

[First Reprint]

**SENATE, No. 2015**

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**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

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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, Space and Pou**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Labor Committee on May 6, 2024, with amendments.



**(Sponsorship Updated As Of: 5/9/2024)**

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

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:

<sup>1</sup>Senate SLA committee amendments adopted May 6, 2024.

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

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

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

21 <sup>1</sup>"Public work" also means any work undertaken on a project that  
22 has received financial assistance in the form of: grants; loans; loan  
23 guarantees; expenditures; investments; tax abatements, exemptions,  
24 incentives, or rebates; incentives; or other financial assistance, any  
25 of which are provided, authorized, facilitated, or administered by  
26 public bodies, or by agencies or authorities of public bodies.<sup>1</sup>

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

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

38 <sup>1</sup>"Public work" also means any work undertaken on a project  
39 that has received financial assistance in the form of: grants; loans;  
40 loan guarantees; expenditures; investments; tax abatements,  
41 exemptions, incentives, or rebates; incentives; or other financial  
42 assistance, any of which are provided, authorized, facilitated, or  
43 administered by public bodies, or by agencies or authorities of  
44 public bodies, except that no work on a project that has received  
45 financial assistance provided, authorized, facilitated, or  
46 administered solely by the New Jersey Housing and Mortgage  
47 Finance Agency shall be regarded as "public work" for the purposes  
48 of this section and shall not be subject to the prevailing wage

1 requirements of P.L.1963, c.150 (C.34:11-56.25 et seq.), other than  
2 work which is subject to the prevailing wage requirements of  
3 sections 7 and 42 of P.L.1983, c.530 (C.55:14K-7 and 55:14K-42),  
4 which shall be, to the extent indicated in those sections, subject to  
5 the prevailing wage requirements of P.L.1963, c.150 (C.34:11-  
6 56.25 et seq.).<sup>1</sup>

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

11 (9) "Prevailing wage" means the wage rate paid by virtue of  
12 collective bargaining agreements by employers employing a  
13 majority of workers of that craft or trade subject to said collective  
14 bargaining agreements, in the locality in which the public work is  
15 done. <sup>1</sup>In the case of public work on residential buildings the  
16 "prevailing wage" rate shall be the lessor of 65% of the wage rate  
17 paid by virtue of collective bargaining agreements by employers  
18 employing a majority of workers of that craft or trade subject to  
19 those collective bargaining agreements in the locality in which the  
20 public work is done, or the prevailing rate determined by the  
21 Secretary of the United States Department of Labor in accordance  
22 with the Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-5)  
23 for work on residential buildings. For the purposes of this  
24 subsection (9), "public work on residential buildings" means the  
25 construction, reconstruction, demolition, alteration, custom  
26 fabrication, or repair of residential buildings, and "residential  
27 buildings" means structures that are less than five stories in height,  
28 and are single or multi-family residences, apartment buildings,  
29 condominiums, and townhomes, except that "residential buildings  
30 does not include institutional housing.<sup>1</sup>

31 (10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-  
32 56.25 et seq.) and the rules and regulations issued hereunder.

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

34 (a) In the case of any public work paid for in whole or in part out  
35 of the funds of a municipality in the State of New Jersey or done on  
36 property or premises owned by a public body or leased or to be  
37 leased by the municipality, the dollar amount established for the  
38 then current calendar year by the commissioner through rules and  
39 regulations promulgated pursuant to the "Administrative Procedure  
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which amount shall be  
41 equal to \$9,850 on July 1, 1994 and which amount shall be adjusted  
42 on July 1 every five calendar years thereafter in direct proportion to  
43 the rise or fall in the average of the Consumer Price Indices for  
44 Urban Wage Earners and Clerical Workers for the New York  
45 metropolitan and the Philadelphia metropolitan regions as reported  
46 by the United States Department of Labor during the last full  
47 calendar year preceding the date upon which the adjustment is  
48 made; and

1 (b) In the case of any public work other than a public work  
2 described in paragraph (a) of this subsection, an amount equal to  
3 \$2,000.

4 (12) "Custom fabrication" means:

5 (a) the fabrication of any of the following: plumbing, heating,  
6 cooling, ventilation or exhaust duct systems, mechanical insulation,  
7 or one or more signs in a project which cost a total of more than  
8 \$30,000 and are part of a project upon completion; or

9 (b) any other fabrication which is one or more entire modules or  
10 structures pre-fabricated to specifications for a particular project of  
11 public work with minimal construction work remaining other than  
12 installation, regardless of whether unforeseen construction work is  
13 required on the public work site to modify the custom fabricated  
14 item for the purpose of installation, for use in a project of public  
15 work or for use in a type or classification of a project of public  
16 work. "Custom fabrication" shall not include components or  
17 materials, such as structural steel members or precast concrete, or  
18 smaller prefabricated components.

