

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3059**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

ADOPTED JUNE 12, 2014

**Sponsored by:**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Co-Sponsored by:**

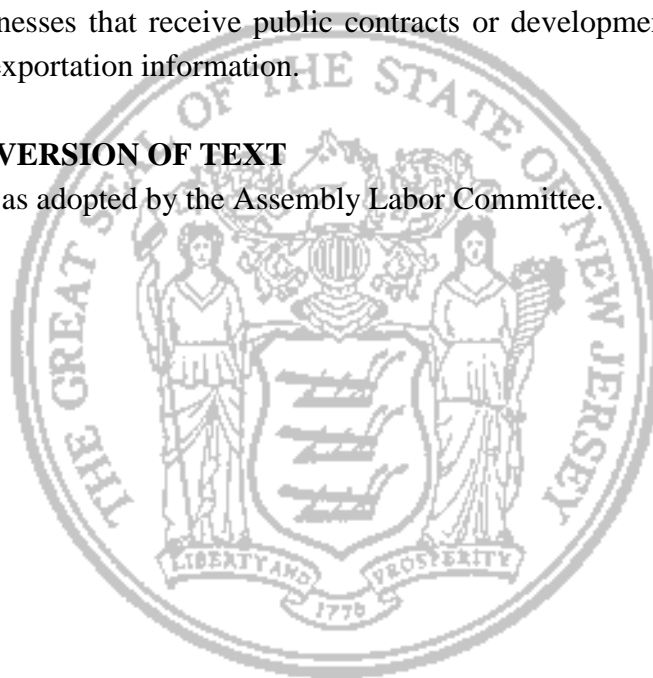
**Assemblymen S.Kean, O'Donnell, Benson, DeAngelo, Cryan, Eustace,  
Lagana, Assemblywoman Quijano, Assemblyman Wisniewski,  
Assemblywoman Pinkin, Assemblymen Coughlin, Andrzejczak, Mazzeo  
and Assemblywoman N.Munoz**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Labor Committee.



**(Sponsorship Updated As Of: 12/12/2014)**

1   **AN ACT** concerning the use of goods made in the United States for  
 2       public contracts, requiring the disclosure of certain information  
 3       by certain businesses, revising various parts of the statutory law,  
 4       and supplementing Title 18A of the New Jersey Statutes and  
 5       Title 52 of the Revised Statutes.

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

9  
 10       1. N.J.S.18A:18A-20 is amended to read as follows:

11       18A:18A-20. American goods and products to be used where  
 12       possible.

13       a. Each board of education shall provide, in the specifications for  
 14       all contracts for purchases or work, including public work contracts,  
 15       for which it will pay any part of the cost, or work which by contract  
 16       it will ultimately own and maintain, that only manufactured and  
 17       farm products of the United States, wherever available in  
 18       reasonable quantity, be purchased or be used in such work.

19       b. The provisions of subsection a. of this section may be  
 20       waived, pursuant to the procedures provided in this subsection, in  
 21       any case or category of cases in which the board of education  
 22       entering into the contract finds that:

23       (1) Manufactured or farm products of the United States are not  
 24       available in reasonable quantity; or

25       (2) The cost of buying manufactured or farm products of the  
 26       United States is unreasonable. There is a presumption of  
 27       unreasonableness for manufactured or farm products of the United  
 28       States that cost more than 20% above the fair market value for such  
 29       products.

