

**SENATE BILL NO. 2489  
(Third Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2489 (Third Reprint) with my recommendations for reconsideration.

Public-private partnerships ("P3s") are efficient and necessary tools that create flexibility for public entities, particularly institutions of higher education, by relieving the funding burden on institutional budgets. This bill expands the P3 program the Legislature and I put into place in 2010 with amendments to the Economic Stimulus Act, and furthered with the Economic Opportunity Act. The program has seen great successes with strategic projects completed at Montclair State University and others planned or underway at Rutgers University, Ramapo College, The College of New Jersey, and Montclair State University. This bill now seeks to expand the program to other areas including local projects that will provide much needed financial relief to our municipalities, and transportation projects that will help improve our bridges, roads, and tunnels.

While I agree with the sponsors that we must take advantage of the opportunity to improve our infrastructure through private investment, we must take care to ensure that the State has a unified plan of development that considers the impact of projects on our residents, the economic benefits of such projects, and the long term goals of the State. Therefore, I am recommending that the Department of Transportation, Department of Education, and Department of Community Affairs take leading roles, along with the Economic Development Authority, for building and transportation projects that impact our neighborhoods, cities, roadways, and travel corridors. In order to ensure competitive bidding for projects and reduce project

costs, I am also recommending that the provisions imposing prevailing wage requirements and those mandating project labor agreements be removed from the bill.

I am steadfast in my full support of the use of P3s and encourage the sponsors to accept these changes so that the economic development we have worked so hard to foster under this Administration can continue to blossom and provide jobs for New Jersey's hardworking residents.

Accordingly, I herewith return Senate Bill No. 2489 (Third Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 2:</u>	Delete "highway infrastructure" and insert "transportation"
<u>Page 2, Section 1, Line 14:</u>	Delete "road,"
<u>Page 2, Section 1, Line 20:</u>	Before ""Local" insert ""Division" means the Division of Local Government Services in the Department of Community Affairs established pursuant to Section 1 of P.L.1966, c.293 (C.52:27D-1)."
<u>Page 2, Section 1, Line 25:</u>	After "the" insert "site acquisition,"
<u>Page 2, Section 1, Line 27:</u>	Delete "road,"
<u>Page 2, Section 1, Line 27:</u>	After "facility" insert "to be utilized,"
<u>Page 2, Section 1, Line 30:</u>	Delete ";" and insert "."
<u>Page 2, Section 1, Lines 31-33:</u>	Delete in their entirety
<u>Page 2, Section 1, Line 40:</u>	After "unit" insert "pursuant to local government unit standards enumerated in the public-private partnership agreement"
<u>Page 3, Section 1, Line 4:</u>	After "entity." insert "A local government unit may enter into a contract with a private entity, subject to review and approval pursuant to Section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), to be referred to as a public-private partnership agreement, that permits the private entity to assume financial and administrative

responsibility for a transportation project, as defined in Section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), of, or for the benefit of, the local government unit, provided that the project is financed in whole or in part by the private entity. Public-private partnership applications for all transportation projects shall be submitted directly to the Department of Transportation."

- Page 3, Section 1, Line 7: Delete "road,"
- Page 3, Section 1, Line 11: Delete "road,"
- Page 3, Section 1, Line 14: Delete "road,"
- Page 3, Section 1, Line 14: Delete ", and" and insert "."
- Page 3, Section 1, Line 15: Delete in its entirety
- Page 3, Section 1, Line 16: Delete "in accordance with local government unit standards."
- Page 3, Section 1, Line 17: Delete "road,"
- Page 3, Section 1, Line 24: Delete "road,"
- Page 3, Section 1, Line 25: Delete "in accordance with local government unit standards"
- Page 3, Section 1, Line 32: Delete ", including, but not limited to, the "Local Public" and insert "."
- Page 3, Section 1, Line 33: Delete in its entirety
- Page 3, Section 1, Line 47: Delete in its entirety and insert "entities, unless the accepted proposal is an unsolicited proposal accepted in accordance with subsection j. of this section."
- Page 4, Section 1, Lines 1-6: Delete in their entirety
- Page 4, Section 1, Lines 27-48: Delete in their entirety and insert "d. A local government unit shall apply to the Division for its review and approval for any project the local government entity proposes to undertake. The Division may request any State department, agency, or authority to assist in its review of a project."
- Page 5, Section 1, Lines 1-47: Delete in their entirety

Page 6, Section 1, Line 8: Delete "f." and insert "e."

Page 6, Section 1, Line 9: Delete "New Jersey" and insert "Division"

Page 6, Section 1, Line 10: Delete "Economic Development Authority"

Page 6, Section 1, Line 10: Delete "authority's" and insert "Division's"

Page 6, Section 1, Line 11: Delete "The projects are encouraged, when practicable, to adhere"

Page 6, Section 1, Lines 12-13: Delete in their entirety

Page 6, Section 1, Line 14: Delete "c.132(C.52:27D-130.6)."