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

22 (cf: P.L.2023, c.133)

23

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

26 16. If any workman is paid by an employer less than the  
27 prevailing wage to which such workman is entitled, including if the  
28 public body did not award a contract that is compliant with the  
29 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25  
30 et seq.) to an employer when the public body was required to, under  
31 the provisions of this act such workman may recover in a civil  
32 action the full amount of such prevailing wage less any amount  
33 actually paid to him or her by the employer together with costs and  
34 such reasonable attorney's fees as may be allowed by the court, and  
35 any agreement between such workman and the employer to work  
36 for less than such prevailing wage shall be no defense to the action.  
37 Any workman shall be entitled to maintain such action for and on  
38 behalf of himself or other workmen similarly situated, and such  
39 workman and workmen may designate an agent or representative to  
40 maintain such action for and on behalf of all workmen similarly  
41 situated. At the request of any workman paid less than the  
42 prevailing wage to which such workman was entitled under the  
43 provisions of this act the commissioner may take an assignment of  
44 the wage claim in trust for the assigning workman and may bring  
45 any legal action necessary to collect the claim, and the employer  
46 shall be required to pay the costs and such reasonable attorney's  
47 fees as may be allowed by the court.

48 (cf: P.L.1963, c.150, s.16)

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

3       1. a. Any person who submits a bid directly to a public body for  
4 a contract for any public work subject to the provisions of the "New  
5 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et  
6 seq.) and is not awarded the contract and whose bid is the lowest  
7 bid other than the bid accepted by the public body or, if, pursuant to  
8 law, the contract is awarded on the basis of factors other than or in  
9 addition to the lowest bid, whose bid is the highest in rank other  
10 than the bid accepted by the public body (hereinafter referred to in  
11 this section as the "plaintiff") may bring an action for damages in a  
12 court of competent jurisdiction against the contractor who was  
13 directly awarded the contract by the public body or any  
14 subcontractor of that contractor (hereinafter referred to in this  
15 section as the "defendant") alleging that the defendant has, in  
16 connection with work performed pursuant to the contract, violated  
17 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed  
18 to pay any contribution, tax, assessment or benefit required by any  
19 other applicable law. If there is more than one losing bidder, a  
20 bidder with a higher bid than the second lowest bidder or lower  
21 rank than the second highest rank, if, pursuant to law, the contract is  
22 awarded on the basis of factors other than or in addition to the  
23 lowest bid, may bring the action if that bidder gives written notice  
24 of his intention to bring an action, sent by first-class mail and  
25 certified mail, return receipt requested, to every other losing bidder  
26 whose bid was lower than his or whose bid was higher in rank than  
27 his and none of the bidders notified files an action within 30 days  
28 following the date of their receipt of notice. The written notice of  
29 intention to bring an action must contain the following: (1) a  
30 statement of the specific violations or failures to pay allegedly  
31 committed, which shall not preclude, in the course of the action,  
32 consideration of other violations or failures to pay as may be  
33 revealed in the course of discovery, (2) a statement that the action is  
34 to be filed pursuant to this act, and (3) a statement that the recipient  
35 of the notice may have the right to file an action and will be  
36 precluded from doing so if he does not file an action within 30 days  
37 of his receipt of the notice. If no other losing bidder so notified  
38 files an action within 30 days of his receipt of the notice, the losing  
39 bidder who sent the notice shall file an action pursuant to this act  
40 within 15 days of the last day any of the recipients of the notice  
41 could have filed an action. If more than one bidder files an action,  
42 all actions other than that filed by the bidder whose bid is the lowest  
43 of the bidders who filed actions, or, if, pursuant to law, the contract  
44 is awarded on the basis of factors other than or in addition to the  
45 lowest bid, whose bid is the highest in rank of the bidders who filed  
46 actions, shall be dismissed.

