Title 40A.
Chapter 11.
Part S (New)
Public-Private Partnership
Agreements.
§1 - C.40A:11-52
Title 18A.
Subtitle 5.
Part 7.
Chapter 18A.
Article 16 (New)
Public-Private Partnership
Agreements.
§2 - C.18A:18A-60
§3 - C.52:34-26
§4 - C.18A:64E-33
§§7-9 - C.52:18A-259 to
52:18A-261
§10 - Note

P.L. 2018, CHAPTER 90, approved August 14, 2018
Senate, No. 865 (Third Reprint)

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

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

1. (New section) a. As used in this section:
“Authority” means the New Jersey Economic Development
Authority established pursuant to section 4 of P.L.1974,
c.80 (C.34:1B-4).
“Availability payment” means a periodic payment made by a
local government unit to a private entity in exchange for making
available the use of a public building, road, structure, infrastructure,
or facility at a predetermined level of service, operation, or
maintenance.¹
“Bundling” means the use of a solicitation for multiple projects
in one single contract, through a public-private partnership project
delivery method, the result of which restricts competition.
“Local government unit” means a county, a municipality, or any
board, commission, committee, authority or agency thereof that is
subject to the provisions of the “Local Public Contracts Law;”

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:
¹Senate SBA committee amendments adopted June 11, 2018.
²Senate floor amendments adopted June 21, 2018.
³Senate floor amendments adopted June 25, 2018.
P.L.1971, c.198 (C.40A:11-1 et seq.) including a housing authority or redevelopment agency created or continued under the “Local Redevelopment and Housing Law;” P.L.1992, c.79 (C.40A:12A-1 et seq.). A local government unit shall not include a public entity that has entered into a contract with a private firm or a public authority pursuant to the “New Jersey Wastewater Treatment Public-Private Contracting Act,” P.L.1995, c.216 (C.58:27-19 et al.), for the provision of wastewater treatment services.

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

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

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

(2) A public-private partnership agreement may include an agreement under which a local government unit and a private entity enter into a lease of a public building, road, structure, infrastructure, or facility in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity may be responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility. The private entity may receive some or all, as per the agreement, of the revenue generated by the building, road, structure, infrastructure, or facility, and may operate the building, road structure, infrastructure, or facility in accordance with local government unit standards. At the end of the lease term, subsequent revenue generated by the building, road, structure, infrastructure, or facility, along with management, operation, and maintenance responsibility, shall revert to the local government unit. A lease agreement entered into pursuant to this section shall be limited in duration to a term of not more than 30 years. A lease agreement shall be subject to all applicable provisions of current law.
governing leases by a local government unit not inconsistent with
the provisions of this section.¹

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

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

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

(2) For the purposes of facilitating the financing of a project
pursuant to this section, a public entity may become the owner or
lessee of the project or the lessee of the land, or both, may become
the lessee of a revenue-producing building, structure, or facility to
which the local government unit holds title, may issue indebtedness
in accordance with the public entity's enabling legislation and,
notwithstanding any provision of law to the contrary, shall be
empowered to enter into contracts with a private entity and its
affiliates without being subject to the procurement and contracting
requirements of any statute applicable to the public entity provided
that the private entity has been selected by the local government
unit pursuant to a solicitation of proposals or qualifications from at
least two private entities. For the purposes of this subsection, a
public entity shall include the New Jersey Economic Development
Authority, and any project undertaken pursuant to this section of
which the authority becomes the owner or lessee, or which is
situated on land of which the authority becomes the lessee, shall be
deemed a "project" under the "The New Jersey Economic
Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

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

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

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

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

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

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

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

(2) (a) In order for an application to be complete and considered by the authority, the application shall include, but not be limited to: (i) a full description of the proposed public-private partnership agreement between the local government unit and the private developer; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility related to the project; (iii) the estimated costs and financial documentation for the project; (iv) a timetable for completion of the construction of the project extending no more than five years after consideration and approval; and (v) any other requirements that the authority deems appropriate or necessary. The application shall also include a resolution by the local government unit’s governing body of its intent to enter into a public-private partnership agreement pursuant to this section.

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

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. The criteria for assessing the project shall include, but may not be limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the local government unit’s governing body of its intent to enter into a public-private partnership agreement for the project. No project
shall commence the procurement process until approval has been granted by the authority. Following the procurement process, but before the local government unit enters into a public-private partnership agreement, the project and the resultant short list of private entities shall be submitted to the authority for final approval; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has substantially deviated from the plan submitted pursuant to paragraph (2) of this subsection, and shall retain the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest as specified under subsection j. of this section. Notwithstanding any provision of this section to the contrary, all roadway or highway projects shall be subject to review and approval by the State Treasurer, which shall be conducted in consultation with the Commissioner of the Department of Transportation, and the authority shall not approve any roadway or highway project disapproved by the State Treasurer.

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

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

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

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

d. (1) A private entity seeking to enter into a public-private partnership agreement with the local government unit shall be qualified by the local government unit as part of the procurement process, provided such process ensures that the private entity meets at least the minimum local government unit standards for qualification for professional services, construction contracting, and other qualifications applicable to the project, prior to submitting a proposal under the procurement process. The local governing unit’s governing body shall issue a request for proposals, which
shall close within 45 days.¹ The qualification process ¹shall be
conducted within 45 days after the closing date for the receipt of
proposals, and¹ shall result in a list of qualified private entities, that
may be ranked in order to generate a short list of private entities
requested to submit a final proposal.

(2) The local government unit may accept unsolicited proposals
from private entities for public-private partnership agreements. If
the local government unit receives an unsolicited proposal and
determines that it meets the standards of this section, the local
government unit shall publish a notice of the receipt of the proposal
on the Internet site of the local government unit, or through
advertisements in newspapers. If a notice is published exclusively
in newspapers, the notice shall appear in two or more newspapers
circulated wholly or in part in the county where the proposed
project is to be located. The notice shall provide that the local
government unit will accept, for ¹[45] 120¹ days after the initial
date of publication, proposals meeting the standards of this section
from other private entities for eligible projects that satisfy the same
basic purpose and need. A copy of the notice shall be mailed to
each municipal and county local government body in the geographic
area affected by the proposal.

