

[First Reprint]

SENATE, No. 2798

STATE OF NEW JERSEY
220th LEGISLATURE

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Sponsored by:

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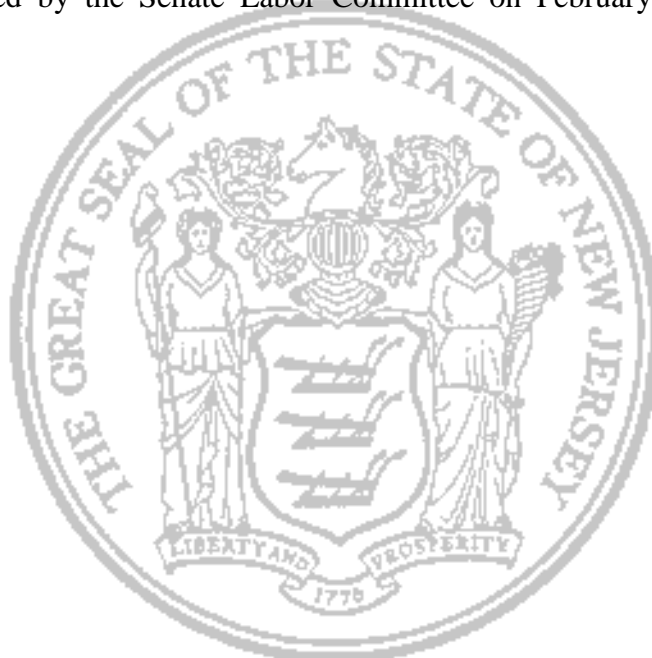
Senator Corrado

SYNOPSIS

Concerns prevailing wage law requirements for public institutions of higher education.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on February 9, 2023, with amendments.



(Sponsorship Updated As Of: 3/6/2023)

1 AN ACT concerning prevailing wage law requirements for public
2 institutions of higher education and amending various parts of
3 the statutory law and supplementing Title 18A of the New Jersey
4 Statutes.

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

8
9 1. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to
10 read as follows:

11 2. As used in this act:

12 (1) "Department" means the Department of Labor and
13 Workforce Development of the State of New Jersey.

14 (2) "Locality" means any political subdivision of the State,
15 combination of the same or parts thereof, or any geographical area
16 or areas classified, designated and fixed by the commissioner from
17 time to time, provided that in determining the "locality," the
18 commissioner shall be guided by the boundary lines of political
19 subdivisions or parts thereof, or by a consideration of the areas with
20 respect to which it has been the practice of employers of particular
21 crafts or trades to engage in collective bargaining with the
22 representatives of workers in such craft or trade.

23 (3) "Maintenance work" means the repair of existing facilities
24 when the size, type or extent of such facilities is not thereby
25 changed or increased. "Maintenance work" also means any work on
26 a maintenance-related project that exceeds the scope of work and
27 capabilities of in-house maintenance personnel, requires the
28 solicitation of bids, and has an aggregate value exceeding \$50,000.

29 (4) "Public body" means the State of New Jersey, any of its
30 political subdivisions, any authority created by the Legislature of
31 the State of New Jersey and any instrumentality or agency of the
32 State of New Jersey or of any of its political subdivisions.

33 (5) "Public work" means construction, reconstruction,
34 demolition, alteration, custom fabrication or repair work, or
35 maintenance work, including painting and decorating, done under
36 contract and paid for in whole or in part out of the funds of a public
37 body, or under a contract with a for-profit or not-for-profit entity
38 associated with the public body when the for-profit or not-for-profit
39 entity exists for the purpose of raising or managing public or private
40 financial support, or otherwise managing real or financial assets, on
41 behalf of the public body, such as a not-for-profit foundation
42 associated with a public college or university, where the
43 construction, reconstruction, demolition, alteration, custom
44 fabrication or repair work, or maintenance work, including painting
45 or decorating, undertaken under contract with the entity associated

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted February 9, 2023.