47       b. Upon a finding by the court that the plaintiff was a  
48 responsible bidder for the contract and a finding that one or more

1 defendants violated the provisions of P.L.1963, c.150  
2 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,  
3 assessment or benefit required by any other applicable law in  
4 connection with work performed pursuant to the contract, and that  
5 the plaintiff submitted a bid for the contract which was less than the  
6 sum total of the bid accepted by the public body plus any additional  
7 amount that the defendant or defendants would have paid during the  
8 term of the contract to be in full compliance with P.L.1963, c.150  
9 (C.34:11-56.25 et seq.) and other applicable laws in connection  
10 with the contract, the court shall order the defendant or defendants  
11 to pay to the plaintiff the entire amount of damages sustained plus  
12 costs and reasonable attorney's fees or, if the court finds the  
13 noncompliance to be intentional, three times the amount of damages  
14 sustained plus costs and reasonable attorney's fees, except that the  
15 court shall order no payment to the plaintiff if the court finds that  
16 the violation or failure to pay was caused by minor record keeping  
17 mistakes or minor computational errors or by other minor mistakes.  
18 The occurrence of more than two violations or failures to pay shall  
19 lead to the rebuttable presumption that the violation or failure to  
20 pay at issue is not minor. If there are two or more defendants, the  
21 court shall allocate the payments for damages sustained and  
22 attorney's fees among the defendants in a reasonable manner.  
23 Nothing in this section shall be construed as requiring payments to  
24 a plaintiff by any contractor or subcontractor who has not violated  
25 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed  
26 to pay any contribution, tax, assessment or benefit required by any  
27 other applicable law in connection with work performed pursuant to  
28 the contract. A plaintiff may designate an agent or representative to  
29 maintain the action if the violation or failure to pay has an adverse  
30 effect on the agent or representative or, if the agent or  
31 representative is an organization or association, on any member of  
32 the organization or association. If the plaintiff prevails, the agent or  
33 representative shall be entitled to reimbursement for costs and  
34 reasonable attorney's fees of the agent or representative but not to a  
35 financial interest in the damages awarded.

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

42 d. If the court determines that the defendant did not, in  
43 connection with work performed pursuant to the contract, violate  
44 the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to  
45 pay any contribution, tax, assessment or benefit required by other  
46 applicable law, the court shall order the plaintiff to pay the costs  
47 and reasonable attorney's fees of the defendant. Nothing herein  
48 shall preclude a defendant who is found to have committed minor

1 record keeping mistakes, minor computational errors or other minor  
2 mistakes from being awarded relief pursuant to section 1 of  
3 P.L.1988, c.46 (C.2A:15-59.1).

4 e. If a construction project is undertaken by a public institution  
5 of higher education, in which the construction project is intended  
6 for use by a public institution of higher education at the time of  
7 construction, the public body shall be subject to the requirements of  
8 P.L.1963, c.150 (C.34:11-56.25 et seq.). If the public institution of  
9 higher education, the public body, violates the provisions of  
10 P.L.1963, c.150 (C.34:11-56.25 et seq.), the public institution of  
11 higher education will be subject to the penalties defined under  
12 P.L.1963, c.150 (C.34:11-56.25 et seq.).

13 f. As used in this section:

14 "Person" means any individual, corporation, company,  
15 partnership, firm, association or business;

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

18 "Subcontractor" means any subcontractor or lower tier  
19 subcontractor of a contractor.

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

21

22 <sup>1</sup>[4. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to  
23 read as follows:

24 19. All contracts or agreements for the purchase of goods and  
25 services, as distinct from contracts or agreements for the  
26 construction of buildings and other improvements, which require  
27 public advertisement for bids shall be awarded by the board of  
28 trustees to the responsible bidder whose bid, conforming to the  
29 invitation for bids, will be most advantageous to the State college,  
30 price and other factors considered. Each worker employed by the  
31 selected bidder shall be paid the prevailing wage determined by the  
32 Commissioner of Labor pursuant to the provisions of the "New  
33 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et  
34 seq.) if the project is intended for use by the State college at the  
35 time of construction.

36 Prior to the award of any contract or agreement which does not  
37 require public advertisement, the estimated cost of which is 20% or  
38 more of the amount set forth in this act or, commencing January 1,  
39 1985, 20% of the amount determined by the Governor pursuant to  
40 subsection b. of section 3 of this act, the contracting agent shall,  
41 except in the case of professional services, solicit quotations  
42 therefor whenever practicable, and the award thereof shall be made,  
43 in accordance with section 3 of this article, on the basis of the  
44 quotation, conforming to the request for proposals, which is most  
45 advantageous to the State college, price and other factors  
46 considered; however, if the contracting agent deems it impractical  
47 to solicit competitive quotations or having sought the quotations  
48 determines that the award should not be made on that basis, the



1 contracting agent shall file a statement of explanation of the reason  
2 or reasons therefor, which shall be placed on file with the purchase,  
3 contract, or agreement.

