

# SENATE, No. 2015

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Senator VIN GOPAL**

**District 11 (Monmouth)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senators Corrado, Singer, Burzichelli, Amato, McKnight and Space**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 5/6/2024)**

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.

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 or  
13 under agreement to be purchased by the public body, 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 **];or]**.

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 "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.).

47 (8) "Work performed under a rehabilitation program" means  
48 work arranged by and at a State institution primarily for teaching

1 and upgrading the skills and employment opportunities of the  
2 inmates of such institutions.

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

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

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

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

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

30 (12) "Custom fabrication" means:

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

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

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

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

44

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

47 16. If any workman is paid by an employer less than the  
48 prevailing wage to which such workman is entitled, including if the

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

22  
23 3. Section 1 of P.L.1996, c.71 (C.34:11-56.47) is amended to  
24 read as follows:

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

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

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

1 other applicable law in connection with work performed pursuant to  
2 the contract. A plaintiff may designate an agent or representative to  
3 maintain the action if the violation or failure to pay has an adverse  
4 effect on the agent or representative or, if the agent or  
5 representative is an organization or association, on any member of  
6 the organization or association. If the plaintiff prevails, the agent or  
7 representative shall be entitled to reimbursement for costs and  
8 reasonable attorney's fees of the agent or representative but not to a  
9 financial interest in the damages awarded.

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

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

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

35 f. As used in this section:

36 "Person" means any individual, corporation, company,  
37 partnership, firm, association or business;

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

40 "Subcontractor" means any subcontractor or lower tier  
41 subcontractor of a contractor.

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

43

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

46 19. All contracts or agreements for the purchase of goods and  
47 services, as distinct from contracts or agreements for the  
48 construction of buildings and other improvements, which require

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

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

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

27

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

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

41 (2) A public-private partnership agreement may include an  
42 agreement under which a State or county college and the private  
43 entity enter into a lease of a dormitory or other revenue-producing  
44 facility to which the college holds title, in exchange for up-front or  
45 structured financing by the private entity for the construction of  
46 classrooms, laboratories, or other academic or research buildings.  
47 Under the lease agreement, the college shall continue to hold title to  
48 the facility, and the private entity shall be responsible for the



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

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

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

1 lessee, shall be deemed a "project" under "The New Jersey  
2 Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1  
3 et seq.) or the "New Jersey educational facilities authority law,"  
4 N.J.S.18A:72A-1 et seq., as appropriate.

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

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

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

1 completed during the partnership is intended for use by the State or  
2 county college at the time of construction.

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

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

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

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

38 f. (1) Prior to entering into a public-private partnership, the State  
39 or county college shall determine: (i) the benefits to be realized by  
40 the project; (ii) the cost of the project if it is developed by the  
41 public sector supported by comparisons to comparable projects; (iii)  
42 the maximum public contribution that the State or county college  
43 will allow under the public-private partnership; (iv) a comparison of  
44 the financial and non-financial benefits of the public-private  
45 partnership compared to other options including the public sector  
46 option; (v) a list of risks, liabilities and responsibilities to be  
47 transferred to the private entity and those to be retained by the State  
48 or county college; and (vi) if the project has a high, medium or low

1 level of project delivery risk and how the public is protected from  
2 these risks.

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

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

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

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

1 public benefit in advancing the project as a public-private  
2 partnership; (vi) a record of the public hearing; and (vii) any other  
3 requirements that the State Treasurer deems appropriate or  
4 necessary. The application shall also include a resolution by the  
5 governing body of the State or county college of its intent to enter  
6 into a public-private partnership agreement pursuant to this section.

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

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

47 (7) The State Treasurer, in consultation with the Secretary of  
48 Higher Education, the New Jersey Economic Development

1 Authority and the New Jersey Educational Facilities Authority, as  
2 to projects to be financed through the New Jersey Educational  
3 Facilities Authority, may promulgate any rules and regulations  
4 necessary to implement this subsection, including, but not limited  
5 to, provisions for fees to cover administrative costs, and for the  
6 determination of minimum State or county college standards for the  
7 operation of the project, and for the qualification for professional  
8 services, construction contracting, and other relevant qualifications.

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

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

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

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

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

45 (2) A request for qualifications for a public-private partnership  
46 agreement shall be advertised at least 45 days prior to the  
47 anticipated date of receipt. The advertisement of the request for  
48 qualifications shall be published on the official Internet website of

1 the State or county college and at least one or more newspapers  
2 with Statewide circulation.

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

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

42 (5) After the proposal or proposals have been received, and any  
43 public notification period has expired, the State or county college  
44 shall rank the proposals in order of preference. In ranking the  
45 proposals, the State or county college may consider factors that  
46 include, but may not be limited to, professional qualifications,  
47 general business terms, innovative engineering, architectural  
48 services, or cost-reduction terms, finance plans, and the need for

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

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

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

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

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

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



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

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

15 The Commissioner of Labor and Workforce Development shall  
16 determine the prevailing wage rate in the locality in which the  
17 construction or rehabilitation is to be performed for each craft, trade  
18 or classification of worker employed in the construction or  
19 rehabilitation, as if the construction or rehabilitation is "public  
20 work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).  
21 (cf: P.L.2004, c.127, s.5)  
22

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

35 8. This act shall take effect immediately.  
36  
37

38 STATEMENT  
39

40 This bill provides that a public institution of higher education is  
41 required to pay the State prevailing wage rate determined by the  
42 Commissioner of Labor and Workforce Development when a  
43 development is intended for use by the institution at the time of  
44 construction. The bill requires the prevailing wage rate to be paid  
45 for work under a contract with a for-profit or not-for-profit entity  
46 associated with the public body when the purpose of the entity is  
47 raising or managing public or private financial support or managing  
48 assets on behalf of the public body, where the construction,

1 reconstruction, demolition, alteration, custom fabrication, repair  
2 work, or maintenance work undertaken under contract with the  
3 entity is to be used by or for the benefit of the public body.

4 The bill adds to the definition of “public work” subject to  
5 prevailing wage requirements work on properties or premises under  
6 agreement to be purchased by the public body and work paid for in  
7 whole or in part by “take-out financing.”

8 The bill provides that “public work” is also defined to mean  
9 work on a project receiving financial assistance provided,  
10 authorized, facilitated, or administered by public bodies or their  
11 agencies or authorities, except that work on a project receiving  
12 financial assistance from the New Jersey Housing and Mortgage  
13 Finance Agency (HMFA) is not “public work” unless it is subject to  
14 State prevailing wage requirements pursuant to sections 7 and 42 of  
15 P.L.1983, c.530 (C.55:14K-7 and 55:14K-42).