1 with the public body is to be used by or for the benefit of the public
2 body; except that "public work" shall not include work performed
3 under a rehabilitation program. "Public work" shall include
4 construction, reconstruction, demolition, alteration, custom
5 fabrication or repair work, or maintenance work, including painting
6 or decorating, that is paid for in whole or in part through "take-out
7 financing" provided by a public body, whether directly or obtained
8 through a lender. "Public work" shall also mean construction,
9 reconstruction, demolition, alteration, custom fabrication or repair
10 work, done on any property or premises, whether or not the work is
11 paid for from public funds, if, at the time of the entering into of the
12 contract the property or premises is owned by the public body ¹or
13 under agreement to be purchased by the public body,¹ or:

14 (a) Not less than 55% of the property or premises is leased by a
15 public body, or is subject to an agreement to be subsequently leased
16 by the public body; and

17 (b) The portion of the property or premises that is leased or
18 subject to an agreement to be subsequently leased by the public
19 body measures more than 20,000 square feet ¹[; or].¹

20 (6) "Commissioner" means the Commissioner of Labor and
21 Workforce Development or his duly authorized representatives.

22 (7) "Workman" or "worker" includes laborer, mechanic, skilled
23 or semi-skilled, laborer and apprentices or helpers employed by any
24 contractor or subcontractor and engaged in the performance of
25 services directly upon a public work, regardless of whether their
26 work becomes a component part thereof, but does not include
27 material suppliers or their employees who do not perform services
28 at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25
29 et seq.), contractors or subcontractors engaged in custom fabrication
30 shall not be regarded as material suppliers.

31 ¹"Public work" also means any work undertaken on a project that
32 has received financial assistance in the form of: grants; loans; loan
33 guarantees; expenditures; investments; tax abatements, exemptions,
34 incentives, or rebates; incentives; or other financial assistance, any
35 of which are provided, authorized, facilitated, or administered by
36 public bodies, or by agencies or authorities of public bodies, except
37 that no work on a project that has received financial assistance
38 provided, authorized, facilitated, or administered solely by the New
39 Jersey Housing and Mortgage Finance Agency shall be regarded as
40 "public work" for the purposes of this section and shall not be
41 subject to the prevailing wage requirements of P.L.1963, c.150
42 (C.34:11-56.25 et seq.), other than work which is subject to the
43 prevailing wage requirements of sections 7 and 42 of P.L.1983,
44 c.530 (C.55:14K-7 and 55:14K-42), which shall be, to the extent
45 indicated in those sections, subject to the prevailing wage
46 requirements of P.L.1963, c.150 (C.34:11-56.25 et seq.).¹

1 (8) "Work performed under a rehabilitation program" means
2 work arranged by and at a State institution primarily for teaching
3 and upgrading the skills and employment opportunities of the
4 inmates of such institutions.

5 (9) "Prevailing wage" means the wage rate paid by virtue of
6 collective bargaining agreements by employers employing a
7 majority of workers of that craft or trade subject to said collective
8 bargaining agreements, in the locality in which the public work is
9 done.

10 (10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-
11 56.25 et seq.) and the rules and regulations issued hereunder.

12 (11) "Prevailing wage contract threshold amount" means:

13 (a) In the case of any public work paid for in whole or in part
14 out of the funds of a municipality in the State of New Jersey or
15 done on property or premises owned by a public body or leased or
16 to be leased by the municipality, the dollar amount established for
17 the then current calendar year by the commissioner through rules
18 and regulations promulgated pursuant to the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which
20 amount shall be equal to \$9,850 on July 1, 1994 and which amount
21 shall be adjusted on July 1 every five calendar years thereafter in
22 direct proportion to the rise or fall in the average of the Consumer
23 Price Indices for Urban Wage Earners and Clerical Workers for the
24 New York metropolitan and the Philadelphia metropolitan regions
25 as reported by the United States Department of Labor during the
26 last full calendar year preceding the date upon which the adjustment
27 is made; and

28 (b) In the case of any public work other than a public work
29 described in paragraph (a) of this subsection, an amount equal to
30 \$2,000.

31 (12) "Custom fabrication" means:

32 (a) the fabrication of any of the following: plumbing, heating,
33 cooling, ventilation or exhaust duct systems, mechanical insulation,
34 or one or more signs in a project which cost a total of more than
35 \$30,000 and are part of a project upon completion; or

36 (b) any other fabrication which is either of components or
37 structures pre-fabricated to specifications for a particular project of
38 public work or of other materials finished into components without
39 further modification for use in a project of public work or for use in
40 a type or classification of a project of public work.

41 (13) "Take-out financing" means a long-term loan on property
42 from a lender used to pay off or replace a short-term construction
43 loan.