30       At least 30 days before issuing a waiver under this subsection,  
 31       the board of education shall provide to the public a notice  
 32       summarizing the reason for the proposed waiver, and an opportunity  
 33       for public comment on the proposed waiver. The notice shall be  
 34       posted prominently on the public Internet website of the board of  
 35       education and provided by electronic means to any person, firm, or  
 36       corporation that makes a written or electronic request for  
 37       notification. If, after public notice and an opportunity for public  
 38       comment required by this subsection, the board of education  
 39       determines to issue a waiver, the board of education shall provide a  
 40       detailed justification for the waiver that shall be posted prominently  
 41       on the public Internet website of the board of education and  
 42       provided by electronic means to any person, firm, or corporation  
 43       that has made a written or electronic request to receive notice of  
 44       waiver actions. The justification shall include responses to any

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

public comments received pursuant to this subsection, and be published before the waiver takes effect.

c. If a contractor knowingly uses or supplies procured products that are not manufactured or farm products of the United States in violation of the provisions of a contract subject to the provisions of this section, then:

(1) The contractor shall be barred from obtaining any contract with any board of education or other public body, including the State or any State agency, or public institution of higher education, for a period of three years after the violation is discovered by the board of education;

(2) The board of education may void the contract; and

(3) The board of education may recover damages in a civil action in an amount two times any cost incurred by the board as a result of the violation.

d. The provisions of this section requiring the purchase and use of manufactured products of the United States shall not apply:

(1) At any time to replacement parts or components for, or modifications of, equipment or systems provided under a contract approved prior to the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill);

(2) At any time to replacement parts or components for, or modifications of, any equipment or systems for which a waiver was provided under the provisions of this section;

(3) To information technology, telecommunications, electronic, digital, computing, or other sophisticated technology articles, materials or supplies that are generally imported into the United States fully assembled; or

(4) To any product approved or legally marketed under the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

e. For the purposes of this section:

“Manufactured product” means a product that has been:

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials;

“Products of the United States” means:

(1) In the case of a manufactured product that is comprised predominantly of iron or steel, all manufacturing processes of the product, from the initial melting through the application of coatings, occurred in the United States; and

(2) In the case of a manufactured product that is not comprised predominantly of iron or steel:

(a) The product has been mined, produced or manufactured in the United States; and

(b) The cost of the product's components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components.

"Public work" means any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved at the expense of the public.

(cf: P.L.1999, c.440, s.66)

2. Section 18 of P.L.1971, c.198 (C.40A:11-18) is amended to read as follows:

18. a. Each **local** contracting unit shall provide, in the specifications for all contracts for purchases, or county or municipal work, including public work contracts, or for work for which it will pay any part of the cost, or work which by contract or ordinance it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available in reasonable quantity, be purchased or used in such work.

b. The provisions of subsection a. of this section may be waived, pursuant to the procedures provided in this subsection, in any case or category of cases in which the contracting unit entering into the contract finds that:

(1) Manufactured or farm products of the United States are not available in reasonable quantity; or

(2) The cost of buying manufactured or farm products of the United States is unreasonable. There is a presumption of unreasonableness for manufactured or farm products of the United States that cost more than 20% above the fair market value for such products.

At least 30 days before issuing a waiver under this subsection, the contracting unit shall provide to the public a notice summarizing the reason for the proposed waiver, and an opportunity for public comment on the proposed waiver. The notice shall be posted prominently on the public Internet website of the contracting unit and provided by electronic means to any person, firm, or corporation that makes a written or electronic request for notification. If, after public notice and an opportunity for public comment required by this subsection, the contracting unit determines to issue a waiver, the contracting unit shall provide a detailed justification for the waiver that shall be posted prominently on the public Internet website of the contracting unit and provided by electronic means to any person, firm, or corporation that has made a written or electronic request to receive notice of waiver actions. The justification shall include responses to any public comments received pursuant to this subsection, and be published before the waiver takes effect.

1 c. If a contractor knowingly uses or supplies procured products  
2 that are not manufactured or farm products of the United States in  
3 violation of the provisions of a contract subject to the provisions of  
4 this section, then:

5 (1) The contractor shall be barred from obtaining any contract  
6 with any contracting unit or other public body, including the State  
7 or any State agency or public institution of higher education, for a  
8 period of three years after the violation is discovered by the  
9 contracting unit;

10 (2) The contracting unit may void the contract; and

11 (3) The contracting unit may recover damages in a civil action  
12 in an amount two times any cost incurred by the contracting unit as  
13 a result of the violation.