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

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

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

(6) Stipends may be used on public private partnership projects
when there is a substantial opportunity for innovation and the costs
for developing a proposal are significant. The local government unit
may elect to pay unsuccessful proposers for the work product they
submit with their proposal in response to a request for proposals.
The use by the local government unit of any design element
contained in an unsuccessful proposal shall be at the sole risk and
discretion of the local government unit and shall not confer liability
on the recipient of the stipulated stipend amount. After payment of
the stipulated stipend amount, the local government unit and the
unsuccessful proposer shall jointly own the rights to, and may make
use of any work product contained in the proposal, including the
technologies, techniques, methods, processes, ideas, and
information contained in the proposal, project design, and project
financial plan. The use by the unsuccessful proposer of any part of
the work product contained in the proposal shall be at the sole risk
of the unsuccessful proposer and shall not confer liability on the
local government unit.\[^2\]

\[^2\] (New section) a. As used in this section:

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

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

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

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

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

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

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

(2) A public-private partnership agreement may include an
 agreement under which a local government unit and a private entity
 enter into a lease of a revenue-producing public building, road,
 structure, infrastructure, or facility in exchange for up-front or
 structured financing by the private entity for the project. Under the
 lease agreement, the private entity shall be responsible for the
 management, operation, and maintenance of the building, road,
 structure, infrastructure, or facility. The private entity shall receive
 some or all, as per the agreement, of the revenue generated by the
 building, road, structure, infrastructure, or facility, and shall operate
 the building, road structure, infrastructure, or facility in accordance
 with local government unit standards. At the end of the lease term,
 subsequent revenue generated by the building, road, structure,
 infrastructure, or facility, along with management, operation, and
 maintenance responsibility, shall revert to the local government
 unit. A lease agreement entered into pursuant to this section shall be
 limited in duration to a term of not more than 30 years. A lease
 agreement shall be subject to all applicable provisions of current
 law governing leases by a local government unit not inconsistent
 with the provisions of this section. For the purposes of this section,
 “revenue-producing” shall include leaseback arrangements.

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

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

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

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

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

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

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

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

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

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

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

(6) Prior to entering into a public-private partnership, the local government unit at a public hearing shall find that the project is in the best interest of the public by finding that (i) it will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense; (ii) there is a public need for the
project and the project is consistent with existing long-term plans;

(iii) there are specific significant benefits to the project; (iv) there are specific significant benefits to using the public-private partnership instead of other options including No-Build; (v) the private development will result in timely and efficient development and operation; and (vi) the risks, liabilities and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

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

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

(3) (a) In order for an application to be complete and considered by the State Treasurer, the application shall include, but not be limited to: (i) a full description of the proposed public-private partnership agreement between the local government unit and the private developer, including all information obtained by and findings of the local government unit pursuant to paragraphs (4) and (5) of subsection e. of this section; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility related to the project; and (iii) the estimated costs and financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include at least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios; (iv) a timetable for completion of the construction of the project; (v) an analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership; (vi) a record of the public hearing held pursuant to paragraph (4) of subsection e. of this section, which shall have been made available to the public within seven days following the conclusion of the hearing; and (vii) any other requirements that the State Treasurer deems appropriate or necessary. The application shall also include a resolution by the local government unit’s governing body of its intent to enter into a public-private partnership agreement pursuant to this section.
(b) As part of the estimated costs and financial documentation for the project, the application shall contain a long-range maintenance plan and a long-range maintenance bond and shall specify the expenditures that qualify as an appropriate investment in maintenance. The long-range maintenance plan shall be approved by the State Treasurer pursuant to regulations promulgated by the State Treasurer that reflect national building maintenance standards and other appropriate building maintenance benchmarks.

(4) The State Treasurer, in consultation with the authority and the Commissioner of the Department of Community Affairs, shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. No public-private partnership agreement shall be executed until approval has been granted by the State Treasurer. Prior to a final decision by the State Treasurer on the application, the authority and the Department of Community Affairs shall be afforded the opportunity to provide comments on the application that they deem appropriate, and the State Treasurer shall consider any comments submitted by the authority and the Department of Community Affairs with respect to the application. In order to approve the application, the State Treasurer shall find that: (i) the local government unit’s assumptions regarding the project’s scope, its benefits, its risks and the cost of the public sector option were fully and reasonably developed; (ii) the design of the project is feasible; (iii) the experience and qualifications of the private entity; (iv) the financial plan is sound; (v) the long-range maintenance plan is adequate to protect the investment; (vi) the project is in the best interest of the public, using the criteria in paragraph (6) of subsection e. of this section; (vii) a resolution by the local government unit’s governing body of its intent to enter into a public-private partnership agreement for the project has been received; and (viii) the term sheet for any proposed procurement contains all necessary elements. The State Treasurer shall retain the right to revoke approval if the project has substantially deviated from the plan submitted pursuant to this section, and shall retain the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest.

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

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

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

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

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

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

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

(4) The local government unit may accept unsolicited proposals from private entities for public-private partnership agreements. If the local government unit receives an unsolicited proposal and determines that it meets the standards of this section, the local government unit shall publish a notice of the receipt of the proposal on the Internet site of the local government unit and through advertisement in at least one or more newspapers with statewide circulation. The local government unit shall also provide notice of the proposal at its next scheduled public meeting and to the State Treasurer. To qualify as an unsolicited proposal, the unsolicited proposal shall at a minimum include a description of the public-private project, the estimated construction and life-cycle costs, a timeline for development, proposed plan of financing, including projected revenues, public or private, debt, equity investment, description of how the project meets needs identified in existing plans, the permits and approvals needed to develop the project from local, state and federal agencies and a projected schedule for obtaining such permits and approvals, a statement of risks, liabilities and responsibilities to be assumed by the private entity. The notice shall provide that the local government unit shall accept, for 120 days after the initial date of publication, proposals meeting the standards of this section from other private entities for eligible projects that satisfy the same basic purpose and need. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.

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

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

(7) Stipends may be used on public private partnership projects
when there is a substantial opportunity for innovation and the costs
for developing a proposal are significant. The local government unit
may elect to pay unsuccessful proposers for the work product they
submit with their proposal in response to a request for proposals.
The use by the local government unit of any design element
contained in an unsuccessful proposal shall be at the sole risk and
discretion of the local government unit and shall not confer liability
on the recipient of the stipulated stipend amount. After payment of
the stipulated stipend amount, the local government unit and the
unsuccessful proposer shall jointly own the rights to, and may make
use of any work product contained in the proposal, including the
technologies, techniques, methods, processes, ideas, and
information contained in the proposal, project design, and project
financial plan. The use by the unsuccessful proposer of any part of
the work product contained in the proposal shall be at the sole risk
of the unsuccessful proposer and shall not confer liability on the
local government unit. The State Treasurer, in consultation with the
New Jersey Economic Development Authority of New Jersey and
Department of Community Affairs shall promulgate guidelines
based upon which any stipends paid by a local government unit are
to be based.

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

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

[2. (New section)  a. As used in this section:

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

“Availability payment” means a periodic payment made by a
school district to a private entity in exchange for making available
the use of a public building, structure, infrastructure, or facility at a
predetermined level of service, operation, or maintenance.]
“Bundling” means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method, the result of which restricts competition.

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

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

“School district” means and includes a local school district, regional school district, or county special services school district or county vocational school established and operating under the provisions of Title 18A of the New Jersey Statutes. The term “school district” shall not include a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.) and a renaissance school established under P.L.2011, c.176 (C.18A:36C-1 et seq.).

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

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

(3) A public-private partnership agreement may include the use of availability payments if deemed to be in the best interest of the public and the school district, provided the private entity shall
operate the building, structure, infrastructure or facility in
accordance with school district standards.