44 (cf: P.L.2021, c.253, s.1)

45

46 2. Section 16 of P.L.1963, c.150 (C.34:11-56.40) is amended to
47 read as follows:

1 16. If any workman is paid by an employer less than the
2 prevailing wage to which such workman is entitled, including if the
3 public body did not award a contract that is compliant with the
4 “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25
5 et seq.) to an employer when the public body was required to, under
6 the provisions of this act such workman may recover in a civil
7 action the full amount of such prevailing wage less any amount
8 actually paid to him or her by the employer together with costs and
9 such reasonable attorney's fees as may be allowed by the court, and
10 any agreement between such workman and the employer to work
11 for less than such prevailing wage shall be no defense to the action.
12 Any workman shall be entitled to maintain such action for and on
13 behalf of himself or other workmen similarly situated, and such
14 workman and workmen may designate an agent or representative to
15 maintain such action for and on behalf of all workmen similarly
16 situated. At the request of any workman paid less than the
17 prevailing wage to which such workman was entitled under the
18 provisions of this act the commissioner may take an assignment of
19 the wage claim in trust for the assigning workman and may bring
20 any legal action necessary to collect the claim, and the employer
21 shall be required to pay the costs and such reasonable attorney's
22 fees as may be allowed by the court.
23 (cf: P.L.1963, c.150, s.16)

24
25 3. Section 1 of P.L.1996, c.71 (C.34:11-56.47) is amended to
26 read as follows:

27 1. a. Any person who submits a bid directly to a public body for
28 a contract for any public work subject to the provisions of the "New
29 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
30 seq.) and is not awarded the contract and whose bid is the lowest
31 bid other than the bid accepted by the public body or, if, pursuant to
32 law, the contract is awarded on the basis of factors other than or in
33 addition to the lowest bid, whose bid is the highest in rank other
34 than the bid accepted by the public body (hereinafter referred to in
35 this section as the "plaintiff") may bring an action for damages in a
36 court of competent jurisdiction against the contractor who was
37 directly awarded the contract by the public body or any
38 subcontractor of that contractor (hereinafter referred to in this
39 section as the "defendant") alleging that the defendant has, in
40 connection with work performed pursuant to the contract, violated
41 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed
42 to pay any contribution, tax, assessment or benefit required by any
43 other applicable law. If there is more than one losing bidder, a
44 bidder with a higher bid than the second lowest bidder or lower
45 rank than the second highest rank, if, pursuant to law, the contract is
46 awarded on the basis of factors other than or in addition to the
47 lowest bid, may bring the action if that bidder gives written notice
48 of his intention to bring an action, sent by first-class mail and

1 certified mail, return receipt requested, to every other losing bidder
2 whose bid was lower than his or whose bid was higher in rank than
3 his and none of the bidders notified files an action within 30 days
4 following the date of their receipt of notice. The written notice of
5 intention to bring an action must contain the following: (1) a
6 statement of the specific violations or failures to pay allegedly
7 committed, which shall not preclude, in the course of the action,
8 consideration of other violations or failures to pay as may be
9 revealed in the course of discovery, (2) a statement that the action is
10 to be filed pursuant to this act, and (3) a statement that the recipient
11 of the notice may have the right to file an action and will be
12 precluded from doing so if he does not file an action within 30 days
13 of his receipt of the notice. If no other losing bidder so notified
14 files an action within 30 days of his receipt of the notice, the losing
15 bidder who sent the notice shall file an action pursuant to this act
16 within 15 days of the last day any of the recipients of the notice
17 could have filed an action. If more than one bidder files an action,
18 all actions other than that filed by the bidder whose bid is the lowest
19 of the bidders who filed actions, or, if, pursuant to law, the contract
20 is awarded on the basis of factors other than or in addition to the
21 lowest bid, whose bid is the highest in rank of the bidders who filed
22 actions, shall be dismissed.

23 b. Upon a finding by the court that the plaintiff was a
24 responsible bidder for the contract and a finding that one or more
25 defendants violated the provisions of P.L.1963, c.150 (C.34:11-
26 56.25 et seq.) or failed to pay any contribution, tax, assessment or
27 benefit required by any other applicable law in connection with
28 work performed pursuant to the contract, and that the plaintiff
29 submitted a bid for the contract which was less than the sum total of
30 the bid accepted by the public body plus any additional amount that
31 the defendant or defendants would have paid during the term of the
32 contract to be in full compliance with P.L.1963, c.150 (C.34:11-
33 56.25 et seq.) and other applicable laws in connection with the
34 contract, the court shall order the defendant or defendants to pay to
35 the plaintiff the entire amount of damages sustained plus costs and
36 reasonable attorney's fees or, if the court finds the noncompliance to
37 be intentional, three times the amount of damages sustained plus
38 costs and reasonable attorney's fees, except that the court shall order
39 no payment to the plaintiff if the court finds that the violation or
40 failure to pay was caused by minor record keeping mistakes or
41 minor computational errors or by other minor mistakes. The
42 occurrence of more than two violations or failures to pay shall lead
43 to the rebuttable presumption that the violation or failure to pay at
44 issue is not minor. If there are two or more defendants, the court
45 shall allocate the payments for damages sustained and attorney's
46 fees among the defendants in a reasonable manner. Nothing in this
47 section shall be construed as requiring payments to a plaintiff by
48 any contractor or subcontractor who has not violated the provisions