14 d. The provisions of this section requiring the purchase and use  
15 of manufactured products of the United States shall not apply:

16 (1) At any time to replacement parts or components for, or  
17 modifications of, equipment or systems provided under a contract  
18 approved prior to the effective date of P.L. , c. (C. )  
19 (pending before the Legislature as this bill);

20 (2) At any time to replacement parts or components for, or  
21 modifications of, any equipment or systems for which a waiver was  
22 provided under the provisions of this section;

23 (3) To information technology, telecommunications, electronic,  
24 digital, computing, or other sophisticated technology articles,  
25 materials or supplies that are generally imported into the United  
26 States fully assembled; or

27 (4) To any product approved or legally marketed under the  
28 Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

29 e. For the purposes of this section:

30 “Manufactured product” means a product that has been:

31 (1) Processed into a specific form and shape; or

32 (2) Combined with other raw material to create a material that  
33 has different properties than the properties of the individual raw  
34 materials;

35 “Products of the United States” means:

36 (1) In the case of a manufactured product that is comprised  
37 predominantly of iron or steel, all manufacturing processes of the  
38 product, from the initial melting through the application of coatings,  
39 occurred in the United States; and

40 (2) In the case of a manufactured product that is not comprised  
41 predominantly of iron or steel:

42 (a) The product has been mined, produced or manufactured in  
43 the United States; and

44 (b) The cost of the product’s components mined, produced or  
45 manufactured in the United States exceeds 50 percent of the cost of  
46 all of its components.

1     "Public work" means any public building, public highway,  
2     bridge, or other public betterment, work or improvement of a  
3     permanent nature, constructed, reconstructed, repaired or improved  
4     at the expense of the public.

5     (cf: P.L.1982, c.107, s.1)

6  
7     3. (New section) a. A State agency shall make provisions in  
8     the specifications for all contracts that include or necessitate the  
9     procurement of articles, materials, goods, equipment, or supplies,  
10    including contracts for public works, for which the State pays any  
11    part of the cost, that only products that are manufactured or farm  
12    products of the United States, be used to fulfill those contracts.

13    b. Products that are manufactured or farm products of the  
14    United States shall be specified and purchased unless the State  
15    agency determines that any of the following apply:

16    (1) There are not manufactured or farm products of the United  
17    States available in reasonable quantities; or

18    (2) The cost of buying manufactured or farm products of the  
19    United States is unreasonable. There is a presumption of  
20    unreasonableness for manufactured or farm products of the United  
21    States that cost more than 20% above the fair market value for such  
22    products.

23    Any waiver proposed under this section shall be made public,  
24    reported to the relevant State agencies, and posted publicly for a 30-  
25    day comment period. If, after public notice and an opportunity for  
26    public comment, it is decided to issue the waiver, the waiver, with  
27    detailed justification including responses to any public comments,  
28    shall, before the waiver takes effect, be posted prominently on a  
29    public Internet website and made available upon request.

30    c. Each contract awarded by a State agency on or after the  
31    effective date of P.L. , c. (C. ) (pending before the Legislature  
32    as this bill), shall contain the contractor's certification that procured  
33    products provided pursuant to the contract or a subcontract shall be  
34    manufactured or farm products of the United States.

35    d. If a contractor is awarded a contract subject to the provisions  
36    of this section and knowingly supplies procured products under that  
37    contract that are not manufactured or farm products of the United  
38    States in violation of the provisions of this section, then:

39    (1) The contractor shall be barred from obtaining any contract  
40    with any State agency or other public body, including a political  
41    subdivision or public institution of higher education, for a period of  
42    three years after the violation is discovered by the State agency;

43    (2) The State agency may void the contract; and

44    (3) The State agency may recover damages in a civil action in  
45    an amount two times any cost to the State or the State agency  
46    caused by the violation or by any measures needed to achieve  
47    compliance with the requirements of this section.