Page 6, Section 1, Line 19: Delete "authority" and insert "Division"

Page 6, Section 1, Line 20: Delete "full description of the proposed" and insert "negotiated"

Page 6, Section 1, Line 22: After "including" insert "the project need, all available funding options, a cost benefit analysis, the public benefit of advancing the project as a public-private partnership, and"

Page 6, Section 1, Line 28: Delete "authority" and insert "Division"

Page 6, Section 1, Line 31: Delete "and a long range maintenance bond"

Page 6, Section 1, Line 34: Delete "authority" and insert "Division"

Page 6, Section 1, Line 34: After "to" insert "any"

Page 6, Section 1, Line 35: Delete "authority" and insert "Division"

Page 6, Section 1, Line 37: Before "(3)" insert "(c) The Division shall submit all completed applications to the authority for review before final approval. No project shall be approved by the Division without receipt of a review memo from the authority that includes a financial and operational analysis of the project and the public-private partnership agreement."

Page 6, Section 1, Line 37: Delete "authority" and insert "Division"

Page 6, Section 1, Line 40: Delete "commence the procurement process" and

- insert "execute binding agreements"
- Page 6, Section 1, Line 41: After "granted by the" delete "authority" and insert "Division"
- Page 6, Section 1, Line 41: After "that the" delete "authority" and insert "Division"
- Page 6, Section 1, Line 42: After "approval" insert "after the procurement process has commenced"
- Page 6, Section 1, Line 43: Delete "plan submitted pursuant to paragraph (2) of" and insert "application."
- Page 6, Section 1, Lines 44-46: Delete in their entirety
- Page 7, Section 1, Line 1: Delete "roadway or highway" and insert "transportation"
- Page 7, Section 1, Line 2: Delete ", and the authority shall not approve" and insert "and the Department of Transportation pursuant to Section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill). The Division shall consult with the Department of Transportation on any project that has a highway component or impacts the transportation infrastructure."
- Page 7, Section 1, Lines 3-4: Delete in their entirety
- Page 7, Section 1, Line 5: Delete "authority" and insert "Division"
- Page 7, Section 1, Line 8: Before "g." insert "f. The general contractor, construction manager, or design-build team shall be required to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with, and conforming to, the requirements of N.J.S.2A:44-143 et seq."
- Page 7, Section 1, Line 30: Delete "qualified" and insert "prequalified"
- Page 7, Section 1, Line 34: After "project," insert "in accordance with any regulations that may be promulgated by the Department,"
- Page 8, Section 1, Lines 24-28: Delete in their entirety

- Page 8, Section 1, Line 29: Delete "(6)" and insert "(5)"
- Page 9, Section 2, Line 11: Before "Project" insert "Department" means the Department of Education established pursuant to N.J.S.18A:4-1."
- Page 9, Section 2, Line 21: After "district" insert "in accordance with school district standards set forth in the public-private partnership agreement"
- Page 9, Section 2, Line 26: After "include" insert "an SDA district as defined in Section 3 of P.L. 2000, c.72 (C.18A:7G-3), or"
- Page 9, Section 2, Line 33: After "entity" insert "and the school district retains full ownership of the land where the project is located."
- Page 9, Section 2, Line 44: After "standards" insert "set forth in the public-private partnership agreement"
- Page 10, Section 2, Line 7: Before "c." insert "(5) Projects completed pursuant to a public-private partnership agreement as described in this section shall be included in the school district's long-range facilities plan pursuant to Section 4 of P.L.2000, c.72 (C.18A:7G-4)."
- Page 10, Section 2, Line 11: After "completed" delete "," and insert "."
- Page 10, Section 2, Lines 12-13: Delete in their entirety
- Page 10, Section 2, Line 26: Delete ". For the purposes" and insert ", unless the accepted proposal is an unsolicited proposal accepted in accordance with subsection i. of this section."
- Page 10, Section 2, Line 27-33: Delete in their entirety
- Page 11, Section 2, Line 7: After "(4)" insert "The financing of any project described pursuant to this section shall be funded through the school district's General Fund and shall not be eligible for State funds pursuant to Section 9 of P.L. 2000, c. 72 (C.18A:7G-9) or Section 15 of P.L.2000, c.72 (C.18A:7G-15).  
(5) Lease agreements made under a public-private partnership agreement as

described in this section shall be drafted pursuant to N.J.S.18A:20-4.2.  
(6)"

- Page 11, Section 2, Lines 21-47: Delete in their entirety
- Page 12, Section 2, Line 1: Delete "(2)" and insert "d.(1)"
- Page 12, Section 2, Line 2: Delete "New Jersey"
- Page 12, Section 2, Line 3: Delete "Economic Development Authority" and insert "Department"
- Page 12, Section 2, Line 4: Delete "commencing procurement of the project and, when" and insert "execution of binding agreements."
- Page 12, Section 2, Lines 5-10: Delete in their entirety
- Page 12, Section 2, Line 11: Delete "(3)" and insert "(2)"
- Page 12, Section 2, Line 35: Delete "f." and insert "e."
- Page 12, Section 2, Line 36: Delete "New Jersey"
- Page 12, Section 2, Line 37: Delete "Economic Development Authority" and insert "Department"
- Page 12, Section 2, Line 37: Delete "authority's" and insert "Department's"
- Page 12, Section 2, Line 38: Delete "The projects are encouraged, when practicable, to adhere"
- Page 12, Section 2, Lines 39-44: Delete in their entirety
- Page 12, Section 2, Line 46: Delete "authority" and insert "Department"
- Page 12, Section 2, Line 47: Delete "full description of the proposed" and insert "negotiated"
- Page 13, Section 2, Line 2: After "including" insert "the project need, all available funding options, a cost benefit analysis, the public benefit of advancing the project as a public-private partnership, and"
- Page 13, Section 2, Line 8: Delete "authority" and insert "Department"
- Page 13, Section 2, Line 14: Delete "authority" and insert "Department"
- Page 13, Section 2, Line 15: Delete "authority" and insert "Department"
- Page 13, Section 2, Line 17: Delete "authority" and insert "Department"