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

c. (1) A private entity that assumes financial and administrative
responsibility for a project pursuant to this section shall not be
subject to, unless otherwise set forth herein, the procurement and
contracting requirements of all statutes applicable to the school
district at which the project is completed, including, but not limited

(2) For the purposes of facilitating the financing of a project
pursuant to this section, a public entity may become the owner or
lessee of the project or the lessee of the land, or both, may become
the lessee of a building, structure, or facility to which the school
district holds title, may issue indebtedness in accordance with the
public entity's enabling legislation and, notwithstanding any
provision of law to the contrary, shall be empowered to enter into
contracts with a private entity and its affiliates without being
subject to the procurement and contracting requirements of any
statute applicable to the public entity provided that the private
entity has been selected by the school district pursuant to a
solicitation of proposals or qualifications from at least two private
entities. For the purposes of this subsection, a public entity shall
include the New Jersey Economic Development Authority, and any
project undertaken pursuant to this section of which the authority
becomes the owner or lessee, or which is situated on land of which
the authority becomes the lessee, shall be deemed a "project" under
the "The New Jersey Economic Development Authority Act,"
P.L.1974, c.80 (C.34:1B-1 et seq.).

(3) As the carrying out of any project described pursuant to this
section constitutes the performance of an essential public function,
all projects predominantly used in furtherance of the purposes of the
school district undertaken pursuant to this section, provided the
project is owned by or leased to a public entity, non-profit business
entity, foreign or domestic, or a business entity wholly owned by
such non-profit business entity, shall at all times be exempt from
property taxation and special assessments of the State, or any
municipality, or other political subdivision of the State and,
notwithstanding the provisions of section 15 of P.L.1974,
c.80 (C.34:1B-15), section 2 of P.L.1977, c.272 (C.54:4-2.2b), or
any other section of law to the contrary, shall not be required to
make payments in lieu of taxes. The land upon which the project is
located shall also at all times be exempt from property taxation.
The project and land upon which the project is located shall not be
subject to the provisions of section 1 of P.L.1984, c.176 (C.54:4-
1.10) regarding the tax liability of private parties conducting for
profit activities on tax exempt land, or section 1 of P.L.1949,
c.177 (C.54:4-2.3) regarding the taxation of leasehold interests in
exempt property that are held by nonexempt parties.
(4) Prior to the commencement of work on a project, the private entity shall establish a construction account and appoint a third-party financial institution, who shall act as a collateral agent, to manage the construction account. The construction account shall include the funding, financial instruments, or both, that shall be used to fully capitalize and fund the project, and the collateral agent shall maintain a full accounting of the funds and instruments in the account. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full. The construction account shall not be designated for more than one project.

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

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

(2) All projects proposed in accordance with this section shall be submitted to the New Jersey Economic Development Authority for its review and approval 1in accordance with subsection f. of this section1 prior to commencing procurement of the project 1in accordance with subsection j. of this section1 and, when practicable, are encouraged to adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system.
The general contractor, construction manager, or design-build team shall be required to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

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

(2) (a) In order for an application to be complete and considered by the authority, the application shall include, but not be limited to:
(i) a full description of the proposed public-private partnership agreement between the school district and the private developer; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility related to the project; (iii) the estimated costs and financial documentation for the project; (iv) a timetable for completion of the construction of the project extending no more than five years after consideration and approval; and (v) any other requirements that the authority deems appropriate or necessary. The application shall also include a resolution by the school district’s governing body of its intent to enter into a public-private partnership agreement pursuant to this section.

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

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. The criteria for assessing the project shall include, but may not be limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the school district’s governing body of its intent to enter into a public-private partnership agreement for the project. No project shall commence the procurement process until final approval has been granted by the authority. Following the procurement process, but before the school district enters into a public-private partnership agreement, the project and the resultant short list of private entities
shall be submitted to the authority for final approval; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has substantially deviated from the plan submitted pursuant to paragraph (2) of this subsection, and shall retain the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest as specified under subsection j. of this section.

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

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

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

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

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

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

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

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

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

(6) Stipends may be used on public private partnership projects
when there is a substantial opportunity for innovation and the costs
for developing a proposal are significant. The school district may
elect to pay unsuccessful proposers for the work product they
submit with their proposal in response to a request for proposals.
The use by the school district of any design element contained in an
unsuccessful proposal shall be at the sole risk and discretion of the
school district and shall not confer liability on the recipient of the
stipulated stipend amount. After payment of the stipulated stipend
amount, the school district and the unsuccessful proposer shall
jointly own the rights to, and may make use of any work product
contained in the proposal, including the technologies, techniques,
methods, processes, ideas, and information contained in the
proposal, project design, and project financial plan. The use by the
unsuccessful proposer of any part of the work product contained in
the proposal shall be at the sole risk of the unsuccessful proposer
and shall not confer liability on the school district. ]²

²2. (New section) a. As used in this section:
“Authority” means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

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

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

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

“School district” shall have the same meaning as provided in section 3 of P.L.2000, c.72 (C.18A:7G-3) and includes a local school district, regional school district, or county special services school district or county vocational school established and operating under the provisions of Title 18A of the New Jersey Statutes that can demonstrate to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority that a school facility is necessary due to overcrowding or is in need of replacement. The term “school district” shall include a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.)

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

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

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

   c. (1) A private entity that assumes financial and administrative responsibility for a project pursuant to this section shall not be subject to, unless otherwise set forth herein, the procurement and contracting requirements of all statutes applicable to the school district at which the project is completed, including, but not limited to, the "Public School Contracts Law."


   (2) For the purposes of facilitating the financing of a project pursuant to this section, a public entity may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a building, structure, or facility to which the school district holds title, may issue indebtedness in accordance with the public entity's enabling legislation and, notwithstanding any provision of law to the contrary, shall be empowered to enter into contracts with a private entity and its affiliates without being subject to the procurement and contracting requirements of any statute applicable to the public entity provided that the private entity has been selected by the school district pursuant to a solicitation of proposals or qualifications from at least two private entities. For the purposes of this subsection, a public entity shall include the New Jersey Economic Development Authority, and any project undertaken pursuant to this section of which the authority becomes the owner or lessee, or which is situated on land of which the authority becomes the lessee, shall be deemed a "project" under the "The New Jersey Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

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

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

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

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

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

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

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

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

(1) All projects proposed in accordance with this section shall be submitted to the State Treasurer for review and approval, which shall be conducted in consultation with the Commissioner of the Department of Education and the Chief Executive Officer of the Schools Development Authority. The Commissioner of the Department of Education shall determine if a project is subject to voter approval pursuant to N.J.S.A. 18A:24-10. If a project is subject to voter approval, such approval is required prior to progressing thru the procurement process. The projects are encouraged, when practicable, to adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

(2) All projects proposed in accordance with this section that have a transportation component or impact the transportation infrastructure shall be submitted to the Department of Transportation. The State Treasurer shall consult with the Department of Transportation in making its final determination.

(a) In order for an application to be complete and considered by the State Treasurer, the application shall include, but not be limited to: (i) a full description of the proposed public-private partnership agreement between the school district and the private developer, including all information obtained by and findings of the school district pursuant to paragraphs (4) and (5) of subsection (e) of this section; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility related to the project; (iii) the estimated costs and financial
documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation must include at least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios; (iv) a timetable for completion of the construction of the project; (v) an analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership; (vi) a record of the public hearing held pursuant to paragraph (4) of subsection e. of this section, which shall have been kept open for a period of seven days following the conclusion of the hearing; (vii) any other requirements that the State Treasurer deems appropriate or necessary. The application shall also include a resolution by the school district’s governing body of its intent to enter into a public-private partnership agreement pursuant to this section.

