

**Higher Education Component**  
**“New Jersey Economic Stimulus Act of 2009”**  
**A4048/S2299SCS (Roberts/Coutinho/Diegnan/Wisniewski/Lesniak)**

The “New Jersey Economic Stimulus Act of 2009,” P.L. 2009, c. 90, makes various statutory changes to improve the financing of higher education facilities in New Jersey.

Specifically, the law implements several recommendations which were deleted from pending legislation intended to improve the structure and fiscal management of higher education in New Jersey following the October 2007 Report of the State Commission of Investigation entitled “Vulnerable to Abuse: The Importance of Restoring Accountability, Transparency and Oversight to Public Higher Education Governance.”

**Public-Private Partnership Agreement**

Under the law, a **State college** or **county college** may enter into a contract with a private entity, referred to as a public-private partnership agreement, that permits the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution.

The project however, shall be financed in whole by the private entity and that the State or institution of higher education, as applicable, retains full ownership of the land upon which the project is completed.

A private entity that assumes financial and administrative responsibility for a project shall not be subject to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the “State College Contracts Law,” P.L.1986, c.43 (C.18A:64-52 et seq.), and the “County College Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

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

All construction projects under a public-private partnership agreement entered into pursuant to this section shall contain a project labor agreement. The project labor agreement shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest extent possible enhances employment opportunities for individuals residing in the county of the project’s location. Further, the general contractor, construction manager, design-build team, or subcontractor for a construction project proposed in accordance with this paragraph shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project.

A general contractor, construction manager, design-build team, or subcontractor shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project.

Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

### **EDA Review and Approval**

On or before the first day of the nineteenth month next following enactment of P.L. 2009, c. 90 (July 28, 2009), all proposed projects shall be submitted to the **EDA** for its review and approval; and, any application that is deemed to be incomplete on that date, shall not be eligible for consideration.

The projects shall be encouraged, when practicable, to adhere to the green building manual prepared by the Department of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).

In order for an application to be complete and considered by the **EDA** it shall include, but not limited to: (1) a *public-private partnership agreement* between the State or county college and the private developer; (ii) a *full description of the project*; (iii) the *estimated costs and financial documentation for the project*; (iv) a *timetable for completion* of the project extending no more than five years after consideration and approval; and (v) *any other requirements that the authority deems appropriate or necessary*.

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.

This long-range maintenance plan shall be approved by the **EDA** *pursuant to regulations promulgated by the authority that reflect national building maintenance standards and other appropriate building maintenance benchmarks*.

All contracts to implement a *long-range maintenance plan* pursuant to this paragraph shall contain a project labor agreement subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall to the greatest extent possible enhance employment opportunities for individuals residing in the county of the project's location.

The **EDA** shall review all completed applications, request additional information as is needed to make a complete assessment of the project. No project shall be undertaken until final approval

has been granted by the authority; provided, however, that the **EDA** shall retain the right to revoke approval if it determines that the project has deviated from the plan submitted.

The **EDA** may *promulgate any rules and regulations necessary* to implement this subsection, *including provisions for fees to cover administrative costs.*

### **Funding – Duration of Contracts**

The law authorizes possible methods for funding projects by increasing allowable terms of certain contracts exceeding 36 months by a **State college**, particularly:

- Providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms, vending operations, and cafeterias, for a term not exceeding 30 years;
- Management and operation of bookstores, performing arts centers, residence halls, parking facilities and building operations for a term not exceeding 30 years;
- Purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 30 years.

In addition, the bill would increase allowable terms of certain contracts exceeding 24 months by a **county college**, particularly:

- Providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias, for a term not exceeding 30 years;
- Management and operation of bookstores for a term not exceeding 30 years;
- Performance of work or services or the furnishing of materials and supplies for the purpose of producing class I renewable energy, at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 30 years according to guidelines promulgated by the BPU.

### **“Higher Education Partnership Agreements Act”**

The law permits a municipality to enter into a higher education partnership agreement with an institution of higher education for the issuance of bonds by the municipality, a county improvement authority, or a redevelopment entity to finance a higher education project, in accordance with rules promulgated by the Local Finance Board in the Division of Local Government Services in DCA.

A “higher education project” is defined as the establishment and construction of higher education buildings and the expansion and construction of additional facilities at, and the acquisition of additional and upgraded equipment for existing higher education buildings, including but not limited to the planning, erecting, purchasing, improving, developing, constructing, reconstructing, extending, rehabilitating, renovating, upgrading, demolishing and equipping of facilities at institutions of higher education.

The law applies to the following institutions of higher education: *Rutgers, The State University*; a *State college or university* established pursuant to chapter 64 of Title 18A of the New Jersey Statutes; the *New Jersey Institute of Technology*; the *University of Medicine and Dentistry of New Jersey*; a *county college* and any other public university or college now or hereafter established or authorized by State law; and any college or university incorporated and located in New Jersey and accredited by the Middle States Association of Colleges and Schools, and which is eligible to receive State, excluding any religious educational institution.

The Local Finance Board shall promulgate rules and regulations, modeled after the procedures and protections set forth in the “Redevelopment Area Bond Financing Law,” sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), within 120 days following the enactment of sections 47 through 49 of P.L. 2009, c. 90.

### **Long Range Facilities Plan**

This law requires a **public research university** or a **State college** to submit a *long-range facilities plan* on projects to be developed to the New Jersey Commission on Higher Education for its review and recommendations (*county colleges are exempt from the requirement to prepare and submit long-range facilities plans*).

The *long range facilities plan* shall contain details of any public-private partnerships contemplated or entered into by the public research university or State college and shall include details on the sources of dedicated funds that will be used for repayment of loans.

The long range facilities plan shall be amended at least once every five years and shall detail the facilities needs of the institution and the institution’s plans to address those needs for the ensuing five years. Also, the plan shall adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6) when practicable.

In developing its response to the *long range facilities plan*, the commission shall consider the overall facilities needs of the institution, long-term fiscal implications of the plan including the debt burden of the institution, the relation of the facilities plan to the academic and student service programs of the institution, and the extent and cost of any deferred maintenance of the institution. The commission shall issue its response to the plan within one full semester of its receipt.

Finally, an amendment to a *long-range facilities plan* may be submitted at any time to the commission for its review and recommendations.

### **Economic Development Policies and Programs**

Finally, the law requires the New Jersey Commission on Higher Education shall appoint and convene a network of academics and researchers from New Jersey’s public and independent institutions of higher education to propose and develop economic development policies and programs for the higher education community.

## **Eligible Higher Education Institutions**

### **State Colleges**

The College of New Jersey  
Kean University  
Montclair State University  
New Jersey City University  
Ramapo College of NJ  
Richard Stockton College of NJ  
Rowan University  
Thomas Edison State College  
William Paterson University of NJ

### **County Colleges**

Atlantic Cape Community College  
Bergen Community College  
Brookdale Community College  
Burlington County College  
Camden County College  
Cumberland County College  
Essex County College  
Gloucester County College  
Hudson County Community College  
Mercer County Community College  
Middlesex County College  
County College of Morris  
Ocean County College  
Passaic County Community College  
Raritan Valley Community College  
Salem Community College  
Sussex County Community College  
Union County College  
Warren County Community College

### **State Public Research Universities**

NJ Institute of Technology  
Rutgers University-Camden  
Rutgers University-New Brunswick  
Rutgers University-Newark  
University of Medicine & Dentistry of NJ