4 (cf: P.L.2005, c.369, s.12)]<sup>1</sup>

5

6 <sup>14.</sup> Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to  
7 read as follows:

8 19. All contracts or agreements for the purchase of goods and  
9 services, as distinct from contracts or agreements for the  
10 construction of buildings and other improvements, which require  
11 public advertisement for bids shall be awarded by the board of  
12 trustees to the responsible bidder whose bid, conforming to the  
13 invitation for bids, will be most advantageous to the State college,  
14 price and other factors considered, except that a bid may be  
15 disqualified due to prior negative experience pursuant to the  
16 provisions of section 10 of P.L.2021, c.417 (C.18A:64-70.1). Each  
17 worker employed by the selected bidder shall be paid the prevailing  
18 wage determined by the Commissioner of Labor pursuant to the  
19 provisions of the "New Jersey Prevailing Wage Act," P.L.1963,  
20 c.150 (C.34:11-56.25 et seq.) if the project is intended for use by  
21 the State college at the time of construction.

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

38 (cf: P.L.2021, c.417, s.7)

39

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

42 43. a. (1) A State college or county college may enter into a  
43 contract with a private entity, subject to subsection f. of this section,  
44 to be referred to as a public-private partnership agreement, that  
45 permits the private entity to assume full financial and administrative  
46 responsibility for the on-campus or off-campus construction,  
47 reconstruction, repair, alteration, improvement, extension,  
48 management, or operation of a building, structure, or facility of, or

1 for the benefit of, the institution, provided that the project is  
2 financed in whole or in part by the private entity and that the State  
3 or institution of higher education, as applicable, retains full  
4 ownership of the land upon which the project is completed.

5 (2) A public-private partnership agreement may include an  
6 agreement under which a State or county college and the private  
7 entity enter into a lease of a dormitory or other revenue-producing  
8 facility to which the college holds title, in exchange for up-front or  
9 structured financing by the private entity for the construction of  
10 classrooms, laboratories, or other academic or research buildings.  
11 Under the lease agreement, the college shall continue to hold title to  
12 the facility, and the private entity shall be responsible for the  
13 management, operation, and maintenance of the facility. The  
14 private entity shall receive some or all, as per the agreement, of the  
15 revenue generated by the facility and shall operate the facility in  
16 accordance with college standards. A lease agreement shall not  
17 affect the status or employment rights of college employees who are  
18 assigned to, or provide services to, the leased facility. At the end of  
19 the lease term, subsequent revenue generated by the facility, along  
20 with management, operation, and maintenance responsibility, shall  
21 revert to the college. A lease agreement entered into pursuant to  
22 this section shall be limited in duration to a term of not more than  
23 30 years. A lease agreement shall be subject to all applicable  
24 provisions of current law governing leases by a State or county  
25 college not inconsistent with the provisions of this section. For the  
26 purposes of this section, "revenue-producing" shall include  
27 leaseback arrangements.

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

32 b. (1) A private entity that assumes full financial and  
33 administrative responsibility for a project pursuant to subsection a.  
34 of this section shall not be subject, unless otherwise set forth herein,  
35 to the procurement and contracting requirements of all statutes  
36 applicable to the institution of higher education at which the project  
37 is completed, including, but not limited to, the "State College  
38 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the  
39 "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1  
40 et seq.). Any capital improvements and conveyance of personal  
41 property owned by the State shall not be subject to the approval of  
42 the State House Commission pursuant to R.S.52:20-1 et seq., or the  
43 State Legislature, provided the State Treasurer approves of such  
44 transfer as being necessary to meet the goals of this act, P.L.2018,  
45 c.90 (C.40A:11-52 et al.). Notwithstanding any provision of law to  
46 the contrary, any State or county college or public research  
47 university shall be empowered to enter into contracts with a private  
48 entity and its affiliates, unless otherwise set forth herein, without