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

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

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

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

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

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

j. (1) A private entity seeking to enter into a public-private
partnership agreement with the school district shall be qualified by
the school district as part of the procurement process, provided such
process ensures that the private entity and its subcontractors and
consultants, where relevant, meet at least the minimum
qualifications standards promulgated by the State Treasurer, in
consultation with the New Jersey Economic Development
Authority, Department of Education, Schools Development
Authority, and such other school district standards for qualification
for professional services, construction contracting, and other
qualifications applicable to the project, prior to submitting a
proposal under the procurement process.
(2) A request for qualifications for a public-private partnership agreement shall be advertised at least 45 days prior to the anticipated date of receipt. The advertisement of the request for qualifications shall be published on the official Internet website of the school district and at least one or more newspapers with statewide circulation.

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

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

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

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

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

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

3

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

1“Availability payment” means a periodic payment made by a
State government entity to a private entity in exchange for making
available the use of a public building, road, structure, infrastructure,
or facility at a predetermined level of service, operation, or
maintenance.1

“Building project” means the construction, reconstruction, repair,
alteration, improvement, or extension of any public building,
structure, or facility constructed or acquired by a State government
entity to house State government functions, including any
infrastructure or facility used or to be used by the public or in
support of a public purpose or activity.
“Bundling” means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method, the result of which restricts competition.

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

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

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

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

(2) A public-private partnership agreement may include an agreement under which a State government entity and a private entity enter into a lease of a revenue-producing public building or highway in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity may be responsible for the management, operation, and maintenance of the building or highway. The private entity may receive some or all, as per the agreement, of the revenue generated by the building or highway, and may operate the building or highway in accordance with State government entity standards. At the end of the lease term, subsequent revenue generated by the building or highway, along with management, operation, and maintenance responsibility, shall revert to the State government entity.
A lease agreement entered into pursuant to this section shall be limited in duration to a term of not more than 30 years. A lease agreement shall be subject to all applicable provisions of current law governing leases by a State government entity not inconsistent with the provisions of this section.

(3) A public-private partnership agreement may include the use of availability payments if deemed to be in the best interest of the public and the State government entity, provided the private entity shall operate the building, road, structure, infrastructure or facility in accordance with State government entity standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The State government entity may accept unsolicited
proposals from private entities for public-private partnership
agreements. If the State government entity receives an unsolicited
proposal and determines that it meets the standards of this section,
the State government entity shall publish a notice of the receipt of
the proposal on the Internet site of the State government entity, or
through advertisements in newspapers. If a notice is published
exclusively in newspapers, the notice shall appear in two or more
newspapers circulated wholly or in part in the county where the
proposed project is to be located. The notice shall provide that the
State government entity will accept, for \([45] 120\) days after the
initial date of publication, proposals meeting the standards of this
section from other private entities for eligible projects that satisfy
the same basic purpose and need. A copy of the notice shall be
mailed to each municipal and county local government body in the
geographic area affected by the proposal.

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

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

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

(6) Stipends may be used on public private partnership projects
when there is a substantial opportunity for innovation and the costs
for developing a proposal are significant. The State government
entity may elect to pay unsuccessful proposers for the work product
they submit with their proposal in response to a request for
proposals. The use by the State government entity of any design
element contained in an unsuccessful proposal shall be at the sole
risk and discretion of the State government entity and shall not confer liability on the recipient of the stipulated stipend amount. After payment of the stipulated stipend amount, the State government entity and the unsuccessful proposer shall jointly own the rights to, and may make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan. The use by the unsuccessful proposer of any part of the work product contained in the proposal shall be at the sole risk of the unsuccessful proposer and shall not confer liability on the State government entity.

2. (New section) a. As used in this section:
   “Authority” means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).
   “Building project” means the construction, reconstruction, repair, alteration, improvement, or extension of any public building, structure, or facility constructed or acquired by a State government entity to house State government functions, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity.
   “Bundling” means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method, the result of which restricts competition.
   “Department” means the Department of Transportation.
   “Division” means the Division of Property Management and Construction within the Department of the Treasury.
   ”Highway project” means the construction, reconstruction, repair, alteration, improvement, or extension of public expressways, freeways, and parkways, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, and park and ride facilities, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity; provided that the project shall include an expenditure of at least $100 million in public funds, or any expenditure in solely private funds.
   “Public-private partnership agreement” means an agreement entered into by a State government entity and a private entity pursuant to this section for the purpose of permitting a private entity to assume full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a revenue-producing building project or a highway project of, or for the benefit of, the State government entity.
   “State government entity” means the State or any department, agency, commission, or authority thereof subject to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.), including the South Jersey Port Corporation created pursuant to...

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

(2) A public-private partnership agreement may include an agreement under which a State government entity and a private entity enter into a lease of a revenue-producing public building or highway in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity shall be responsible for the management, operation, and maintenance of the building or highway. The private entity shall receive some or all, as per the agreement, of the revenue generated by the building or highway, and shall operate the building or highway in accordance with State government entity standards. At the end of the lease term, subsequent revenue generated by the building or highway, along with management, operation, and maintenance responsibility, shall revert to the State government entity. A lease agreement entered into pursuant to this section shall be limited in duration to a term of not more than 30 years, unless it includes a highway project component in which case the lease agreement shall be limited in duration to a term not more than 50 years. A lease agreement shall be subject to all applicable provisions of current law governing leases by a State government entity not inconsistent with the provisions of this section. For the purposes of this section, “revenue-producing” shall include leaseback arrangements.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) In order for an application to be complete and
considered by the State Treasurer, the application shall include, but
not be limited to: (i) a full description of the proposed public-
private partnership agreement between the State government entity
and the private developer, including all information obtained by and
findings of the State government entity pursuant to paragraphs (1)
and (2) of this subsection; (ii) a full description of the project,
including a description of any agreement for the lease of a revenue-
producing building or highway related to the project; (iii) the
estimated costs and financial documentation for the project showing
the underlying financial models and assumptions that determined
the estimated costs. The financial documentation shall include at
least three different projected estimated costs showing scenarios in
which materially different economic circumstances are assumed and
an explanation for how the estimated costs were determined based
on the three scenarios; (iv) a timetable for completion of the
construction of the project; (v) an analysis of all available funding
options for the project, including an analysis of the financial
viability and advisability of such project, along with evidence of the
public benefit in advancing the project as a public-private
partnership; and (vi) any other requirements that the State Treasurer
deems appropriate or necessary.