1 of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed to pay any
2 contribution, tax, assessment or benefit required by any other
3 applicable law in connection with work performed pursuant to the
4 contract. A plaintiff may designate an agent or representative to
5 maintain the action if the violation or failure to pay has an adverse
6 effect on the agent or representative or, if the agent or
7 representative is an organization or association, on any member of
8 the organization or association. If the plaintiff prevails, the agent or
9 representative shall be entitled to reimbursement for costs and
10 reasonable attorney's fees of the agent or representative but not to a
11 financial interest in the damages awarded.

12 c. For the purposes of this section, the damages sustained by a
13 plaintiff shall include the plaintiff's costs of preparing and
14 submitting the bid and may, if sought by the plaintiff, include
15 profits that the court determines the plaintiff would have made if
16 the plaintiff had been awarded the contract and complied with
17 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws.

18 d. If the court determines that the defendant did not, in
19 connection with work performed pursuant to the contract, violate
20 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to
21 pay any contribution, tax, assessment or benefit required by other
22 applicable law, the court shall order the plaintiff to pay the costs
23 and reasonable attorney's fees of the defendant. Nothing herein
24 shall preclude a defendant who is found to have committed minor
25 record keeping mistakes, minor computational errors or other minor
26 mistakes from being awarded relief pursuant to section 1 of
27 P.L.1988, c.46 (C.2A:15-59.1).

28 e. If a construction project is undertaken by a public institution
29 of higher education, in which the construction project is intended
30 for use by a public institution of higher education at the time of
31 construction, the public body shall be subject to the requirements of
32 P.L.1963, c.150 (C.34:11-56.25 et seq.). If the public institution of
33 higher education, the public body, violates the provisions of
34 P.L.1963, c.150 (C.34:11-56.25 et seq.), the public institution of
35 higher education will be subject to the penalties defined under
36 P.L.1963, c.150 (C.34:11-56.25 et seq.).

37 f. As used in this section:

38 "Person" means any individual, corporation, company,
39 partnership, firm, association or business;

40 "Contractor" means a person who is directly awarded a contract
41 for a public work by a public body; and

42 "Subcontractor" means any subcontractor or lower tier
43 subcontractor of a contractor.

44 (cf: P.L.1996, c.71, s.1)

45

46 4. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to
47 read as follows:

1 19. All contracts or agreements for the purchase of goods and
2 services, as distinct from contracts or agreements for the
3 construction of buildings and other improvements, which require
4 public advertisement for bids shall be awarded by the board of
5 trustees to the responsible bidder whose bid, conforming to the
6 invitation for bids, will be most advantageous to the State college,
7 price and other factors considered. Each worker employed by the
8 selected bidder shall be paid the prevailing wage determined by the
9 Commissioner of Labor pursuant to the provisions of the "New
10 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
11 seq.) if the project is intended for use by the State college at the
12 time of construction.

13 Prior to the award of any contract or agreement which does not
14 require public advertisement, the estimated cost of which is 20% or
15 more of the amount set forth in this act or, commencing January 1,
16 1985, 20% of the amount determined by the Governor pursuant to
17 subsection b. of section 3 of this act, the contracting agent shall,
18 except in the case of professional services, solicit quotations
19 therefor whenever practicable, and the award thereof shall be made,
20 in accordance with section 3 of this article, on the basis of the
21 quotation, conforming to the request for proposals, which is most
22 advantageous to the State college, price and other factors
23 considered; however, if the contracting agent deems it impractical
24 to solicit competitive quotations or having sought the quotations
25 determines that the award should not be made on that basis, the
26 contracting agent shall file a statement of explanation of the reason
27 or reasons therefor, which shall be placed on file with the purchase,
28 contract, or agreement.

