.L.2019, c.159 (C.40A:12A-74 et al.) for any
41 municipality situated within the county pursuant to a land banking
42 agreement approved by an ordinance adopted by the municipal
43 governing body.

44 The enumerated powers in subsections (f), (h), (o), (q), and (t) of
45 this section are subject to the additional requirements that, to the
46 extent those powers are implemented in connection with any public
47 improvement, the authority shall require any person with whom the
48 authority enters into an agreement, contract, or lease, to furnish a

1 payment and performance bond issued in accordance with
2 N.J.S.2A:44-147, and that any and all moneys loaned or otherwise
3 provided by the authority shall constitute trust funds pursuant to
4 N.J.S.2A:44-148.

5 (cf: P.L.2019, c.159, s.17)

6
7 3. Section 39 of P.L.1960, c.183 (C.40:37A-82) is amended to
8 read as follows:

9 39. All property of an authority shall be exempt from levy and
10 sale by virtue of an execution and no execution or other judicial
11 process shall issue against the same nor shall any judgment against
12 an authority be a charge or lien upon its property; provided, that
13 nothing herein contained shall apply to or limit the rights of the
14 holder of any bonds to pursue any remedy for the enforcement of
15 any pledge, mortgage or lien given by an authority on its facility
16 revenues or other moneys, or on its real or personal property; and
17 provided that nothing herein shall apply to or limit the rights of the
18 holder of a lien, pursuant to the “municipal mechanics’ lien law,”
19 N.J.S.2A:44-125 et seq., to pursue any remedy for the enforcement
20 of the lien upon the moneys due or to grow due under any contract
21 or lease involving a public improvement made between any person
22 and the authority, and which moneys are in the control of the
23 authority, even if not directly held by the authority.

24 (cf: P.L.1977, c. 291, s. 4)

25
26 4. Section 47 of P.L.1960, c.183 (C.40:37A-90) is amended to
27 read as follows:

28 47. This act shall be construed liberally to effectuate the
29 legislative intent and as complete and independent authority for the
30 performance of each and every act and thing herein authorized, and
31 an authority shall not constitute or be deemed to be a county or
32 municipality or agency or component of a municipality for the
33 purposes of any other law; provided, however, that

34 a. an authority or governmental unit shall be deemed a
35 “contracting unit” under the “Local Public Contracts Law,”
36 P.L.1971, c.198 (C.40A:11-1 et seq.) or the “Design Build
37 Construction Services Procurement Act,” P.L.2021, c.71
38 ‘[(C.) (Assembly Bill No. 1285 (4R) of 2020-2021, enacted
39 by the Governor on April 30, 2021)]’ (C.52:35B-1 et seq.)¹ when
40 soliciting proposals and awarding contracts for construction, and

41 b. that no authority, other than an authority created in or
42 performing services for a county of the second class having a
43 population in excess of 265,000, but less than 350,000 inhabitants, in a
44 county of the third class having a population not in excess of 70,000
45 inhabitants, or in a county of the fifth class having a population in
46 excess of 150,000, but less than 300,000 inhabitants, shall exercise the
47 powers of a common carrier in any such county, and, except as
48 hereinabove in this section set forth, nothing contained in this act shall

1 in any way affect or limit the jurisdiction, rights, powers or duties of
2 any State regulatory agencies.

3 (cf: P.L.1994, c.76, s.11)
4

5 5. Section 22 of P.L.1979, c.275 (C.40:37A-127) is amended to
6 read as follows:

7 22. All property of the authority, except as otherwise provided
8 herein, shall be exempt from levy and sale by virtue of an
9 execution and no execution or other judicial process shall issue
10 against the same nor shall any judgment against the authority be a
11 charge or lien upon its property; provided, that nothing herein shall
12 apply to or limit the rights of the holder of any bonds, bond
13 anticipation notes or other notes or obligations to pursue any
14 remedy for the enforcement of any pledge or lien given by the
15 authority on its revenues or other moneys; and provided that
16 nothing herein shall apply to or limit the rights of the holder of a
17 lien, pursuant to the “municipal mechanics’ lien law”, N.J.S.2A:44-
18 125 et seq., to pursue any remedy for the enforcement of the lien
19 upon the moneys due or to grow due under any contract or lease
20 involving a public improvement made between any person and the
21 authority, and which moneys are in the control of the authority,
22 even if not directly held by the authority; and provided, further, that
23 nothing herein shall limit the authority's ability to enter into
24 partnerships, limited partnerships, joint ventures or other
25 associations as a general partner, limited partner or participant
26 therein.