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

(6) The State Treasurer, in consultation with the authority, shall
review all completed applications, and request additional
information as is needed to make a complete assessment of the
project. No public-private partnership agreement shall be executed
until approval has been granted by the State Treasurer. Prior to a
final decision by the State Treasurer on the application, the
authority shall be afforded the opportunity to provide comments on
the application that it deems appropriate, and the State Treasurer
shall consider any comments submitted by the authority or relevant
State government entity with respect to the application. The State
Treasurer shall find that: (i) the State government entity’s assumptions regarding the project’s scope, its benefits, its risks and the cost of the public sector option were fully and reasonably developed; (ii) the design of the project is feasible; (iii) the experience and qualifications of the private entity are adequate; (iv) the financial plan is sound; (v) the long-range maintenance plan is adequate to protect the investment; (vi) the project is in the best interest of the public, using the criteria in paragraph (2) of this subsection; and (vii) the term sheet for any proposed procurement contains all necessary elements. The criteria for assessing the project shall include, but may not be limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; and (vi) the existence of a clear public benefit. The State Treasurer shall retain the right to revoke approval if the project has substantially deviated from the plan submitted pursuant to paragraph (2) of this subsection.

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

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

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

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

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

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

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

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

(5) After the proposal or proposals have been received, and any public notification period has expired, the State government entity shall rank the proposals in order of preference. In ranking the proposals, the State government entity may consider factors that include, but may not be limited to, professional qualifications, general business terms, innovative engineering, architectural services, or cost-reduction terms, finance plans, and the need for State government entity funds to deliver the project and discharge the agreement and shall rely upon, at a minimum, the evaluation criteria promulgated by the State Treasurer, in consultation with the New Jersey Economic Development Authority. The Department of the Treasury may negotiate the final terms with the private entities submitting proposals, including price, term, and any other term or condition so as to make the project well-suited to the needs of the State government entity and commercially viable for the private entity. The State Treasurer shall select proposals that meet the standards of this section and that best meet the needs, price and other factors considered by the State Treasurer. The private entity selected shall comply with all laws and regulations required by the State government entity, including but not limited to section 1 of P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38), section 1 of P.L.1977, c.33 (C.52:25.24-2), P.L.2005, c.51 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, Executive Order No. 189, prior to executing the public private partnership agreement. If only one proposal is received, the State government entity shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State government entity may, at its sole discretion, terminate negotiations.

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

(7) Stipends may be used on public private partnership projects when there is a substantial opportunity for innovation and the costs for developing a proposal are significant. The Department of the Treasury may elect to pay unsuccessful proposers for the work product they submit with their proposal in response to a request for
proposals. The use by the State government entity of any design element contained in an unsuccessful proposal shall be at the sole risk and discretion of the Department of the Treasury and shall not confer liability on the recipient of the stipulated stipend amount. After payment of the stipulated stipend amount, the Department of the Treasury and the unsuccessful proposer shall jointly own the rights to, and may make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan. The use by the unsuccessful proposer of any part of the work product contained in the proposal shall be at the sole risk of the unsuccessful proposer and shall not confer liability on the State government entity. The State Treasurer, in consultation with the New Jersey Economic Development Authority, shall promulgate guidelines based upon which any stipends paid by a State government entity may be based.

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

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

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

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

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

(2) A public-private partnership agreement may include an agreement under which a State or county college [leases to a private entity the operation] and the private entity enter into a lease of a dormitory or other [revenue-producing] facility to which the
college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic or research buildings. Under the lease agreement, the college shall continue to hold title to the facility, and the private entity shall be responsible for the management, operation, and maintenance of the facility. The private entity shall receive some or all, as per the agreement, of the revenue generated by the facility and shall operate the facility in accordance with college standards. A lease agreement shall not affect the status or employment rights of college employees who are assigned to, or provide services to, the leased facility. At the end of the lease term, subsequent revenue generated by the facility, along with management, operation, and maintenance responsibility, shall revert to the college. A lease agreement entered into pursuant to this section shall be limited in duration to a term of not more than 30 years. A lease agreement shall be subject to all applicable provisions of current law governing leases by a State or county college not inconsistent with the provisions of this section.

(3) A public-private partnership agreement may include the use of availability payments if deemed to be in the best interest of the public and the State or county college, provided the private entity shall operate the building, structure, infrastructure or facility in accordance with State or county college standards. Bundling of projects shall be prohibited. As used in this paragraph, “availability payment” means a periodic payment made by a State or county college to a private entity in exchange for making available the use of a public building, structure, infrastructure, or facility at a predetermined level of service, operation, or maintenance. “Bundling” means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method, the result of which restricts competition.

b. (1) A private entity that assumes financial and administrative responsibility for a project pursuant to subsection a. of this section shall not be subject, unless otherwise set forth herein, to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of facilitating the financing of a project pursuant to subsection a. of this section, a public entity, including any State or county college or public research university, may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a dormitory or other revenue-producing facility to which the college holds title, may issue
indebtedness in accordance with the public entity’s or institution’s enabling legislation and, notwithstanding any provision of law to the contrary, shall be empowered to enter into contracts with a private entity and its affiliates, unless otherwise set forth herein, without being subject to the procurement and contracting requirements of any statute applicable to the public entity or institution provided that the private entity has been selected by the institution of higher education pursuant to a solicitation of proposals or qualifications from at least two private entities. For the purposes of this section, a public entity shall include the New Jersey Economic Development Authority or the New Jersey Educational Facilities Authority, and any project undertaken pursuant to subsection a. of this section of which the authority becomes the owner or lessee, or which is situated on land of which the authority becomes the lessee, shall be deemed a "project" under the "The New Jersey Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.) or the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., as appropriate.

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

(3) Prior to the commencement of work on a project, the private entity shall establish a construction account and appoint a third-party financial institution, who shall act as a collateral agent, to manage the construction account. The construction account shall include the funding, financial instruments, or both, that shall be used to fully capitalize and fund the project, and the collateral agent shall maintain a full accounting of the funds and instruments in the account. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction
manager, and design-build team involved in the project. The funds
and instruments in the construction account shall not be the
property of the private entity unless all amounts due to the
construction account beneficiaries are paid in full. The construction
account shall not be designated for more than one project.
c. Each worker employed in the construction, rehabilitation, or
building maintenance services of facilities by a private entity that
has entered into a public-private partnership agreement with a State
or county college pursuant to subsection a. of this section shall be
paid not less than the prevailing wage rate for the worker’s craft or
trade as determined by the Commissioner of Labor and Workforce
Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
and P.L.2005, c.379 (C.34:11-56.58 et seq.).
d. (1) All building construction projects under a public-
private partnership agreement entered into pursuant to this section
shall contain a project labor agreement. The project labor
agreement shall be subject to the provisions of P.L.2002, c.44
(C.52:38-1 et seq.), and shall be in a manner that to the greatest
extent possible enhances employment opportunities for individuals
residing in the county of the project’s location. Further, the general
contractor, construction manager, design-build team, or
subcontractor for a construction project proposed in accordance
with this paragraph shall be registered pursuant to the provisions of
P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by
the Division of Property Management and Construction, or shall be
prequalified by the Department of Transportation. ¹New Jersey
Transit, or the New Jersey Turnpike Authority,¹ as appropriate, to
perform work on a public-private partnership higher education
project.
(2) All construction projects proposed in accordance with this
section shall be submitted to the New Jersey Economic
Development Authority for its review and approval ¹in accordance
with subsection f. of this section¹ prior to commencing
procurement of the project ¹in accordance with subsection k. of this
section¹ and, when practicable, are encouraged to adhere to the
Leadership in Energy and Environmental Design Green Building
Rating System as adopted by the United States Green Building
Council, the Green Globes Program adopted by the Green Building
Initiative, or a comparable nationally recognized, accepted, and
appropriate sustainable development rating system.
(2) Where no public fund has been established for the financing
of a public improvement, the chief financial officer of the public
owner shall require the private entity for whom the public
improvement is being made] (3) The general contractor,
construction manager, or design-build team shall be required to post
a performance bond to ensure completion
of the project and a payment bond guaranteeing prompt payment of
moneys due to the contractor, his or her subcontractors and to all
persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