<u>Page 13, Section 2, Line 20:</u>	Delete "commence the procurement process" and insert "execute binding agreements"
<u>Page 13, Section 2, Line 21:</u>	After "by the" delete "authority" and insert "Department"
<u>Page 13, Section 2, Line 21:</u>	After "that the" delete "authority" and insert "Department"
<u>Page 13, Section 2, Line 23:</u>	Delete "plan submitted pursuant to paragraph (2) of" and insert "application."
<u>Page 13, Section 2, Lines 24-26:</u>	Delete in their entirety
<u>Page 13, Section 2, Line 27:</u>	Delete "authority" and insert "Department"
<u>Page 13, Section 2, Line 30:</u>	Delete "g." and insert "f."
<u>Page 13, Section 2, Line 36:</u>	Delete "h." and insert "g."
<u>Page 13, Section 2, Line 45:</u>	Delete "i." and insert "h."
<u>Page 14, Section 2, Line 3:</u>	Delete "j." and insert "i."
<u>Page 14, Section 2, Line 4:</u>	Delete "qualified" and insert "prequalified"
<u>Page 14, Section 2, Line 9:</u>	After "project," insert "in accordance with any regulations that may be promulgated by the Department,"
<u>Page 14, Section 2, Line 44-48:</u>	Delete in their entirety
<u>Page 15, Section 2, Line 1:</u>	Delete "(6)" and insert "(5)"
<u>Page 15, Section 3, Lines 20-22:</u>	Delete in their entirety
<u>Page 15, Section 3, Line 25:</u>	Delete "public building, road, structure, infrastructure," and insert "transportation project."
<u>Page 15, Section 3, Lines 26-34:</u>	Delete in their entirety
<u>Page 15, Section 3, Lines 38-47:</u>	Delete in their entirety and insert "'Department' means the Department of Transportation established pursuant to Section 1 of P.L.1966, c.301 (C. 27:1A-1)."
<u>Page 16, Section 3, Line 4:</u>	Delete "the" and insert "a transportation project"
<u>Page 16, Section 3, Lines 5-6:</u>	Delete in their entirety

- Page 16, Section 3, Line 7: Delete "highway project"
- Page 16, Section 3, Line 12: After "seq.)," insert "and shall include any instrumentality of the State including New Jersey Transit, and any local government unit as defined in Section 1 of P.L., c. (C. ) (pending before the Legislature as this bill),"
- Page 16, Section 3, Line 13: Before "b." insert "Transportation project" means the construction, reconstruction, replacement, repair, alteration, improvement, extension, operation, or maintenance of public highways as defined in Section 3 of P.L.1984, c.73 (C.27:1B-3) or any public transportation project, as defined in Section 3 of P.L.1984, c.73 (C.27:1B-3) including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity; provided that the project shall include an expenditure of at least \$10 million in public funds, or any expenditure in solely private funds."
- Page 16, Section 3, Line 14: Delete "subject to subsection f. of this section,"
- Page 16, Section 3, Line 17: Delete "construction, reconstruction, repair, alteration,"
- Page 16, Section 3, Line 18: Delete in its entirety
- Page 16, Section 3, Line 19: Delete "or highway" and insert "transportation project"
- Page 16, Section 3, Line 20: Delete "building or highway" and insert "transportation"
- Page 16, Section 3, Line 21: After "entity." insert "In considering a project, the State government entity shall consult with the Department and the State Treasurer prior to commencing procurement."
- Page 16, Section 3, Line 24: Delete "public building or"
- Page 16, Section 3, Line 25: Delete "highway" and insert "transportation project"
- Page 16, Section 3, Line 26: After "for the" insert "transportation"

