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New Jersey Governor Signed into Law Act Permitting Private Companies to Construct and Operate Public Schools in Newark, Trenton and Camden

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On January 12, 2012, New Jersey Governor Chris Christie signed into law the Urban Hope Act (“Act”), S3173/A4426, which allows private companies to construct, operate and manage up to twelve public schools in three under-performing public school districts in the State: the Newark School District, the Trenton School District and the Camden School District. These “failing districts,” as such are defined in the Act as those in which a below average percentage of students scored at least in the partially proficient range on State assessments administered in the 2009-2010 school year, have been unable to convert, year after year, “increased State aid and other resources into improved student achievement, higher graduation rates, or greater student readiness for postsecondary education and gainful employment.” Recognizing that although New Jersey’s per pupil public school expenditures are among the highest in the nation, many of the State students are nonetheless failing to achieve the core curriculum content standards, the New Jersey Legislature passed, and the Governor approved, the Act to “provide local boards of education, partners, students, and teachers with more and better options for addressing their failing schools.”

The Act offers one such option by allowing the identified school districts, on a limited pilot program basis, to partner with one or more nonprofit entities to create “renaissance schools.” Under the Act, a “renaissance school project” (“RSP”) means “a newly-constructed school, or group of schools in a common campus setting, that provides an educational program for students enrolled in grades K through 12 or in a grade range less than K through 12, that is agreed to by the school district, and is operated and managed by a nonprofit entity in a renaissance school district.” A “renaissance school district” (“RSD”) is “a failing district in which

[RSPs] shall be established.” Private or parochial schools are not eligible for RSP status under the Act.

Upon receiving local school district approval, nonprofit entities can apply, within three (3) years of the Act’s passage, to the state Commissioner of Education (“Commissioner”) to create up to four (4) RSPs in each RSD. The nonprofit entity must demonstrate experience in operating a school in a “high-risk, low-income urban district.” Similarly, “an entity retained by the nonprofit entity for the purpose of financing or constructing the [RSP] shall also have appropriate experience.” In its application, the nonprofit entity is required to outline its goals, policies, and a financial plan. In addition, the nonprofit entity must provide a description of the process employed by the RSD to find and partner with the chosen nonprofit entity to create a RSP; such process should be “open, fair and subject to public input and comment.”

Once the nonprofit entity obtains state approval, it can then enter into a contract with the RSD in which the RSP will be located, setting forth the terms and conditions for the RSP including the operation, management, and funding of the RSP. The nonprofit entity is also required to file an organizational document with the Commissioner.

The Act permits for-profit entities to construct a RSP. RSPs may also be located on land owned by a for-profit entity. Moreover, the nonprofit entity is authorized to retain for-profit entities to staff, operate, and manage the RSP. Although RSPs shall be considered public schools under the Act, the nonprofit entity or any entity acting in cooperation with a RSP, including for-profit businesses, would not be subject to public bidding requirements for goods and services, as is otherwise required for public schools under the “Public School Contracts Law,” N.J.S.A.

18A:18A-1 et seq. Further, any such contracts entered into would not be deemed public contracts or public works, except for the purposes of the “New Jersey Prevailing Wage Act,” N.J.S.A. 34:11-56.25 et seq., which the RSPs are subject to. All costs of the RSP, including the costs of land acquisition, site remediation, site development, design, construction, and any other costs required to place into service the school facility or facilities constituting the RSP, are to be paid for by the nonprofit entity. State funds may be used to pay for a lease, debt service, or mortgage for any facility constructed or otherwise acquired.

Under provisions of the Act, RSPs may also be built on land owned by the New Jersey Schools Development Authority (“SDA”) or the RSD. Ownership of the land on which the RSP is constructed determines which students are permitted to enroll at the RSP. The Act also permits the SDA to convey the land by ground lease or fee simple title to either the RSD or the entity constructing the RSP, including to private developers, “for such consideration and on such terms as the [SDA] determines to be in the best interest of the State.” The conveyance must contain a restriction that the land be used solely for a school or it shall revert to the SDA. In the event the

land is conveyed to a RSD, the RSD may enter into a sublease of the property with the entity. Such a sublease must contain a similar use restriction and reverter provision, and be reviewed and approved by the Commissioner.

Moreover, if any board of education determines by resolution that any tract of land is no longer desirable or necessary for school purposes, it may authorize the conveyance of such a tract to a RSP, similarly conditioning the conveyance on the property's continued use for school purposes by the RSP.

Under the provisions of the Act, the RSD will pay to the nonprofit entity operating a RSP an amount per pupil equal to 95% of the district's per pupil expenditure. The RSPs are required to meet the same testing and academic performance standards established by law and regulation for public students. The nonprofit entity may also establish additional testing and academic performance standards which, upon the Commissioner's approval of the same, the RSP must meet as well. The RSPs are subject to periodic reviews and assessments by the Commissioner, and the Commissioner has the right to review the RSP's and the nonprofit entity's records and facilities to ensure compliance with the RSP's organizational document, and with State laws and regulations. In addition, five (5) years following the date of the opening of the third RSP, or ten (10) years after the opening of the first RSP, whichever occurs first, an independent education researcher or research organization selected by the Commissioner will conduct a review of the efficacy of the RSPs. The Act requires that the Commissioner report the results of the review to the Governor, the State Board of Education, and the Legislature, and the RSP program altered and/or expanded based on these results.

The Act received wide support from education organizations and the state's largest teachers union, the New Jersey Education Association. Educators in the RSPs would have the same qualification requirements, salary minimums and collective-bargaining powers as teachers in other public schools.

The Urban Hope Act is one of several pieces of the administration's overall effort to improve education.

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