1 being subject to the procurement and contracting requirements of  
2 any statute applicable to the public entity or institution provided  
3 that the private entity has been selected by the institution of higher  
4 education pursuant to a solicitation of proposals or qualifications  
5 from at least two private entities, or it has received an unsolicited  
6 proposal and followed the procedure set forth in paragraph (2) of  
7 subsection k. of this section. For the purposes of this section, a  
8 public entity shall include the New Jersey Economic Development  
9 Authority or the New Jersey Educational Facilities Authority, and  
10 any project undertaken pursuant to subsection a. of this section of  
11 which the authority becomes the owner or lessee, or which is  
12 situated on land of which either of those authorities becomes the  
13 lessee, shall be deemed a "project" under "The New Jersey  
14 Economic Development Authority Act," P.L.1974, c.80 (C.34:1B-1  
15 et seq.) or the "New Jersey educational facilities authority law,"  
16 N.J.S.18A:72A-1 et seq., as appropriate.

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

38 (3) Prior to the commencement of work on a project, the private  
39 entity shall establish a construction account and appoint a third-  
40 party financial institution, who shall be prequalified by the State  
41 Treasurer, to act as a collateral agent, and to manage the  
42 construction account. The construction account shall include the  
43 funding, financial instruments, or both, that shall be used to fully  
44 capitalize and fund the project, and the collateral agent shall  
45 maintain a full accounting of the funds and instruments in the  
46 account. The funds and instruments in the construction account  
47 shall be held in trust for the benefit of the contractor, construction  
48 manager, and design-build team involved in the project. The funds

1 and instruments in the construction account shall not be the  
2 property of the private entity unless all amounts due to the  
3 construction account beneficiaries are paid in full. The construction  
4 account shall not be designated for more than one project.

5 c. Each worker employed in the construction, rehabilitation, or  
6 building maintenance services of facilities by a private entity that  
7 has entered into a public-private partnership agreement with a State  
8 or county college pursuant to subsection a. of this section shall be  
9 paid not less than the prevailing wage rate for the worker's craft or  
10 trade as determined by the Commissioner of Labor and Workforce  
11 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
12 and P.L.2005, c.379 (C.34:11-56.58 et seq.), including if the work  
13 completed during the partnership is intended for use by the State or  
14 county college at the time of construction.

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

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

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

- 1 e. (Deleted by amendment, P.L.2018, c.90)
- 2 f. (1) Prior to entering into a public-private partnership, the State  
3 or county college shall determine: (i) the benefits to be realized by  
4 the project; (ii) the cost of the project if it is developed by the  
5 public sector supported by comparisons to comparable projects; (iii)  
6 the maximum public contribution that the State or county college  
7 will allow under the public-private partnership; (iv) a comparison of  
8 the financial and non-financial benefits of the public-private  
9 partnership compared to other options including the public sector  
10 option; (v) a list of risks, liabilities and responsibilities to be  
11 transferred to the private entity and those to be retained by the State  
12 or county college; and (vi) if the project has a high, medium or low  
13 level of project delivery risk and how the public is protected from  
14 these risks.
- 15 (2) Prior to entering into a public-private partnership, the State  
16 or county college at a public meeting shall find that the project is in  
17 the best interest of the public by finding that: (i) it will cost less  
18 than the public sector option or if it costs more there are factors that  
19 warrant the additional expense; (ii) there is a public need for the  
20 project and the project is consistent with existing long-term plans;  
21 (iii) there are specific significant benefits to the project; (iv) there  
22 are specific significant benefits to using the public-private  
23 partnership instead of other options including No-Build; (v) the  
24 private development will result in timely and efficient development  
25 and operation; and (vi) the risks, liabilities and responsibilities  
26 transferred to the private entity provide sufficient benefits to  
27 warrant not using other means of procurement.
- 28 (3) All projects proposed in accordance with this section shall  
29 be submitted to the State Treasurer, in consultation with the  
30 Secretary of Higher Education, and the New Jersey Educational  
31 Facilities Authority is to be consulted if the project is to be financed  
32 through the New Jersey Educational Facilities Authority, for review  
33 and approval. The projects are encouraged, when practicable, to  
34 adhere to the green building manual prepared by the Commissioner  
35 of Community Affairs pursuant to section 1 of P.L.2007, c.132  
36 (C.52:27D-130.6).
- 37 (4) All projects proposed in accordance with this section that  
38 have a transportation component or impact the transportation  
39 infrastructure shall be submitted to the State Treasurer, in  
40 consultation with the Commissioner of the Department of  
41 Transportation for review and approval.
- 42 (5) (a) In order for an application to be complete and considered  
43 by the State Treasurer, the application shall include, but not be  
44 limited to: (i) a full description of the proposed public-private  
45 partnership agreement between the State or county college and the  
46 private developer, including all information obtained by and  
47 findings of the State or county college pursuant to paragraphs (1)  
48 and (2) of this subsection; (ii) a full description of the project,