- Page 16, Section 3, Line 28: Delete "building or highway" and insert "transportation project"
- Page 16, Section 3, Line 30: Delete "building or highway, and" and insert "transportation project."
- Page 16, Section 3, Line 31: Delete "may operate the building or highway" and insert "If that private entity agrees to operate that transportation project, it shall do so"
- Page 16, Section 3, Line 33: Delete "building or highway" and insert "transportation project"
- Page 16, Section 3, Line 35: After "entity" insert ", unless such agreement is extended by contract"
- Page 16, Section 3, Line 39: Delete "building, road, structure, infrastructure, or facility" and insert "transportation project"
- Page 16, Section 3, Line 41: After "shall" insert "not"
- Page 16, Section 3, Line 42: Before "c." insert "(5) A public-private partnership agreement utilizing federal funds or subject to federal oversight shall comply with all applicable federal laws and regulations."
- Page 16, Section 3, Line 43: Delete "building or highway" and insert "transportation"
- Page 16, Section 3, Line 46: Delete "at which the" and insert ", except that it shall be subject to all contracting requirements set forth in paragraph (2) of this subsection."
- Page 17, Section 3, Lines 1-2: Delete in their entirety
- Page 17, Section 3, Line 4: Delete "public" and insert "State government"
- Page 17, Section 3, Line 6: Delete "building or highway" and insert "transportation project"
- Page 17, Section 3, Line 16-25: Delete in their entirety and insert "entities, unless the accepted proposal is an unsolicited proposal accepted in accordance with subsection i. of this section."
- Page 17, Section 3, Line 26: After "any" and insert "transportation"
- Page 17, Section 3, Line 30: After "the" insert "transportation"

Page 17, Section 3, Line 30: Delete "public" and insert "State government"

Page 17, Section 3, Line 46-47: Delete in their entirety

Page 18, Section 3, Lines 1-47: Delete in their entirety

Page 19, Section 3, Lines 1-27: Delete in their entirety

Page 19, Section 3, Line 28: Delete "f." and insert "d."

Page 19, Section 3, Line 29: Delete "New Jersey"

Page 19, Section 3, Line 30: Delete "Economic Development Authority" and insert "Department"

Page 19, Section 3, Line 30: Delete "authority's" and insert "Department's"

Page 19, Section 3, Line 31: Delete "The projects are encouraged, when practicable, to adhere"

Page 19, Section 3, Lines 32-33: Delete in their entirety

Page 19, Section 3, Line 34: Delete "c.132 (C.52:27D-130.6)."

Page 19, Section 3, Line 38: After "application" insert "by the State government entity"

Page 19, Section 3, Line 39: Delete "authority" and insert "Department and the State Treasurer pursuant to this section"

Page 19, Section 3, Line 42: After "including" insert "the project need, all available funding options, a cost benefit analysis, the public benefit of advancing the project as a public-private partnership, and"

Page 19, Section 3, Line 44: Delete "building or highway related to the" and insert "transportation"

Page 20, Section 3, Line 1: Delete "five" and insert "ten"

Page 20, Section 3, Line 1: After "approval" insert "with the period of operation or maintenance after construction, and any renewal thereof, to be set in the public-private partnership agreement"

Page 20, Section 3, Line 2: Delete "authority" and insert "Department"

Page 20, Section 3, Line 8: Delete "authority" and insert "Department"

- Page 20, Section 3, Line 9: Delete "authority" and insert "Department"
- Page 20, Section 3, Line 9: Delete "building" and insert "rail"
- Page 20, Section 3, Line 12: Before "(3)" insert "(c) The Department shall submit all completed applications to the State Treasurer before final approval. No project shall be approved by the Department without review and approval by the State Treasurer."
- Page 20, Section 3, Line 12: Delete "authority" and insert "Department and the State Treasurer"
- Page 20, Section 3, Line 15: Delete "commence the procurement process" and insert "execute binding agreements"
- Page 20, Section 3, Line 16: After "by the" delete "authority" and insert "Department and the State Treasurer"
- Page 20, Section 3, Line 16: After "that the" delete "authority" and insert "Department"
- Page 20, Section 3, Line 17: After "approval" insert "after the procurement process has commenced"
- Page 20, Section 3, Line 18: Delete "plan submitted pursuant to paragraph (2) of" and insert "application. In the case of applications initiated by the Department, the State Treasurer shall review and approve the application pursuant to this subsection."
- Page 20, Section 3, Lines 19-26: Delete in their entirety
- Page 20, Section 3, Line 27: Delete "authority" and insert "Department"
- Page 20, Section 3, Line 29: After "costs." insert "e. The general contractor, construction manager, or design-build team shall be required to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of N.J.S.2A:44-143 et seq."
- Page 20, Section 3, Line 30: Delete "g." and insert "f."

- Page 20, Section 3, Line 30: After "A" insert "transportation"
- Page 20, Section 3, Line 36: Delete "h." and insert "g."
- Page 20, Section 3, Line 45: Delete "i." and insert "h."
- Page 21, Section 3, Line 3: Delete "j." and insert "i."
- Page 21, Section 3, Line 5: Delete "qualified" and insert "prequalified"
- Page 21, Section 3, Line 9: After "project," insert "in accordance with any regulations that may be promulgated by the Department,"
- Page 21, Section 3, Line 24: Delete "45" and insert "180"
- Page 22, Section 3, Lines 1-5: Delete in their entirety and insert "(5) Traffic and all other laws applicable on the State transportation system (road, rail, bus or otherwise) shall be enforceable as appropriate as to all projects carried out under a public-private partnership agreement pursuant to this section and all design, construction, operation, maintenance, and financing activities relating thereto."
- Page 22, Section 3, Line 24: Insert new section 4 to read as follows:  
 "4. a. As used in this section:  
 "Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).  
 "Availability payment" means a periodic payment made by a State government entity to a private entity in exchange for making available the use of a project.  
 "Project" means the site acquisition, development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of any building, structure, infrastructure, or facility constructed, acquired, or to be utilized by a State government entity, including any infrastructure or facility used, or to be used, by the public, or in support of a public purpose or activity.

