

CHAPTER 90
(CORRECTED COPY)

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:

C.40A:11-52 Definitions relative to public-private projects.

1. 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 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, 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 j. 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.2018, c.90 (C.40A:11-52 et al.); 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.2018, c.90 (C.40A:11-52 et al.), 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.

C.18A:18A-60 Definitions relative to school district partnership with private entities.

2. 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 school 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," N.J.S.18A:18A-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 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 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 in at least 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 the 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.

(6) 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.

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 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.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.

(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 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.2018, c.90 (C.40A:11-52 et al.); 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 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 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 engineering, 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), 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 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 8 of P.L.2018, c.90 (C.52:18A-260), 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.

C.52:34-26 Definitions relative to State partnerships with private entities.

3. 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 “The South Jersey Port Corporation Act,” P.L.1968, c.60 (C.12:11A-1 et seq.), and New Jersey Transit. 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 full 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 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) 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.

f. (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.2018, c.90 (C.40A:11-52 et al.); 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 the 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.2018, c.90 (C.40A:11-52 et al.), 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.

C.18A:64E-33 NJIT may enter into private partnerships agreements under certain circumstances.

4. 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:

C.18A:64-85 State, county college may enter into certain contracts with a private entity.

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 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. 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.). 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.2018, c.90 (C.40A:11-52 et al.). 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 either of those authorities 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.) 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 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 section shall be submitted to the 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 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.

(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 in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

e. (Deleted by amendment, P.L.2018, c.90)

f. (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 the 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 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, 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, the 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.

g. (Deleted by amendment, P.L.2018, c.90)

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.2018, c.90 (C.40A:11-52 et al.); 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), 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 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.2018, c.90 (C.40A:11-52 et al.), 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.

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

Authority's powers.

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 Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

(r) 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.2018, c.90 (C.18A:64E-33) 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.

C.52:18A-259 Posting of status of agreements.

7. 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

the State Treasurer's consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

C.52:18A-260 Public-Private Partnership Review Fund.

8. 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.2018, c.90 (C.40A:11-52 et al.).

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.2018, c.90 (C.40A:11-52 et al.), 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.

C.52:18A-261 Construction of act.

9. 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).

10. This act shall take effect 180 days following enactment.

Approved August 14, 2018.