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

f. (1) [On or before August 1, 2015, all] All projects proposed in accordance with this section shall be submitted to the New Jersey Economic Development Authority for the authority's review and approval [; except that in the case of projects proposed in accordance with paragraph (2) of subsection a. of this section, all projects shall be submitted on or before August 1, 2016]. The projects are encouraged, when practicable, to adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

[Any application that is deemed to be incomplete on August 2, 2015, or on August 2, 2016 in the case of an application submitted pursuant to paragraph (2) of subsection a. of this section, shall not be eligible for consideration.]

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

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

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. The criteria for assessing the project shall include, but may not be limited to: (i) feasibility and design of the project; (ii) experience and qualifications of the private entity; (iii) soundness of the financial plan; (iv) adequacy of the required exhibits; (v) adequacy of the long-range maintenance plan; (vi) the existence of a clear public benefit; and (vii) a resolution by the governing body of the State or county college of its intent to enter into a public-private partnership agreement for the project. No project shall commence the procurement process until approval has been granted by the authority. Following the procurement process, but before the State or county college enters into a public-private partnership agreement, the project and the resultant short list of private entities shall be submitted to the authority for final approval; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has deviated from the plan submitted pursuant to paragraph (2) of this subsection, and shall retain the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest as specified under subsection k. of this section.

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

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

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

A project with an expenditure of under $50 million developed under a public-private partnership agreement shall include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity’s financing of the project in an amount of more than 10% of the project’s financing costs.
i. The power of eminent domain shall not be delegated to any private entity under the provisions of P.L. ___ , c. ___ (pending before the Legislature as this bill); however, a State or county college may dedicate any property interest, including land, improvements, and tangible personal property of the State or county college for public use in a qualifying project if the State or county college finds that so doing will serve the public purpose of the project by minimizing the cost of the project to the State or county college or reducing the delivery time of a project.

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

k. (1) A private entity seeking to enter into a public-private partnership agreement with the State or county college shall be qualified by the State or county college as part of the procurement process, provided such process ensures that the private entity meets at least the minimum State or county college standards for qualification for professional services, construction contracting, and other qualifications applicable to the project, prior to submitting a proposal under the procurement process. The State or county college shall issue a request for proposals, which shall close within 45 days. The qualification process shall be conducted within 45 days after the closing date for the receipt of proposals, and shall result in a list of qualified private entities, that may be ranked in order to generate a short list of private entities requested to submit a final proposal.

(2) The State or county college may accept unsolicited proposals from private entities for public-private partnership agreements. If the State or county college receives an unsolicited proposal and determines that it meets the standards of this section, the State or county college shall publish a notice of the receipt of the proposal on the Internet site of the State or county college, or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice shall appear in two or more newspapers circulated wholly or in part in the county where the proposed project is to be located. The notice shall provide that the State or county college will accept, for 45 days after the initial date of publication, proposals meeting the standards of this section from other private entities for eligible projects that satisfy the same basic purpose and need. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.

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

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

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

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

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

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

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

(2) A public-private partnership agreement may include an agreement under which a State or county college [leases to a private entity the operation] and the private entity enter into a lease of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic or research buildings. Under the lease agreement, the college shall continue to hold title to the facility, and the private entity shall be responsible for the management, operation, and maintenance of the facility. The private entity shall receive some or all, as per the agreement, of the revenue generated by the facility and shall operate the facility in accordance with college standards. [A lease agreement shall not affect the status or employment rights of college employees who are assigned to, or provide services to, the leased facility.] A lease agreement shall not affect the status or employment rights of college employees who are assigned to, or provide services to, the leased facility. At the end of the lease term, subsequent revenue generated by the facility, along with management, operation, and maintenance responsibility, shall revert to the college. A lease agreement entered into pursuant to this section shall be limited in duration to a term of not more than 30 years. A lease agreement shall be subject to all applicable provisions of current law governing leases by a State or county college not inconsistent with the provisions of this section. For the purposes of this section, “revenue-producing” shall include leaseback arrangements.

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

b. (1) A private entity that assumes full financial and administrative responsibility for a project pursuant to subsection a. of this section shall not be subject, unless otherwise set forth herein, to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.). [For the purposes of facilitating the financing of a project pursuant to subsection a. of this section, a public entity may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a dormitory or other revenue-producing facility to which the college holds title, may issue indebtedness in accordance with the public entity's or institution's enabling legislation and, notwithstanding] Any capital improvements and conveyance of personal property owned by the State shall not be subject to the approval of the State House Commission pursuant to
R.S.52:20-1 et seq., or the State Legislature, provided the State Treasurer approves of such transfer as being necessary to meet the goals of this act, P.L. c. (pending before the Legislature as this bill). Notwithstanding any provision of law to the contrary, any State or county college or public research university shall be empowered to enter into contracts with a private entity and its affiliates, unless otherwise set forth herein, without being subject to the procurement and contracting requirements of any statute applicable to the public entity or institution provided that the private entity has been selected by the institution of higher education pursuant to a solicitation of proposals or qualifications from at least two private entities, or it has received an unsolicited proposal and followed the procedure set forth in paragraph (2) of subsection k. of this section. For the purposes of this section, a public entity shall include the New Jersey Economic Development Authority or the New Jersey Educational Facilities Authority, and any project undertaken pursuant to subsection a. of this section of which the authority becomes the owner or lessee, or which is situated on land of which [the authority] either of those authorities becomes the lessee, shall be deemed a "project" under the "The New Jersey Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.) or the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., as appropriate.

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

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

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

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

(2) All building projects proposed in accordance with this paragraph section shall be submitted to the New Jersey Economic Development Authority [State Treasurer, in consultation with the Secretary of Higher Education, and to the New Jersey Educational Facilities Authority, as to projects to be financed through the New Jersey Educational Facilities Authority, for its review and approval in accordance with subsection f. of this section prior to the execution of the public-private partnership agreement in accordance with subsection k. of this section and, when practicable, are encouraged to adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system.
Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made. The general contractor, construction manager, or design-build team shall be required to post a performance bond to ensure completion of the project and a payment bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

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

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

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

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

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

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

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

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

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

(5) (a) In order for an application to be complete and considered by the State Treasurer, the application shall include, but not be limited to: (i) a full description of the proposed public-private partnership agreement between the State or county college and the private developer, including all information obtained by and findings of the state or county college pursuant to paragraphs (1) and (2) of this subsection; (ii) a full description of the project, including a description of any agreement for the lease of a revenue-producing facility related to the project; (iii) the estimated costs and financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include at least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios; (iv) a timetable for completion of the construction of the project; (v) an analysis of all available funding options for the project, including an analysis of the financial viability and advisability of the project, along with evidence of the public benefit in advancing the project as a public-private partnership; (vi) a record of the public hearing; and (vii) any other requirements that the State Treasurer deems appropriate or necessary. The application shall also include a resolution by the governing body of the State or county college of its intent to enter into a public-private partnership agreement pursuant to this section.