"Public-private partnership agreement" means an agreement entered into by a State government entity and a private entity pursuant to this section for the purpose of permitting a private entity to assume financial and administrative responsibility for a project of, or for the benefit of, the State government entity pursuant to State government entity standards enumerated therein.

"State government entity" means the State or any department, agency, board, commission, committee, or authority thereof subject to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.), and shall also include any independent instrumentalities or authorities of the State not subject to P.L.1954, c.48 (C.52:34-6 et seq.), but shall not include any State institution of higher education.

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

(2) A public-private partnership agreement may include an agreement under which a State government entity and a private entity enter into a lease of a public building in exchange for up-front or structured financing by the private entity for the project. Under the lease agreement, the private entity may be responsible for the management, operation, and maintenance of the project. The private entity may receive some or all, as per the agreement, of the revenue generated by the project. If that private entity agrees to operate that project, it shall do so in accordance with State

government entity standards. At the end of the lease term, subsequent revenue generated by the project, along with management, operation, and maintenance responsibility, shall revert to the State government entity, unless such agreement is extended.

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

(4) A public-private partnership agreement utilizing federal funds or subject to federal oversight shall comply with all applicable federal laws and regulations.

c. (1) Unless otherwise set forth herein, a private entity that assumes financial and administrative responsibility for a project pursuant to this section, shall not be subject to the procurement and contracting requirements of all statutes applicable to the State government entity, except that it shall be subject to all contracting requirements set forth in paragraph (2) of this subsection.

(2) For the purposes of facilitating the financing of a project pursuant to this section, a State government entity may become the owner or lessee of the project or the lessee of the land, or both, may become the lessee of a building to which the State government entity holds title and, notwithstanding any provision of law to the contrary, shall be empowered to enter into contracts with a private entity and its affiliates without being subject to the procurement and contracting requirements, unless otherwise set forth herein, of any statute applicable to the public entity provided that the private entity has been selected by the public entity pursuant to a solicitation of proposals or

qualifications from at least two private entities, unless it is an unsolicited proposal accepted in accordance with subsection i. of this section.

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

d. (1) On or before August 1, 2020, all projects proposed in accordance with this section shall be submitted to the authority for the authority's review and approval. Any application that is deemed to be incomplete on August 2, 2020, including in the case of an application submitted pursuant to paragraph (2) of subsection b. of this

section, shall not be eligible for consideration.

(2) (a) In order for an application by the State government entity to be complete and considered by the authority and the State Treasurer, the application shall include, but not be limited to: (i) a negotiated public-private partnership agreement between the State government entity and the private developer; (ii) a full description of the project, including the project need, all available funding options, a cost benefit analysis, the public benefit of advancing the project as a public-private partnership, and a description of any agreement for the lease of a project; (iii) the estimated costs and financial documentation for the project; (iv) a timetable for completion of the construction of the project extending no more than five years after consideration and approval with the period of operation or maintenance after construction, and any renewal thereof, to be set in the public-private partnership agreement; and (v) any other requirements that the authority deems appropriate or necessary.

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

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. No project shall execute binding agreements until final

approval has been granted by the authority and the State Treasurer; provided, however, that the authority shall retain the right to revoke approval after the procurement process has commenced if it determines that the project has deviated from the application. In the case of applications initiated by the authority, the State Treasurer shall review and approve the application pursuant to this subsection.

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

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

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

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

by minimizing the cost of the project to the State government entity or reducing the delivery time of a project.

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

i. (1) A private entity seeking to enter into a public-private partnership agreement with the State government entity shall be prequalified by the State government entity as part of the procurement process, provided such process ensures that the private entity meets at least the minimum State government entity standards for qualification for professional services, construction contracting, and other qualifications applicable to the project, in accordance with any regulations that may be promulgated by the authority under this section applying to public-private partnership agreements, prior to submitting a proposal under the procurement process.

(2) The State government entity may accept unsolicited proposals from private entities for public-private partnership agreements. If the State government entity receives an unsolicited proposal and determines that it meets the standards of this section, the State government entity shall publish a notice of the receipt of the proposal on the Internet site of the State government entity, or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice shall appear in two or more newspapers circulated wholly or in part in the county where the proposed project is to be located. The notice shall provide that the State government entity will

accept, for 45 days after the initial date of publication, proposals meeting the standards of this section from other private entities for eligible projects that satisfy the same basic purpose and need. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.

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

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

(5) Stipends may be used on public-private partnership projects when there is a substantial opportunity for innovation and the costs for developing a proposal are significant. The State government entity may elect to pay unsuccessful proposers for the work product they submit with their proposal in response to a request for proposals. The use by the

State government entity of any design element contained in an unsuccessful proposal shall be at the sole risk and discretion of the State government entity and shall not confer liability on the recipient of the stipulated stipend amount. After payment of the stipulated stipend amount, the State government entity and the unsuccessful proposer shall jointly own the rights to, and may make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan. The use by the unsuccessful proposer of any part of the work product contained in the proposal shall be at the sole risk of the unsuccessful proposer and shall not confer liability on the State government entity."