27 (cf: P.L.1982, c.113, s.17)
28

29 6. (New section) a. For the purpose of selecting a redeveloper or
30 a person to perform the construction of any ¹public¹ redevelopment
31 project under P.L.1992, c.79 (C.40A:12A-1 et seq.), the municipality
32 or redevelopment entity shall use either a design-bid-build or a design-
33 build delivery system. If the municipality or redevelopment entity
34 selects a design-bid-build delivery system, the municipality or
35 redevelopment entity unit shall solicit proposals and award design-bid-
36 build contracts in accordance with the requirements of P.L.1971, c.198
37 (C.40A:11-1 et seq.), and the municipality or redevelopment entity
38 shall act as a “contracting unit” under that law. If the municipality or
39 redevelopment entity selects a design-build delivery system, the
40 municipality or redevelopment entity shall solicit proposals and award
41 design-build contract in accordance with the requirements of P.L.2021,
42 c.71 ¹[(C.) (Assembly Bill No. 1285 (4R) of 2020-2021,
43 enacted by the Governor on April 30, 2021)] (C.52:35B-1 et seq.)¹,
44 and the municipality or redevelopment entity shall act as a
45 “contracting unit” under that law.

46 b. As used in this section:

1 “Construct” and “construction” shall mean and include acts of
2 clearance, demolition, construction, development or redevelopment,
3 reconstruction, replacement, extension, improvement, and betterment.

4 “Delivery system” means the procedure used to develop and
5 construct a ¹**‘[construction] public redevelopment’** project.

6 “Design-bid-build” means the delivery system used in a ¹**‘public’**
7 redevelopment project in which a licensed and prequalified design
8 professional develops the project design in its entirety; and the
9 municipality or redevelopment entity then solicits bids and awards the
10 contract to the lowest responsible bidder that demonstrates the ability
11 to complete the project specified in the design.

12 “Design-build” means the delivery system in which a design-
13 builder provides labor, materials, and other construction services for a
14 ¹**‘[construction] public redevelopment’** project under a contract with a
15 municipality or redevelopment entity.

16 “Design-builder” means the entity, whether natural person,
17 partnership, joint stock company, corporation, trust, professional
18 corporation, business association, or other legal business entity or
19 successor, that proposes to design and construct any ¹**‘public’**
20 redevelopment project who is registered pursuant to the provisions of
21 P.L.1999, c.238 (C.34:11-56.48 et seq.), and classified by the New
22 Jersey Division of Property Management and Construction or the New
23 Jersey Department of Transportation, where applicable, to perform
24 work on a design-build project.

25 “Design professional” means the entity, whether natural person,
26 partnership, joint stock company, corporation, trust, professional
27 corporation, business association, or other legal business entity or
28 successor that provides licensed and prequalified architectural,
29 engineering, or surveying services in accordance with R.S.45:3-1 et
30 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
31 responsible for planning, designing, and observing the construction of
32 the ¹**‘public’** redevelopment project.

33 ¹**“Public redevelopment project” means a redevelopment project**
34 **where the construction is done under contract with a public body and**
35 **is: (1) paid for in whole or in part out of the funds of a public body, or**
36 **(2) done on property or premises owned, leased, or to be subsequently**
37 **leased by a public body. “Public redevelopment project” shall not be**
38 **construed to include construction on property which is privately**
39 **owned and entirely financed by a private developer.**¹

40
41 7. This act shall take effect immediately.