1 e. The provisions of this section requiring the purchase and use  
2 of manufactured products of the United States shall not apply:

3 (1) At any time to replacement parts or components for, or  
4 modifications of, equipment or systems provided under a contract  
5 approved prior to the effective date of P.L. , c. (C. ) (pending  
6 before the Legislature as this bill);

7 (2) At any time to replacement parts or components for, or  
8 modifications of, any equipment or systems for which a waiver was  
9 provided under the provisions of this section;

10 (3) To information technology, telecommunications, electronic,  
11 digital, computing, or other sophisticated technology articles,  
12 materials or supplies that are generally imported into the United  
13 States fully assembled; or

14 (4) To any product approved or legally marketed under the  
15 Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

16 f. As used in this section:

17 “Manufactured product” means a product that has been:

18 (1) Processed into a specific form and shape; or

19 (2) Combined with other raw material to create a material that  
20 has different properties than the properties of the individual raw  
21 materials;

22 “Products of the United States” means:

23 (1) In the case of a manufactured product that is comprised  
24 predominantly of iron or steel, all manufacturing processes of the  
25 product, from the initial melting through the application of coatings,  
26 occurred in the United States; and

27 (2) In the case of a manufactured product that is not comprised  
28 predominantly of iron or steel:

29 (a) The product has been mined, produced or manufactured in  
30 the United States; and

31 (b) The cost of the product’s components mined, produced or  
32 manufactured in the United States exceeds 50 percent of the cost of  
33 all of its components.

34 “Public work” means any public building, public highway,  
35 bridge, or other public betterment, work or improvement of a  
36 permanent nature, constructed, reconstructed, repaired or improved  
37 at the expense of the public; and

38 “State agency” means any of the principal departments in the  
39 Executive Branch of the State Government, and any division, board,  
40 bureau, office, commission or other instrumentality within or  
41 created by such department, the Legislature of the State and any  
42 office, board, bureau or commission within or created by the  
43 Legislative Branch, and any independent State authority,  
44 commission, instrumentality or agency, but not a county,  
45 municipality or other political subdivision of the State.

1       4. (New section) a. A public institution of higher education  
2 shall make provisions in the specifications for all contracts of the  
3 institution that include or necessitate the procurement of articles,  
4 materials, goods, equipment, or supplies, including contracts for  
5 public works, for which the institution pays any part of the cost,  
6 that only such products that are manufactured or farm products of  
7 the United States be used to fulfill those contracts.

8       b. Products that are manufactured or farm products of the  
9 United States shall be specified and purchased unless the public  
10 institution of higher education determines that any of the following  
11 apply:

12       (1) There are not manufactured or farm products of the United  
13 States available in reasonable quantities; or

14       (2) The cost of buying manufactured or farm products of the  
15 United States is unreasonable. There is a presumption of  
16 unreasonableness for manufactured or farm products of the United  
17 States that cost more than 20% above the fair market value for such  
18 products.

19       Any waiver proposed under this section shall be made public,  
20 reported to the relevant State agencies, and posted publicly for a 30-  
21 day comment period. If, after public notice and an opportunity for  
22 public comment, it is decided to issue the waiver, the waiver, with  
23 detailed justification including responses to any public comments,  
24 shall, before the waiver takes effect, be posted prominently on a  
25 public Internet website and made available upon request.

26       c. Each contract awarded by a public institution of higher  
27 education on or after the effective date of P.L. , c. (C. )  
28 (pending before the Legislature as this bill) shall contain the  
29 contractor's certification that procured products provided pursuant  
30 to the contract or a subcontract shall be manufactured or farm  
31 products of the United States.

32       d. If a contractor is awarded a contract subject to the provisions  
33 of this section and knowingly supplies procured products under that  
34 contract that are not manufactured or farm products of the United  
35 States in violation of the provisions of this section, then:

36       (1) The contractor shall be barred from obtaining any contract  
37 with a public institution of higher education, or any other public  
38 body, including the State or any agency or political subdivision of  
39 the State, for a period of three years after the violation is discovered  
40 by the public institution of higher education;

41       (2) The public institution of higher education may void the  
42 contract; and

43       (3) The public institution of higher education may recover  
44 damages in a civil action in an amount two times any cost to the  
45 institution caused by the violation or by any measures needed to  
46 achieve compliance with the requirements of this section.