- Page 22, Section 4, Line 31: Delete "4." And insert "5."
- Page 22, Section 4, Line 37: Delete "5." And insert "6."
- Page 24, Section 5, Line 13: Delete ". For purposes of this section," and insert ", unless the accepted proposal is an unsolicited proposal accepted in accordance with subsection k. of this section."
- Page 24, Section 5, Lines 14-19: Delete in their entirety
- Page 24, Section 5, Lines 44-47: Delete in their entirety
- Page 25, Section 5, Lines 1-10: Delete in their entirety
- Page 25, Section 5, Line 11: After "c." delete "Each worker employed in the construction, rehabilitation, or" and insert "(Deleted by amendment, P.L. , c. )(pending before the Legislature as this bill)."
- Page 25, Section 5, Lines 12-23: Delete in their entirety
- Page 25, Section 5, Line 24: After "d. (1)" delete "All building construction projects under a public-private" and insert "(Deleted by amendment, P.L. , c. )(pending before the Legislature as this bill)."
- Page 25, Section 5, Lines 25-38: Delete in their entirety

- Page 25, Section 5, Line 42: Delete "commencing procurement of the project" and insert "execution of binding agreements"
- Page 27, Section 5, Line 6: Delete "full description of the proposed" and insert "negotiated"
- Page 27, Section 5, Line 17: Delete "a long-range" and insert "require an annual"
- Page 27, Section 5, Line 22: Delete "All contracts"
- Page 27, Section 5, Lines 23-28: Delete in their entirety
- Page 27, Section 5, Line 32: Delete "commence the procurement process" and insert "execute binding agreements"
- Page 27, Section 5, Line 36: Delete ", and shall retain the right to cancel a procurement" and insert "."
- Page 27, Section 5, Lines 37-38: Delete in their entirety
- Page 28, Section 5, Line 29: Delete "qualified" and insert "prequalified"
- Page 29, Section 5, Lines 25-29: Delete in their entirety
- Page 29, Section 5, Line 30: Delete "(6)" and insert "(5)"
- Page 30, Section 6, Line 1: Delete "6." And insert "7."
- Page 35, Section 6, Line 40: Delete "highway"
- Page 35, Section 6, Line 42: Delete "a local government unit, a school district,"
- Page 36, Section 7, Lines 6-12: Delete in their entirety and insert new sections 8 through 11 to read as follows:
- "8. Section 3 of P.L. 1966, c. 293 (C. 52:27D-3) is amended to read as follows:
- The commissioner, as administrator and chief executive officer of the department, shall:
- (a) Administer the work of the department;
- (b) Appoint and remove officers and other personnel employed within the department, subject to the provisions of Title 11 of the Revised Statutes, Civil Service, and other applicable statutes, except as herein otherwise specifically provided;
- (c) Perform, exercise and

discharge the functions, powers and duties of the department through such divisions as may be established by this act or otherwise by law;

(d) Organize the work of the department in such divisions, not inconsistent with the provisions of this act, and in such bureaus and other organizational units as he may determine to be necessary for efficient and effective operation;

(e) Adopt, issue and promulgate, in the name of the department, such rules and regulations as may be authorized by law;

(f) Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees;

(g) Institute or cause to be instituted such legal proceedings or processes as may be necessary properly to enforce and give effect to any of his powers or duties;

(h) Make an annual report to the Governor and to the Legislature of the department's operations, and render such other reports as the Governor shall from time to time request or as may be required by law;

(i) Co-ordinate the activities of the department, and the several divisions and other agencies therein, in a manner designed to eliminate overlapping and duplicating functions;

(j) Integrate within the department, so far as practicable, all staff services of the department and of the several divisions and other agencies therein;

(k) Maintain suitable headquarters for the department and such other quarters as he shall deem necessary to the proper functioning of the department; [and]

(1) Consider, review, amend, and approve public-private partnership agreements for certain projects entered into by a private entity and a local government unit, for the purposes set forth therein, under terms and conditions established by the Department and as otherwise authorized under State or federal law; and

~~[(1)]~~(m) Perform such other functions as may be prescribed in this act or by any other law.

9. The Commissioner of the Department of Education shall have the power to consider, review, amend, and approve public-private partnership agreements for certain projects entered into by a private entity and a local government unit, for the purposes set forth therein, under terms and conditions established by the Department of Education and as otherwise authorized under State or federal law.

