

# ASSEMBLY, No. 2482

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2012

**Sponsored by:**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**SYNOPSIS**

Requires use of goods made in the United States for State contracts; requires businesses that receive State contracts or economic development assistance to disclose job exportation information.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 11/20/2012)

1 AN ACT concerning the use of goods made in the United States for  
2 State contracts, requiring the disclosure of certain information by  
3 certain businesses, and supplementing Title 52 of the Revised  
4 Statutes.

5  
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*  
8

9 1. A State agency shall make provisions in the specifications  
10 for all contracts that include or necessitate the procurement of  
11 articles, materials, goods, equipment, or supplies, including  
12 contracts for public works, for which the State pays any part of the  
13 cost, that only products manufactured in the United States, be used  
14 to fulfill those contracts. As used in this section, "State agency"  
15 shall have the meaning as set forth in section 1 of P.L.1991, c.507  
16 (C.52:32-40), and "manufactured in the United States" means, in  
17 the case of assembled articles, material or supplies, components,  
18 subcomponents, parts, and equipment used in manufacturing, final  
19 assembly, processing, packaging, testing or other process that adds  
20 value, quality, or reliability occurs in the United States.

21 Products manufactured in the United States shall be specified  
22 and purchased unless the State agency determines that any of the  
23 following apply:

24 the products are not manufactured in the United States in  
25 reasonably available quantities; or

26 the cost of buying products manufactured in the United States is  
27 unreasonable. There is a presumption of unreasonableness for  
28 products manufactured in the United States that cost 25% above the  
29 fair market value for such products.

30 Any waiver granted under this section shall be made public,  
31 reported to the relevant State agencies, and posted publicly for a 30-  
32 day comment period. The agency granted such a waiver shall work  
33 with other State agencies to create a plan to ensure the domestic  
34 supply of the relevant products will be available in the future.

35 Each contract awarded by a State agency on or after the effective  
36 date of P.L. , c. (C. ) (pending before the Legislature as this  
37 bill), shall contain the contractor's certification that procured  
38 products provided pursuant to the contract or a subcontract shall be  
39 manufactured in the United States.

40 Nothing in this section is intended to contravene any existing  
41 treaty, law, agreement, or regulation of the United States. Contracts  
42 entered into in accordance with any treaty, law, agreement, or  
43 regulation of the United States shall not be in violation of this  
44 section to the extent of that accordance. No preference shall be  
45 granted under this section if that preference would contravene any  
46 treaty, law, agreement, or regulation of the United States.

47 If a contractor is awarded a contract that includes the use of a  
48 preference under this section and knowingly supplies procured

1 products under that contract that are not manufactured in the United  
2 States, then:

3 the contractor shall be barred from obtaining any State agency  
4 contract, including State college contracts, for a period of five years  
5 after the violation is discovered by the agency;

6 the agency may void the contract; and

7 the agency may recover damages in a civil action in an amount  
8 three times the value of the preference.

9  
10 2. A State college shall make provisions in the specifications  
11 for all State college contracts that include or necessitate the  
12 procurement of articles, materials, goods, equipment, or supplies,  
13 including contracts for public works, for which the State college  
14 pays any part of the cost, that only such products manufactured in  
15 the United States, be used to fulfill those contracts. As used in this  
16 section, “manufactured in the United States” means, in the case of  
17 assembled articles, material or supplies, components,  
18 subcomponents, parts, and equipment used in manufacturing, final  
19 assembly, processing, packaging, testing or other process that adds  
20 value, quality, or reliability occurs in the United States. “State  
21 college” shall have the meaning as set forth in section 3 of  
22 P.L.1994, c.48 (C.18A:3B-3).

23 Products manufactured in the United States shall be specified  
24 and purchased unless the State college determines that any of the  
25 following apply:

26 the products are not manufactured in the United States in  
27 reasonably available quantities; or

28 the cost of buying products manufactured in the United States is  
29 unreasonable. There is a presumption of unreasonableness for  
30 products manufactured in the United States that cost 25% above the  
31 fair market value for such products.

32 Any waiver granted under this section shall be made public,  
33 reported to the relevant State agencies, and posted publicly for a 30-  
34 day comment period. The State college granted such a waiver shall  
35 work with other State agencies to create a plan to ensure the  
36 domestic supply of the relevant products will be available in the  
37 future.

38 Each contract awarded by a State college on or after the effective  
39 date of P.L. , c. (C. ) (pending before the Legislature as this  
40 bill) shall contain the contractor’s certification that procured  
41 products provided pursuant to the contract or a subcontract shall be  
42 manufactured in the United States.