1 including a description of any agreement for the lease of a revenue-  
2 producing facility related to the project; (iii) the estimated costs and  
3 financial documentation for the project showing the underlying  
4 financial models and assumptions that determined the estimated  
5 costs. The financial documentation shall include at least three  
6 different projected estimated costs showing scenarios in which  
7 materially different economic circumstances are assumed and an  
8 explanation for how the estimated costs were determined based on  
9 the three scenarios; (iv) a timetable for completion of the  
10 construction of the project; (v) an analysis of all available funding  
11 options for the project, including an analysis of the financial  
12 viability and advisability of the project, along with evidence of the  
13 public benefit in advancing the project as a public-private  
14 partnership; (vi) a record of the public hearing; and (vii) any other  
15 requirements that the State Treasurer deems appropriate or  
16 necessary. The application shall also include a resolution by the  
17 governing body of the State or county college of its intent to enter  
18 into a public-private partnership agreement pursuant to this section.

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

33 (6) The State Treasurer, in consultation with the Secretary of  
34 Higher Education and the New Jersey Educational Facilities  
35 Authority, shall review all completed applications, and request  
36 additional information as is needed to make a complete assessment  
37 of the project. No project shall commence the procurement process  
38 or negotiate a contract for an unsolicited proposal until approval has  
39 been granted by the State Treasurer. The State Treasurer shall find  
40 that: the criteria for assessing the project shall include, but may not  
41 be limited to: (i) the State's or county college's assumptions  
42 regarding the project's scope, its benefits, its risks and the cost of  
43 the public sector option were fully and reasonably developed; (ii)  
44 the design of the project is feasible; (iii) the experience and  
45 qualifications of the private entity are adequate; (iv) the financial  
46 plan is sound; (v) the long-range maintenance plan is adequate to  
47 protect the investment; (vi) the project is in the best interest of the  
48 public using the criteria in paragraph (2) of this subsection f.; and

1 (vii) a resolution by the governing body of the State or county  
2 college of its intent to enter into a public-private partnership  
3 agreement for the project has been received; and (viii) the term  
4 sheet for any proposed procurement contains all necessary  
5 elements. Before the State or county college enters into a public-  
6 private partnership agreement, the project shall be submitted to the  
7 State Treasurer for final approval, provided, however, that the State  
8 Treasurer shall retain the right to revoke approval if the project has  
9 substantially deviated from the plan submitted pursuant to  
10 paragraph (2) of this subsection.

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

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

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

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

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

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

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

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

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



1 proposals meeting the standards of this section from other private  
2 entities for eligible projects that satisfy the same basic purpose and  
3 need. A copy of the notice shall be mailed to each municipal and  
4 county local government body in the geographic area affected by  
5 the proposal.

6 (5) After the proposal or proposals have been received, and any  
7 public notification period has expired, the State or county college  
8 shall rank the proposals in order of preference. In ranking the  
9 proposals, the State or county college may consider factors that  
10 include, but may not be limited to, professional qualifications,  
11 general business terms, innovative engineering, architectural  
12 services, or cost-reduction terms, finance plans, and the need for  
13 State or county college funds to deliver the project and discharge  
14 the agreement. The private entity selected shall comply with all  
15 laws and regulations required by the State government entity,  
16 including but not limited to section 1 of P.L.2001, c.134  
17 (C.52:32-44), sections 2 through 8 of P.L.1975, c.127 (C.10:5-32 to  
18 38), section 1 of P.L.1977, c.33 (C.52:25-24.2), P.L.2005, c.51  
19 (C.19:44A-20.13 et al.); P.L.2005, c.271 (C.40A:11-51 et al.),  
20 Executive Order No. 117 of 2008, Executive Order No. 118 of  
21 2008, Executive Order No. 189, prior to executing the public-  
22 private partnership agreement. If only one proposal is received, the  
23 State or county college shall negotiate in good faith and, if not  
24 satisfied with the results of the negotiations, the State or county  
25 college may, at its sole discretion, terminate negotiations.

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

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

1 shall be at the sole risk of the unsuccessful proposer and shall not  
2 confer liability on the State or county college.

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

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

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

13

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

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

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

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

35

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

47

48 8. This act shall take effect immediately.