10. Section 5 of P.L. 1966, c. 301(C. 27:1A-5) is amended to read as follows:

The commissioner, as head of the department, shall have all of the functions, powers and duties heretofore vested in the State Highway Commissioner and shall, in addition to the functions, powers and duties vested in him by this act or by any other law:

(a) Develop and maintain a comprehensive master plan for all modes of transportation development, with special emphasis on public transportation. Such plan shall be revised and updated at least every five years;

(b) Develop and promote programs to foster efficient and economical transportation services in the State;

(c) Prepare plans for the preservation, improvement and expansion of the public transportation system, with special emphasis on the coordination of transit modes

and the use of rail rights of way, highways and public streets for public transportation purposes;

(d) Enter into contracts with the New Jersey Transit Corporation for the provision and improvement of public transportation services;

(e) Coordinate the transportation activities of the department with those of other public agencies and authorities;

(f) Cooperate with interstate commissions and authorities, State departments, councils, commissions and other State agencies, with appropriate federal agencies, and with interested private individuals and organizations in the coordination of plans and policies for the development of air commerce and air facilities;

(g) Make an annual report to the Governor and the Legislature on the department's operations, and render such other reports as the Governor shall from time to time request or as may be required by law;

(h) Promulgate regulations providing for the charging of and setting the amount of fees for certain services performed by and permits issued by the department, including but not limited to the following:

(1) Providing copies of documents prepared by or in the custody of the department;

(2) Aeronautics permits;

(3) Right-of-way permits;

(4) Traffic signal control systems;

(i) Develop and promote programs for the preservation, improvement and expansion of freight railroads, with special emphasis on the use of rail rights of way for the purpose of providing rail freight service;

(j) Develop and promote a program to ensure the safety

and continued operation of aviation facilities in New Jersey;

(k) Enter into agreements with a public or private entity or consortia thereof to provide for the development of demonstration projects through the use of public-private partnerships pursuant to sections 1 through 9 of P.L.1997, c.136 (C.27:1D-1 through C.27:1D-9);

(l) Do any and all things necessary, convenient or desirable to effectuate the purposes of P.L.1966, c.301 (C.27:1A-1 et seq.) and to exercise the powers given and granted in that act; [and]

(m) Enter into agreements or contracts with a private entity and charge and collect fees or other payments for the placement of sponsorship acknowledgment and advertising on signs, equipment, materials, and vehicles used for a safety service patrol or emergency service patrol program operated by the department, or operated by a private entity under contract with the department or through the use of a public-private partnership or demonstration project[.];

(n) Enter into agreements with a private entity that permit the private entity to assume financial and administrative responsibility for the construction, reconstruction, alteration, improvement, extension, operation, and maintenance of a transportation project through the use of public-private partnership agreements pursuant to section 3 of P.L. , c. (C. )( pending before the Legislature as this bill); and

(o) Consider, review, amend, and approve public-private partnership agreements for certain transportation projects entered into by a private entity and a State government entity as defined in P.L. , c. (C. )

(pending before the  
Legislature as this bill),  
for the purposes set forth  
therein, under terms and  
conditions established by the  
Department and as otherwise  
authorized under State or  
federal law.

11. Section 5 of P.L. 1979,  
c. 150 (C.27:25-5) is amended  
to read as follows:

5. In addition to the  
powers and duties conferred  
upon it elsewhere in this  
act, the corporation may do  
all acts necessary and  
reasonably incident to  
carrying out the objectives  
of this act, including but  
not in limitation thereof the  
following:

- a. Sue and be sued;
- b. Have an official  
seal and alter the same at  
pleasure;
- c. Make and alter  
bylaws for its organization  
and internal management and  
for the conduct of its  
affairs and business;
- d. Maintain an office  
at such place or places  
within the State as it may  
determine;
- e. Adopt, amend and  
repeal such rules and  
regulations as it may deem  
necessary to effectuate the  
purposes of this act, which  
shall have the force and  
effect of law; it shall  
publish the same and file  
them in accordance with the  
"Administrative Procedure  
Act," P.L.1968, c.410  
(C.52:14B-1 et seq.) with the  
Director of the Office of  
Administrative Law;
- f. Call to its  
assistance and avail itself  
of the service of such  
employees of any federal,  
State, county or municipal  
department or agency as it  
may require and as may be  
available to it for said  
purpose;
- g. Apply for, accept  
and expend money from any

federal, State, county or municipal agency or instrumentality and from any private source; comply with federal statutes, rules and regulations, and qualify for and receive all forms of financial assistance available under federal law to assure the continuance of, or for the support or improvement of public transportation and as may be necessary for that purpose to enter into agreements, including federally required labor protective agreements;

h. Plan, design, construct, equip, operate, improve and maintain, either directly or by contract with any public or private entity, public transportation services, capital equipment and facilities or any parts or functions thereof, and other transportation projects, or any parts or functions thereof, which may be funded under section 3 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions; the operation of the facilities of the corporation, by the corporation or any public or private entity, may include appropriate and reasonable limitations on competition in order that maximum service may be provided most efficiently to the public;

i. Apply for and accept, from appropriate regulatory bodies, authority to operate public transportation services where necessary;

j. Purchase, lease as lessee, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, from any public or private entity, wherever situated;

k. Lease as lessor, sell or otherwise dispose of on terms which the corporation may prescribe,

real and personal property, including tangible or intangible property and consumable goods, or any interest therein, to any public or private entity, in the exercise of its powers and the performance of its duties under this act. In order to provide or encourage adequate and efficient public transportation service, the corporation may lease or otherwise permit the use or occupancy of property without cost or at a nominal rental;