43 Nothing in this section is intended to contravene any existing  
44 treaty, law, agreement, or regulation of the United States. Contracts  
45 entered into in accordance with any treaty, law, agreement, or  
46 regulation of the United States shall not be in violation of this  
47 section to the extent of that accordance. No preference shall be

1 granted under this section if that preference would contravene any  
2 treaty, law, agreement, or regulation of the United States.

3 If a contractor is awarded a contract that includes the use of a  
4 preference under this section and knowingly supplies procured  
5 products under that contract that are not manufactured in the United  
6 States, then;

7 the contractor shall be barred from obtaining any State college  
8 contract or State contract for a period of five years after the  
9 violation is discovered by the State college;

10 the State college may void the contract; and

11 the State college may recover damages in a civil action in an  
12 amount three times the value of the preference.

13

14 3. a. The Legislature finds that there is widespread concern  
15 that State contracts and economic development assistance financed  
16 by the taxpayer's of the State are being given to companies that  
17 send work outside of the United States. Business, labor, and  
18 government leaders recognize the need for an objective and  
19 thorough study of the extent to which State contracts and projects  
20 financed by taxpayers are being performed outside the United  
21 States, and the impact of this practice on the State's economy.

22 Therefore, the Legislature finds it necessary to:

23 require bidders for State contracts and applicants for economic  
24 development assistance to disclose where the contract or project  
25 will be performed;

26 compile this data and make it available for public review and  
27 comment; and

28 study the impact on the State's economy.

29 b. As used in this section:

30 "development assistance" means any form of public assistance,  
31 including tax expenditures, made for the purpose of stimulating  
32 economic development of a corporation, industry, geographic  
33 jurisdiction, or any other sector of the State's economy, including,  
34 but not limited to, industrial development bonds, training grants,  
35 loans, loan guarantees, enterprise zones, empowerment zones, tax  
36 increment financing, fee waivers, land price subsidies,  
37 infrastructure whose principal beneficiary is a single business or  
38 defined group of businesses at the time it is built or improved,  
39 matching funds, tax abatements, tax credits, and tax discounts of  
40 every kind, including corporate franchise, personal income, sales  
41 and compensating use, raw materials, real property, job creation,  
42 individual investment, excise, utility, inventory, accelerated  
43 depreciation, and research and development tax credits and  
44 discounts.

45 "Corporate parent" means any person, association, corporation,  
46 joint venture, partnership, or other entity that owns or controls 50  
47 percent or more of a recipient corporation.

1       “State” shall have the meaning as set forth in section 1 of  
2 P.L.1991, c.507 (C.52:32-40).

3       b. (1) The State shall require each vendor submitting a bid or  
4 contract to provide services and all development assistance  
5 applicants to certify where the services covered by the bid, contract,  
6 or development assistance will be performed.

7       (2) The State shall require each vendor with a contract, each  
8 subcontractor, and each recipient of development assistance, in  
9 effect on the effective date of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill), notwithstanding any other requirements  
11 that have been imposed, to:

12       certify where the services covered by the bid, contract, or  
13 development assistance are being performed; and

14       disclose the name and headquarters location of its parent  
15 company.

16       c. The joint legislative task force, established under subsection  
17 (e) of this section, shall create and maintain a comprehensive  
18 database of contract awards and development assistance provided  
19 by all State agencies that includes, but is not limited to, the  
20 information included in this section.

21       d. The State shall conduct a study that includes, but need not be  
22 limited to, an evaluation of the following:

23       (1) the extent to which current State contracts, and any  
24 subcontracts under such contracts, are being performed outside of  
25 the United States;

26       (2) the extent to which the performance of State contracts in  
27 whole or in part in other countries results in the creation or loss of  
28 family-wage or other jobs in the State;

29       (3) the extent to which State contracts being performed in whole  
30 or in part in other countries creates a need for adjustment assistance  
31 and retraining programs to ensure the State’s business climate, its  
32 employers, and its workers remain competitive globally;

33       (4) the extent to which State contracts performed at locations  
34 outside the United States involve a risk of unauthorized use or  
35 disclosure of personal information, as well as a review of applicable  
36 State and federal laws regarding the privacy of personal  
37 information;

38       (5) the economic costs and benefits of awarding State contracts,  
39 and any subcontracts under such contracts, to New Jersey  
40 companies;

41       (6) the applicability of international trade agreements and  
42 federal law to State procurement policies;

43       (7) the extent to which legislative authority over State  
44 procurement is adequately protected, including the ability of State  
45 agencies to adequately supervise the performance of contracts when  
46 all or a portion of the work is performed in a country other than the  
47 United States; and

1 (8) the reason New Jersey businesses choose to locate  
2 operations outside the United States.