1 e. The provisions of this section requiring the purchase and use  
2 of manufactured products of the United States shall not apply:

3 (1) At any time to replacement parts or components for, or  
4 modifications of, equipment or systems provided under a contract  
5 approved prior to the effective date of P.L. , c. (C. ) (pending  
6 before the Legislature as this bill);

7 (2) At any time to replacement parts or components for, or  
8 modifications of, any equipment or systems for which a waiver was  
9 provided under the provisions of this section;

10 (3) To information technology, telecommunications, electronic,  
11 digital, computing, or other sophisticated technology articles,  
12 materials or supplies that are generally imported into the United  
13 States fully assembled; or

14 (4) To any product approved or legally marketed under the  
15 Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

16 f. As used in this section:

17 “Manufactured product” means a product that has been:

18 (1) Processed into a specific form and shape; or

19 (2) Combined with other raw material to create a material that  
20 has different properties than the properties of the individual raw  
21 materials;

22 “Products of the United States” means:

23 (1) In the case of a manufactured product that is comprised  
24 predominantly of iron or steel, all manufacturing processes of the  
25 product, from the initial melting through the application of coatings,  
26 occurred in the United States; and

27 (2) In the case of a manufactured product that is not comprised  
28 predominantly of iron or steel:

29 (a) The product has been mined, produced or manufactured in  
30 the United States; and

31 (b) The cost of the product’s components mined, produced or  
32 manufactured in the United States exceeds 50 percent of the cost of  
33 all of its components.

34 “Public institution of higher education” shall have the meaning  
35 as set forth in N.J.S.18A:72A-3; and

36 “Public work” means any public building, public highway,  
37 bridge, or other public betterment, work or improvement of a  
38 permanent nature, constructed, reconstructed, repaired or improved  
39 at the expense of the public.

40

41 5. (New section) a. The Legislature finds that there is  
42 widespread concern that public contracts and economic  
43 development assistance financed by the taxpayers of the State are  
44 being given to companies that send work outside of the United  
45 States. Business, labor, and government leaders recognize the need  
46 for an objective and thorough study of the extent to which public  
47 contracts and projects financed by taxpayers are being performed

1 outside the United States, and the impact of this practice on the  
2 State's economy. Therefore, the Legislature finds it necessary to:

3 (1) Require bidders for public contracts and applicants for  
4 development assistance to disclose where the contract or project  
5 will be performed;

6 (2) Compile this data and make it available for public review  
7 and comment; and

8 (3) Study the impact on the State's economy of taxpayer-  
9 financed contracts and projects being performed outside the United  
10 States.

11 b. Each vendor submitting a bid or contract to provide services  
12 and all development assistance applicants shall certify where the  
13 services covered by the bid, contract, or development assistance  
14 will be performed. Each vendor with a contract, each subcontractor,  
15 and each recipient of development assistance, in effect on the  
16 effective date of P.L. , c. (C. ) (pending before the Legislature  
17 as this bill), notwithstanding any other requirements that have been  
18 imposed, shall certify where the services covered by the bid,  
19 contract, or development assistance are being performed; and  
20 disclose the name and headquarters location of its parent company.

21 c. The joint legislative task force, established under subsection  
22 e. of this section, shall create and maintain a comprehensive  
23 database of contract awards and development assistance provided  
24 by all State agencies that includes, but is not limited to, the  
25 information included in this section.