l. Restrict the rights of persons to enter upon or construct any works in or upon any property owned or leased by the corporation, except under such terms as the corporation may prescribe; perform or contract for the performance of all acts necessary for the management, maintenance and repair of real or personal property leased or otherwise used or occupied pursuant to this act;

m. Establish one or more operating divisions as deemed necessary. Upon the establishment of an operating division, there shall be established a geographically coincident advisory committee to be appointed by the Governor with the advice and consent of the Senate. The committee shall consist of county and municipal government representatives and concerned citizens, in the number and for such terms as may be fixed by the corporation, and shall advise the corporation as to the public transportation service provided in the operating division. At least two members of each advisory committee shall be public transportation riders, including but not limited to urban transit users and suburban commuters as appropriate. One public member from the board of the corporation shall serve as a liaison to each advisory committee;

n. Set and collect fares and determine levels of service for service provided

by the corporation either directly or by contract including, but not limited to, such reduced fare programs as deemed appropriate by the corporation; revenues derived from such service may be collected by the corporation and shall be available to the corporation for use in furtherance of any of the purposes of this act;

o. Set and collect rentals, fees, charges or other payments from the lease, use, occupancy or disposition of properties owned or leased by the corporation; such revenues shall be available to the corporation for use in furtherance of any of the purposes of this act;

p. Deposit corporate revenues in interest bearing accounts or in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);

q. Delegate to subordinate officers of the corporation such powers and duties as the corporation shall deem necessary and proper to carry out the purposes of this act;

r. Procure and enter into contracts for any type of insurance and indemnify against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employees' liability, against any act of any member, officer, employee or servant of the corporation, whether part-time, full-time, compensated or noncompensated, in the performance of the duties of his office or employment or any other insurable risk. In addition, the corporation may carry its own liability insurance and may also establish and utilize a wholly-owned insurance subsidiary or captive provided the subsidiary or captive is domiciled in the United States in a state

which is accredited by the National Association of Insurance Commissioners and which licenses and regulates wholly-owned insurance subsidiaries or captives;

s. Promote the use of public transportation services, coordinate ticket sales and passenger information and sell, lease or otherwise contract for advertising in or on the equipment or facilities of the corporation;

t. Adopt and maintain employee benefit programs for employees of the corporation including, but not limited to, pension, deferred compensation, medical disability, and death benefits, and which programs may utilize insurance contracts, trust funds, and any other appropriate means of providing the stipulated benefits, and may involve new plans or the continuation of plans previously established by entities acquired by the corporation;

u. Own, vote, and exercise all other rights incidental to the ownership of shares of the capital stock of any incorporated entity acquired by the corporation pursuant to the powers granted by this act;

v. Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the corporation, or to carry out any power expressly or implicitly given in this act;

w. Notwithstanding the provisions of section 17 of P.L.1979, c.150 (C.27:25-17) or any other law to the contrary, (1) issue operating grant anticipation notes which shall be secured and retired from operating assistance grants authorized under section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C.

s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions and (2) issue capital grant anticipation notes which shall be secured and retired from capital assistance grants authorized under section 3 or section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions. As used in this subsection, "operating grant anticipation notes" or "capital grant anticipation notes" (hereinafter referred to as "notes") means credit obligations issued in anticipation of these grants. The notes shall be authorized by a resolution or resolutions of the corporation, and may be issued in one or more series and shall bear the date, or dates, bear interest at the rate or rates of interest per annum, be in the denomination or denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in such manner as the resolution or resolutions require. The notes may be sold at public or private sale at the price or prices and in the manner that the corporation determines. The notes of the corporation, the sale or transfer thereof, and the income derived therefrom by the purchasers of the notes, shall, at all times, be free from taxation for State or local purposes, under any law of the State or any political subdivision thereof. Notes may be issued under the provisions of P.L.1979, c.150 (C.27:25-1 et seq.) without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings, conditions, or things which are specifically required by P.L.1979, c.150 (C.27:25-1 et seq.). The notes issued pursuant to P.L.1979, c.150 (C.27:25-1 et seq.) shall not in any way

create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof or of the corporation, except as provided herein.

The notes shall be payable solely from (1) note proceeds, to the extent not disbursed to the corporation, (2) grant payments if, as, and when received from the federal government, and (3) investment earnings on note proceeds, to the extent not disbursed to the corporation. Each note shall contain on its face a statement to the effect that the corporation is obligated to pay the principal thereof or the interest thereon only from these grants to the corporation and from the proceeds of the notes and investment earnings on the proceeds of the notes, to the extent not disbursed to the corporation, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof or of the corporation is pledged to the payment of the principal and interest on these notes. Neither the members of the corporation's board nor any person executing the transactions are personally liable on those notes nor are they otherwise liable for their actions; and

x. Enter into agreements with a public or private entity or consortia thereof to provide for transportation projects as defined in Section 3 of P.L.1984, c.73 (C.27:1B-3) through the use of public-private partnership agreements pursuant to Section 3 of P.L.\_\_\_\_, c.\_\_\_\_ (C.\_\_\_\_) (pending before the Legislature as this bill).

[seal]

Respectfully,

/s/ Chris Christie

Governor

Attest:

/s/ Thomas P. Scrivo

Chief Counsel to the Governor