

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3415

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 7, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3415.

As amended, this bill, entitled the "Energy Infrastructure Public-Private Partnership Act," would permit private entities to propose to public-private partnership eligible entities, as defined in the bill, certain energy-related projects through a public-private partnership (P3) agreement. The bill would create an Energy Infrastructure Public-Private Partnership Program (Energy P3 Program) and an Energy Infrastructure Financing Program within the New Jersey Infrastructure Bank (NJIB).

The Energy P3 Program would be responsible for the formulation and execution of a comprehensive Statewide policy for P3 agreements that facilitate the development of energy-related projects and for the development, promotion, coordination, oversight, and approval of P3 agreements for energy-related projects. The Energy Infrastructure Financing Program would provide loans and other forms of financial assistance to P3 eligible entities that are parties to public-private partnership agreements to develop and finance energy-related projects pursuant to the bill.

The bill defines "public-private partnership eligible entity," or "P3 eligible entity," as the State, its subdivisions, and any department, agency, commission, authority, board, or instrumentality thereof, a county, a municipality, a board of education, a State college or university, a county college, a private not-for-profit higher education institution, a regional or municipal utility authority, a quasi-State agency, a State-created corporation, and a private not-for-profit hospital licensed by the Department of Health pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.).

The Energy P3 Program would consult and coordinate with representatives of other State departments, agencies, boards, and authorities to accomplish the goals of the bill and facilitate P3 agreements for energy-related projects. The bill directs the NJIB to develop criteria by which a P3 eligible entity would award an energy-related project to a private entity whose proposal is determined to be the most advantageous. The bill prescribes competitive contracting procedures to govern P3 agreements, including procurements and

prevailing wage requirements for workers engaged in construction activities and other worker protections, and provides oversight authority to the Energy P3 Program to protect the interests of participating entities. The bill permits the inclusion of a project labor agreement in all energy-related projects created pursuant to the provisions of the bill. The bill also requires, beginning three years after the bill is enacted into law, an annual report concerning energy-related P3 projects to be submitted to the Governor and to the Legislature.

The bill amends the "New Jersey Infrastructure Trust Act" to establish an Energy Infrastructure Financing Program in the NJIB to provide loans and other forms of financial assistance, as the NJIB deems appropriate, to P3 eligible entities and private entities that are parties to P3 agreements to develop and finance energy-related projects pursuant to the bill. The bill would also add the President of the Board of Public Utilities as an ex-officio member to the board of directors for the NJIB.

The bill makes various changes to existing statutes related to the NJIB in order to expand its mission from water, environmental infrastructure, and transportation projects, to include energy-related projects. The bill requires that funds and accounts of the NJIB be segregated in such a way as to prevent the mixing of transportation monies and water or environmental infrastructure monies with energy-related monies. The bill creates an interim financing program for energy-related projects and establishes an Energy Loan Origination Fee Fund similar to the existing interim financing programs and fee funds for environmental and transportation projects.

The bill would require the NJIB to submit to the Legislature, on or before May 15 of each year, a financial plan designed to implement the financing of the energy-related projects on the Energy Financing Program Project Priority List or the Energy Financing Program Project Eligibility List. The bill provides that on or before June 30 of each year the Legislature may reject the financial plan through the adoption by both houses of a concurrent resolution. If the Legislature rejects the financial plan, the project list would be removed from the annual appropriations act and the NJIB would not undertake any of the proposed activities contained in the plan. If the Legislature takes no action on the financial plan on or before June 30, the financial plan would be deemed approved.

Under the bill, the development of an energy-related project would be deemed to constitute the performance of an essential public function. A component of an energy-related project predominantly used by, or developed in furtherance of the purposes of a P3 eligible entity that is owned by or leased to a P3 eligible entity, foreign or domestic nonprofit business entity, or business entity wholly owned by a nonprofit business entity, would be exempt from property taxation and special assessments of the State, a municipality, and any other

political subdivision of the State, and, notwithstanding the provisions of any other law to the contrary, would not be required to make payments in lieu of taxes, and the land upon which an energy-related project is located would be exempt from property taxation for the useful life of the project.

The bill provides that the provisions of P.L.2009, c.136 (the requirements for certain public contracts with private firms) do not apply to energy-related projects developed under the bill. The bill also provides that nothing in the bill limits the powers of the Office of the State Comptroller or the authority of the Board of Public Utilities.

Finally, the bill amends the "Public School Contracts Law" and the "Local Public Contracts Law" to provide that a contract may be for up to 25 years for the sale of electricity or thermal energy, or both, produced by a combined heat and power facility, cogeneration facility, on-site generation facility, a district energy system, or a distributed electric generation resource constructed and operated pursuant to a public-private partnership agreement under the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to revise the definition of "private entity" to include entities that may provide partnership, joint venture, cooperative, or other shared opportunities to a P3 eligible entity, and to add "redevelopment" to the list of those services that may be provided for energy related projects.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates initial startup administrative costs to create the Energy Infrastructure Public-Private Partnership Program (Energy P3 Program) in the New Jersey Infrastructure Bank would be approximately \$1.2 million. This estimate includes additional work by existing staff at the Infrastructure Bank and the Attorney General's Office, as well as the use of outside consultants and attorneys. The estimated annual administrative costs of the program in subsequent years would be approximately \$600,000; however, the OLS notes the total annual program costs could be higher.

The true extent of future expenditure increases would be determined by the Infrastructure Bank, which is authorized to issue bonds, and request future legislative appropriations, to support the program. The amount of funding that would be requested is difficult to predict, since existing Infrastructure Bank programs are supported by federal appropriations, bond revenues, and the Transportation Trust Fund, which derives from the motor fuels tax, the petroleum products gross receipts tax, and other taxes. This bill would not establish any such dedicated stream of revenue for the Energy P3 Program.