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

28 (1) The extent to which current public contracts, and any  
29 subcontracts under such contracts, are being performed outside of  
30 the United States and products and materials necessary in  
31 connection with the contracts are obtained outside of the United  
32 States;

33 (2) The extent to which the performance of public contracts in  
34 whole or in part in other countries results in the creation or loss of  
35 family-wage or other jobs in the State;

36 (3) The extent to which public contracts being performed in  
37 whole or in part in other countries creates a need for adjustment  
38 assistance and retraining programs to ensure the State's business  
39 climate, its employers, and its workers remain competitive globally;

40 (4) The extent to which public contracts performed at locations  
41 outside the United States involve a risk of unauthorized use or  
42 disclosure of personal information, as well as a review of applicable  
43 State and federal laws regarding the privacy of personal  
44 information;

45 (5) The economic costs and benefits of awarding public  
46 contracts, and any subcontracts under such contracts, to New Jersey  
47 companies;

- 1       (6) The applicability of international trade agreements and  
2 federal law to State procurement policies;
- 3       (7) The extent to which legislative authority over State  
4 procurement is adequately protected, including the ability of State  
5 agencies to adequately supervise the performance of contracts when  
6 all or a portion of the work is performed in a country other than the  
7 United States; and
- 8       (8) The reason New Jersey businesses choose to locate  
9 operations outside the United States.
- 10      e. The study shall be conducted by a joint task force of the  
11 Senate and the General Assembly consisting of the following: two  
12 members of the General Assembly to be appointed by the Speaker  
13 of the General Assembly; two members of the General Assembly to  
14 be appointed by the General Assembly Minority Leader; two  
15 members of the Senate to be appointed by the Senate Majority  
16 Leader; and two members of the Senate to be appointed by the  
17 Senate Minority Leader.
- 18      f. The joint task force shall consult with and be advised and  
19 monitored by an advisory committee consisting of seven members:  
20 three members representing labor, appointed jointly by the  
21 President of the Senate and the Speaker of the General Assembly,  
22 from a list of names recommended by a Statewide organization  
23 representing a cross-section of organized labor in the State; three  
24 members representing business, one of whom shall represent small  
25 business, appointed jointly by the President of the Senate and the  
26 Speaker of the General Assembly, from a list of names  
27 recommended by a Statewide organization of employers  
28 representing a cross-section of employers of the State, and one  
29 member representing the public.
- 30      g. The information maintained in the comprehensive database  
31 outlined above shall be made available online to the Legislature and  
32 the public.
- 33      h. The findings and recommendations of the joint task force  
34 shall be reported in writing annually to the Legislature, with the  
35 first report to be submitted within 14 months following the effective  
36 date of P.L. , c. (C. ) (pending before the Legislature as this  
37 bill). In addition to filing each report with the Legislature, the joint  
38 task force shall make each report available to the public on the  
39 Legislature's Internet homepage.
- 40      i. As used in this section:  
41        "Parent company" means any person, association, corporation,  
42 joint venture, partnership, or other entity that owns or controls 50  
43 percent or more of a recipient corporation;  
44        "Development assistance" means any form of public assistance,  
45 including tax expenditures, made for the purpose of stimulating  
46 economic development of a corporation, industry, geographic  
47 jurisdiction, or any other sector of the State's economy, including,

1 but not limited to, industrial development bonds, training grants,  
2 loans, loan guarantees, enterprise zones, empowerment zones, tax  
3 increment financing, fee waivers, land price subsidies,  
4 infrastructure whose principal beneficiary is a single business or  
5 defined group of businesses at the time it is built or improved,  
6 matching funds, tax abatements, tax credits, and tax discounts of  
7 every kind, including corporate franchise, personal income, sales  
8 and compensating use, raw materials, real property, job creation,  
9 individual investment, excise, utility, inventory, accelerated  
10 depreciation, and research and development tax credits and  
11 discounts;

12 "Public body" means the State or any county, municipality,  
13 school district, authority or other political subdivision of the State;  
14 and

15 "Public contract" means a contract between a public body and a  
16 private entity for the private entity to provide goods or services,  
17 including public work.

18

19 6. The following sections are repealed:

20 R.S.52:32-1; and

21 R.S.52:33-1 through R.S.52:33-4.

22

23 7. This act shall take effect immediately.