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

(6) The State Treasurer, in consultation with the Secretary of Higher Education and the New Jersey Educational Facilities Authority, shall review all completed applications, and request
additional information as is needed to make a complete assessment of the project. No project shall commence the procurement process or negotiate a contract for an unsolicited proposal until approval has been granted by the State Treasurer. The State Treasurer shall find that: the criteria for assessing the project shall include, but may not be limited to: (i) the State’s or county college’s assumptions regarding the project’s scope, its benefits, its risks and the cost of the public sector option were fully and reasonably developed; (ii) the design of the project is feasible; (iii) the experience and qualifications of the private entity are adequate; (iv) the financial plan is sound; (v) the long-range maintenance plan is adequate to protect the investment; (vi) the project is in the best interest of the public using the criteria in paragraph (2) of this subsection f.; and (vii) a resolution by the governing body of the State or county college of its intent to enter into a public-private partnership agreement for the project has been received; and (viii) the term sheet for any proposed procurement contains all necessary elements. Before the State or county college enters into a public-private partnership agreement, the project shall be submitted to the State Treasurer for final approval, provided, however, that the State Treasurer shall retain the right to revoke approval if the project has substantially deviated from the plan submitted pursuant to paragraph (2) of this subsection.

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

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

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

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

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

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

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

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

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

(4) The State or county college may accept unsolicited proposals
from private entities for public-private partnership agreements. If
the State or county college receives an unsolicited proposal and
determines that it meets the standards of this section, the State or
county college shall publish a notice of the receipt of the proposal
on the Internet site of the State or county college, or through at least
one or more newspapers with statewide circulation, and provide
notice of the proposal at its next scheduled public meeting and to
the State Treasurer. To qualify as an unsolicited proposal, the
unsolicited proposal shall at a minimum include a description of
the public-private project, the estimated construction and life-cycle
costs, a timeline for development, proposed plan of financing,
including projected revenues, public or private, debt, equity
investment or availability payments, description of how the project
meets needs identified in existing plans, the permits and approvals
needed to develop the project from local, state and federal agencies
and a projected schedule for obtaining such permits and approvals,
a statement of risks, liabilities and responsibilities to be assumed by
the private entity. If a notice is published exclusively in
newspapers, the notice shall appear in at least one or more
newspapers with statewide circulation where the proposed project is
to be located. The notice shall provide that the State or county
college will accept, for 120 days after the initial date of publication,
proposals meeting the standards of this section from other private
entities for eligible projects that satisfy the same basic purpose and
need. A copy of the notice shall be mailed to each municipal and
county local government body in the geographic area affected by
the proposal.

(5) After the proposal or proposals have been received, and any
public notification period has expired, the State or county college
shall rank the proposals in order of preference. In ranking the
proposals, the State or county college may consider factors that
include, but may not be limited to, professional qualifications,
general business terms, innovative engineering, architectural
services, or cost-reduction terms, finance plans, and the need for
State or county college funds to deliver the project and discharge
the agreement. The private entity selected shall comply with all
laws and regulations required by the State government entity,
including but not limited to section 1 of P.L.2001, c.134 (C.52:32-
44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38),
Executive Order No. 117 of 2008, Executive Order No. 118 of
2008, Executive Order No. 189, prior to executing the public
private partnership agreement. If only one proposal is received, the
State or county college shall negotiate in good faith and, if not
satisfied with the results of the negotiations, the State or county
college may, at its sole discretion, terminate negotiations.

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

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

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

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

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

²[6. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to
read as follows:
5. The authority shall have the following powers:
a. To adopt bylaws for the regulation of its affairs and the
conduct of its business;
b. To adopt and have a seal and to alter the same at pleasure;
c. To sue and be sued;
d. To acquire in the name of the authority by purchase or
otherwise, on such terms and conditions and such manner as it may
dean proper, or by the exercise of the power of eminent domain in
the manner provided by the "Eminent Domain Act of 1971,"
P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
other property which it may determine is reasonably necessary for
any project; provided, however, that the authority in connection
with any project shall not take by exercise of the power of eminent
domain any real property except upon consent thereto given by
resolution of the governing body of the municipality in which such
real property is located; and provided further that the authority shall
be limited in its exercise of the power of eminent domain in
connection with any project in qualifying municipalities as defined
under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
municipalities which had a population, according to the latest
federal decennial census, in excess of 10,000;
e. To enter into contracts with a person upon such terms and
conditions as the authority shall determine to be reasonable,
including, but not limited to, reimbursement for the planning,
designing, financing, construction, reconstruction, improvement,
equipping, furnishing, operation and maintenance of the project and
to pay or compromise any claims arising therefrom;
f. To establish and maintain reserve and insurance funds with
respect to the financing of the project or the school facilities project
and any project financed pursuant to the "Municipal Rehabilitation
al.);
g. To sell, convey or lease to any person all or any portion of a
project for such consideration and upon such terms as the authority
may determine to be reasonable;
h. To mortgage, pledge or assign or otherwise encumber all or
any portion of a project, or revenues, whenever it shall find such
action to be in furtherance of the purposes of this act, P.L.2000,
c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
P.L.2009, c.90 (C.52:27D-489c et al.);
i. To grant options to purchase or renew a lease for any of its
projects on such terms as the authority may determine to be
reasonable;
j. To contract for and to accept any gifts or grants or loans of
funds or property or financial or other aid in any form from the
United States of America or any agency or instrumentality thereof,
or from the State or any agency, instrumentality or political
subdivision thereof, or from any other source and to comply,
subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000,
c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
conditions thereof;
k. In connection with any action undertaken by the authority in
the performance of its duties and any application for assistance or
commitments therefor and modifications thereof, to require and
collect such fees and charges as the authority shall determine to be
reasonable, including but not limited to fees and charges for the
authority's administrative, organizational, insurance, operating,
legal, and other expenses;
m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;
n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;
q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, of such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;
r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;
s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the redevelopment


u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;


w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);
To enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the redevelopment utility to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts, the New Jersey Schools Development Authority, and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

aa. (Deleted by amendment, P.L.2007, c.137);

bb. To make and contract to make loans to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or
rescheduled debt of the particular county or public authority for the
duration of the loan; except that, whenever the solid waste facility
bonds to be refinanced were issued by a public authority and the
county solid waste facility was utilized as a regional county solid
waste facility, as designated in the respective adopted district solid
waste management plans of the participating counties as approved
by the department prior to November 10, 1997, and the utilization
of the facility was established pursuant to tonnage obligations set
forth in their respective interdistrict agreements, the public
authority refunding or rescheduling its solid waste facility bonds
pursuant to this subsection shall provide for the payment of a
percentage of the aggregate debt service for the refunded or
rescheduled debt of the public authority not to exceed the
percentage of the specified tonnage obligation of the host county for
the duration of the loan. Whenever the solid waste facility bonds are
the obligation of a public authority, the relevant county shall
execute a deficiency agreement with the authority, which shall
provide that the county pledges to cover any shortfall and to pay
deficiencies in scheduled repayment obligations of the public
authority. All costs associated with the issuance of bonds pursuant
to this subsection may be paid by the authority from the proceeds of
these bonds. Any county or public authority is hereby authorized to
enter into any agreement with the authority necessary, desirable or
convenient to effectuate the provisions of this subsection.