29 (cf: P.L.2005, c.369, s.12)

30

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

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

44 (2) A public-private partnership agreement may include an
45 agreement under which a State or county college and the private
46 entity enter into a lease of a dormitory or other revenue-producing
47 facility to which the college holds title, in exchange for up-front or
48 structured financing by the private entity for the construction of

1 classrooms, laboratories, or other academic or research buildings.
2 Under the lease agreement, the college shall continue to hold title to
3 the facility, and the private entity shall be responsible for the
4 management, operation, and maintenance of the facility. The
5 private entity shall receive some or all, as per the agreement, of the
6 revenue generated by the facility and shall operate the facility in
7 accordance with college standards. A lease agreement shall not
8 affect the status or employment rights of college employees who are
9 assigned to, or provide services to, the leased facility. At the end of
10 the lease term, subsequent revenue generated by the facility, along
11 with management, operation, and maintenance responsibility, shall
12 revert to the college. A lease agreement entered into pursuant to
13 this section shall be limited in duration to a term of not more than
14 30 years. A lease agreement shall be subject to all applicable
15 provisions of current law governing leases by a State or county
16 college not inconsistent with the provisions of this section. For the
17 purposes of this section, "revenue-producing" shall include
18 leaseback arrangements.

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

23 b. (1) A private entity that assumes full financial and
24 administrative responsibility for a project pursuant to subsection a.
25 of this section shall not be subject, unless otherwise set forth herein,
26 to the procurement and contracting requirements of all statutes
27 applicable to the institution of higher education at which the project
28 is completed, including, but not limited to, the "State College
29 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the
30 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1
31 et seq.). Any capital improvements and conveyance of personal
32 property owned by the State shall not be subject to the approval of
33 the State House Commission pursuant to R.S.52:20-1 et seq., or the
34 State Legislature, provided the State Treasurer approves of such
35 transfer as being necessary to meet the goals of this act, P.L.2018,
36 c.90 (C.40A:11-52 et al.). Notwithstanding any provision of law to
37 the contrary, any State or county college or public research
38 university shall be empowered to enter into contracts with a private
39 entity and its affiliates, unless otherwise set forth herein, without
40 being subject to the procurement and contracting requirements of
41 any statute applicable to the public entity or institution provided
42 that the private entity has been selected by the institution of higher
43 education pursuant to a solicitation of proposals or qualifications
44 from at least two private entities, or it has received an unsolicited
45 proposal and followed the procedure set forth in paragraph (2) of
46 subsection k. of this section. For the purposes of this section, a
47 public entity shall include the New Jersey Economic Development
48 Authority or the New Jersey Educational Facilities Authority, and

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

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

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

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

1 trade as determined by the Commissioner of Labor and Workforce
2 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
3 and P.L.2005, c.379 (C.34:11-56.58 et seq.), including if the work
4 completed during the partnership is intended for use by the State or
5 county college at the time of construction.

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

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

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

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

41 f. (1) Prior to entering into a public-private partnership, the State
42 or county college shall determine: (i) the benefits to be realized by
43 the project; (ii) the cost of the project if it is developed by the
44 public sector supported by comparisons to comparable projects; (iii)
45 the maximum public contribution that the State or county college
46 will allow under the public-private partnership; (iv) a comparison of
47 the financial and non-financial benefits of the public-private
48 partnership compared to other options including the public sector

1 option; (v) a list of risks, liabilities and responsibilities to be
2 transferred to the private entity and those to be retained by the State
3 or county college; and (vi) if the project has a high, medium or low
4 level of project delivery risk and how the public is protected from
5 these risks.

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

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

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

33 (5) (a) In order for an application to be complete and considered
34 by the State Treasurer, the application shall include, but not be
35 limited to: (i) a full description of the proposed public-private
36 partnership agreement between the State or county college and the
37 private developer, including all information obtained by and
38 findings of the State or county college pursuant to paragraphs (1)
39 and (2) of this subsection; (ii) a full description of the project,
40 including a description of any agreement for the lease of a revenue-
41 producing facility related to the project; (iii) the estimated costs and
42 financial documentation for the project showing the underlying
43 financial models and assumptions that determined the estimated
44 costs. The financial documentation shall include at least three
45 different projected estimated costs showing scenarios in which
46 materially different economic circumstances are assumed and an
47 explanation for how the estimated costs were determined based on
48 the three scenarios; (iv) a timetable for completion of the

1 construction of the project; (v) an analysis of all available funding
2 options for the project, including an analysis of the financial
3 viability and advisability of the project, along with evidence of the
4 public benefit in advancing the project as a public-private
5 partnership; (vi) a record of the public hearing; and (vii) any other
6 requirements that the State Treasurer deems appropriate or
7 necessary. The application shall also include a resolution by the
8 governing body of the State or county college of its intent to enter
9 into a public-private partnership agreement pursuant to this section.