3 e. The study shall be conducted by a joint task force of the  
4 Senate and the General Assembly consisting of the following: two  
5 members of the General Assembly to be appointed by the Speaker  
6 of the General Assembly; two members of the General Assembly to  
7 be appointed by the General Assembly Minority Leader; two  
8 members of the Senate to be appointed by the Senate Majority  
9 Leader; and two members of the Senate to be appointed by the  
10 Senate Minority Leader.

11 f. The joint task force shall consult with and be advised and  
12 monitored by an advisory committee consisting of seven members:  
13 three members representing labor, appointed jointly by the  
14 President of the Senate and the Speaker of the General Assembly,  
15 from a list of names recommended by a statewide organization  
16 representing a cross-section of organized labor in the State; three  
17 members representing business, one of whom shall represent small  
18 business, appointed jointly by the President of the Senate and the  
19 Speaker of the General Assembly, from a list of names  
20 recommended by a statewide organization of employers  
21 representing a cross-section of employers of the State, and one  
22 member representing the public.

23 g. The information maintained in the comprehensive database  
24 outlined above shall be made available online to the Legislature and  
25 the public.

26 h. The findings and recommendations of the joint task force  
27 shall be reported in writing annually to the Legislature, with the  
28 first report to be submitted within 14 months following the effective  
29 date of this act, P.L. , c. (C. ) (pending before the Legislature  
30 as this bill). In addition to filing each report with the Legislature,  
31 the joint task force shall make each report available to the public on  
32 the Legislature's Internet homepage.

33

34 4. This act shall take effect immediately.

35

36

#### 37 STATEMENT

38

39 This bill would require that vendors receiving State contracts  
40 purchase goods manufactured in the United States to fulfill those  
41 contracts, when such products are available. This bill also requires  
42 disclosure by certain businesses that receive State contracts or  
43 economic development assistance from the State of where the  
44 services covered by the bid, contract, or development assistance are  
45 being performed and establishes a joint task force to conduct a  
46 study of the impact of job exportation on the State economy.

47 Currently, New Jersey requires the purchase of goods  
48 manufactured in the United States in fulfillment of public works

1 contracts, local public contracts, State construction contracts, and  
2 local schools contracts. This bill requires that all State contracts  
3 have provisions that require the use of goods manufactured in the  
4 United States to fulfill the contracts, including contracts negotiated  
5 by State colleges, which includes State universities.

6 The bill includes a provision that allows for a State agency or  
7 State college to receive a waiver in the event that products  
8 manufactured in the United States are unavailable or too costly. If a  
9 State agency or State college seeks a waiver, the information will be  
10 made public, reported to relevant State agencies, and there will be a  
11 30-day comment period. Any State agency or State college that  
12 receives a waiver must work with other State agencies to create a  
13 plan to ensure that there is a domestic supply in the future of the  
14 relevant products.

15 The purpose of this waiver is to recognize that it is not always  
16 possible or practical to use products manufactured in the United  
17 States. However, the 30-day public comment period is also  
18 included as a safeguard to prevent abuse of the waiver system. If  
19 there are reasonably priced products available that are manufactured  
20 in the United States, the 30-day comment period will allow for  
21 American companies to come forward and provide products  
22 manufactured in the United States that may have been overlooked  
23 or ignored. The State agency or State college will also be  
24 responsible for creating a plan to ensure the future supply of  
25 products manufactured in the United States so that the United States  
26 economy may be bolstered.

27 This bill has a penalty provision that, in the event a contractor  
28 knowingly supplies products that are not manufactured in the  
29 United States, bars the contractor from obtaining State contracts for  
30 a period of five years, permits the State agency to void the contract,  
31 and provides a civil remedy for the State agency to recover  
32 damages.

33 The disclosure requirements of the bill serve two primary  
34 purposes. First, they provide for greater transparency for the State  
35 contracting process. Second, they will allow the State to compile  
36 data so that accurate studies may be done to investigate the true  
37 impact that job exportation has on the State economy.

38 A bi-partisan joint task force of members of the Legislature will  
39 be created by this bill to conduct the study into the economic effects  
40 of job exportation and how pervasive the problem is within the  
41 State, ultimately providing the State with a more informed way to  
42 approach the issue of job exportation.

43 Lastly, this bill requires that the information compiled by the  
44 joint task force will be made available to the public and the  
45 Legislature. Accordingly, both the public and the Legislature will  
46 be able to review the data and discuss ideas on how to counteract  
47 any problems associated with job exportation.