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

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

gg. To finance projects approved by the board, provide staff
support to the board, oversee and monitor progress on the part of
the board in carrying out the revitalization, economic development
and restoration projects authorized pursuant to the "Municipal
c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its
responsibilities pursuant thereto;

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

ii. To finance or develop private or public parking facilities or
structures, which may include the use of solar photovoltaic
equipment, in municipalities qualified to receive State aid pursuant
to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
municipalities that contain areas designated pursuant to P.L.1985,
c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
Planning Area 2 (Suburban), or a town center, and to provide appropriate assistance, including but not limited to, extensions of credit, loans, and guarantees, to municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and their agencies and instrumentalities or to private entities whose projects are located in those municipalities, in order to facilitate the financing and development of parking facilities or structures in such municipalities. The authority may serve as the issuing agent of bonds to finance the undertaking of a project for the purposes of this subsection; and

ji. To consider, review, amend, and approve public-private partnership agreements for certain building or highway infrastructure development projects entered into by a private entity and a local government unit, a school district, a State government entity, or the New Jersey Institute of Technology pursuant to sections 1 through 4 of P.L. , c. (C. through C.) (pending before the Legislature as this bill) or by a private entity and a State or county college pursuant to section 43 of P.L.2009, c.90 (C.18A:64-85), for the purposes set forth therein, and provide to a private entity that is a party to an agreement any tax-exempt private activity bond financing under terms and conditions established by the authority and as otherwise authorized under State or federal law.

(cf: P.L.2010, c.28, s.3)

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6. N.J.S.18A:72A-5 is amended to read as follows:

18A:72A-5. The authority shall have power:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt and have an official common seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, and plead and be impleaded;

(e) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter;

(f) To acquire, lease as lessee, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter;

(g) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land or interest therein and other property which it may determine is reasonably necessary for any project, including any lands held by any county, municipality or other governmental
subdivision of the State; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes;

(h) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made;

(i) To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating colleges under the provisions of this chapter, and from time to time to modify such plans, specifications, designs or estimates;

(j) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges; however, in any contract or contracts undertaken by the authority for the construction, reconstruction, rehabilitation or improvement of any public college project where the cost of such work will exceed $25,000, the contracting agent shall advertise for and receive in the manner provided by law:

(1) separate bids for branches of work in the following categories:
   (a) the plumbing and gas fitting work;
   (b) the refrigeration, heating and ventilating systems and equipment;
   (c) the electrical work, including any electrical power plants, tele-data, fire alarm, or security system;
   (d) the structural steel and ornamental iron work;
   (e) general construction, which shall include all other work and materials required for the completion of the project, or

(2) bids for all work and materials required to complete the entire project if awarded as a single contract; or

(3) both (1) and (2) above.

In the case of separate bids pursuant to paragraph (1) or (3) of this subsection, prime contractors shall not be required to name subcontractors for categories (a) through (d) in their bid. In the case of a single bid under paragraph (2) or (3), all bids submitted shall set forth the names and license numbers of, and evidence of performance security from, all subcontractors to whom the general contractor will subcontract the work described in the foregoing categories (a) through (d) in paragraph (1). Subcontractors who furnish non-specialty trade work pursuant to category (e), or subcontractors who furnish work to named subcontractors pursuant to categories (a) through (d), shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, an authority may choose to require in its bid specification that a
subcontractor shall be named in a bid when, in the case of
paragraph (1), separate bids for each category, the work of that
subcontractor exceeds 35 percent of the authority's estimated
amount of value of the work, which shall be set forth in the bid
specification.

Contracts shall be awarded to the lowest responsible bidder
whose bid, conforming to the invitation for bids, will be the most
advantageous to the authority;

(k) To determine the location and character of any project to be
undertaken pursuant to the provisions of this chapter, and to
construct, reconstruct, maintain, repair, operate, lease, as lessee or
lessor, and regulate the same; to enter into contracts for any or all
such purposes; to enter into contracts for the management and
operation of a project, and to designate a participating college as its
agent to determine the location and character of a project
undertaken by such participating college under the provisions of
this chapter and, as the agent of the authority, to construct,
reconstruct, maintain, repair, operate, lease, as lessee or lessor, and
regulate the same, and, as agent of the authority, to enter into
contracts for any and all such purposes including contracts for the
management and operation of such project;

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

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

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

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

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

(q) To enter into loan agreements with any county, to hold
bonds or notes of the county evidencing those loans, and to issue
bonds or notes of the authority to finance county college capital
projects pursuant to the provisions of the "County College Capital
To issue bonds and notes and other obligations of the authority under the direction of law for the purpose of providing financial assistance for the installation of fire prevention and safety systems in dormitories.

(s) To consider and review public-private partnership agreements for certain building projects entered into by a private entity and the New Jersey Institute of Technology pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) or by a private entity and a State or county college pursuant to section 43 of P.L. 2009, c. 90 (C.18A:64-85), for the purposes set forth therein and to provide to a private entity that is a party to an agreement any tax exempt private activity bond financing, including but not limited to a loan of funds under terms and conditions established by the authority in consultation with the State Treasurer and as otherwise authorized under State or federal law.

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

7. (New section) The State Treasurer, in consultation with the New Jersey Economic Development Authority, or the New Jersey Educational Facilities Authority as to projects to be financed through the New Jersey Educational Facilities Authority, shall post on the Department of the Treasury’s official website the status of each public-private partnership agreement subject to consideration, review, amendment, or approval under subsection jj. of section 5 of P.L.1974, c.80 (C.34:1B-5), indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

8. (New section) a. There is hereby established in the Department of the Treasury the Public-Private Partnership Review Fund. The purpose of the fund will be to support financial and administrative review functions associated with the Public-Private Partnership plan review by the State Treasurer, along with the New Jersey Economic Development Authority, the Department of Community Affairs, the Department of Education, the Schools Development Authority, and the Department of Transportation, established by P.L. , c. (C.) (pending before the Legislature as this bill).

b. Notwithstanding the provisions of any law or regulation to the contrary, upon entering into any public-private partnership agreement which is backed, in whole or in part, by New Jersey Economic Development Authority bonds pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), a public entity shall remit one percent of the portion of the revenue established under the agreement to the Department of the Treasury to be placed in the Public-Private Partnership Review Fund.
c. The State Treasurer, in coordination with any relevant agency, including the New Jersey Economic Development Authority, Department of Transportation, and Department of Community Affairs, shall provide, and make available to the public on the Internet, an annual report, not later than December 31, 2019 and each year after that year, a list of all projects reviewed and the percentage and amount of funds withheld and provided to the fund pursuant to this section.²

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

²8. This act shall take effect immediately ¹80 days following enactment².

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