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

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

1 substantially deviated from the plan submitted pursuant to
2 paragraph (2) of this subsection.

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

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

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

20 i. The power of eminent domain shall not be delegated to any
21 private entity under the provisions of P.L.2018, c.90 (C.40A:11-52
22 et al.); however, a State or county college may dedicate any
23 property interest, including improvements, and tangible personal
24 property of the State or county college for public use in a qualifying
25 project if the State or county college finds that so doing will serve
26 the public purpose of the project by minimizing the cost of the
27 project to the State or county college or reducing the delivery time
28 of a project.

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

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

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

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

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

46 (5) After the proposal or proposals have been received, and any
47 public notification period has expired, the State or county college
48 shall rank the proposals in order of preference. In ranking the

1 proposals, the State or county college may consider factors that
2 include, but may not be limited to, professional qualifications,
3 general business terms, innovative engineering, architectural
4 services, or cost-reduction terms, finance plans, and the need for
5 State or county college funds to deliver the project and discharge
6 the agreement. The private entity selected shall comply with all
7 laws and regulations required by the State government entity,
8 including but not limited to section 1 of P.L.2001, c.134 (C.52:32-
9 44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to 38),
10 section 1 of P.L.1977, c.33 (C.52:25-24.2), P.L.2005, c.51
11 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al.),
12 Executive Order No. 117 of 2008, Executive Order No. 118 of
13 2008, Executive Order No. 189, prior to executing the public-
14 private partnership agreement. If only one proposal is received, the
15 State or county college shall negotiate in good faith and, if not
16 satisfied with the results of the negotiations, the State or county
17 college may, at its sole discretion, terminate negotiations.

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

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

42 (8) The State or county college shall set aside one percent of
43 each project and remit it to the Public Private Partnership Review
44 fund established pursuant to P.L.2018, c.90 (C.40A:11-52 et al.),
45 for purposes of plan review and analysis required under the bill.

46 (9) Nothing in this section shall be construed as or deemed a
47 waiver of the sovereign immunity of the State, the State or county
48 college, or an affected locality or public entity or any officer or

1 employee thereof with respect to the participation in or approval of
2 all or any part of the public-private project.

3 (cf: P.L.2018, c.90, s.5)

4

5 6. Section 5 of P.L.2004, c.127 (C.18A:72A-5.1) is amended to
6 read as follows:

7 5. Each worker employed in the construction or rehabilitation
8 of facilities, including if the product of the construction or
9 rehabilitation is intended for use by a public institution of higher
10 education, undertaken in connection with loans, loan guarantees,
11 expenditures, investments, tax exemptions or other incentives or
12 financial assistance approved, provided, authorized, facilitated or
13 administered by the New Jersey Educational Facilities Authority, or
14 undertaken to fulfill any condition of receiving any of the incentives
15 or financial assistance, shall be paid not less than the prevailing
16 wage rate for the worker's craft or trade, as determined by the
17 Commissioner of Labor and Workforce Development pursuant to
18 P.L.1963, c.150 (C.34:11-56.25 et seq.).

19 The Commissioner of Labor and Workforce Development shall
20 determine the prevailing wage rate in the locality in which the
21 construction or rehabilitation is to be performed for each craft, trade
22 or classification of worker employed in the construction or
23 rehabilitation, as if the construction or rehabilitation is "public
24 work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

25 (cf: P.L.2004, c.127, s.5)

26

27 7. (New Section) A public institution of higher education shall
28 pay not less than the prevailing wage rate for any construction
29 completed by the selected bidder, pursuant to P.L.1963, c.150
30 (C.34:11-56.25 et seq.). Nothing in this act shall be construed as
31 restricting or limiting any right established or provided to
32 employees by any other law. If any section, subsection, clause,
33 sentence, paragraph, or part of this act or the application thereof to
34 any person or circumstances, shall, for any reason, be adjudged by a
35 court of competent jurisdiction to be invalid, such judgment shall
36 not affect, impair, or invalidate any other right or obligation to pay
37 prevailing wage.

38

39 8. This act shall take effect immediately.