

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3162

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED MAY 17, 2018

Sponsored by:

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

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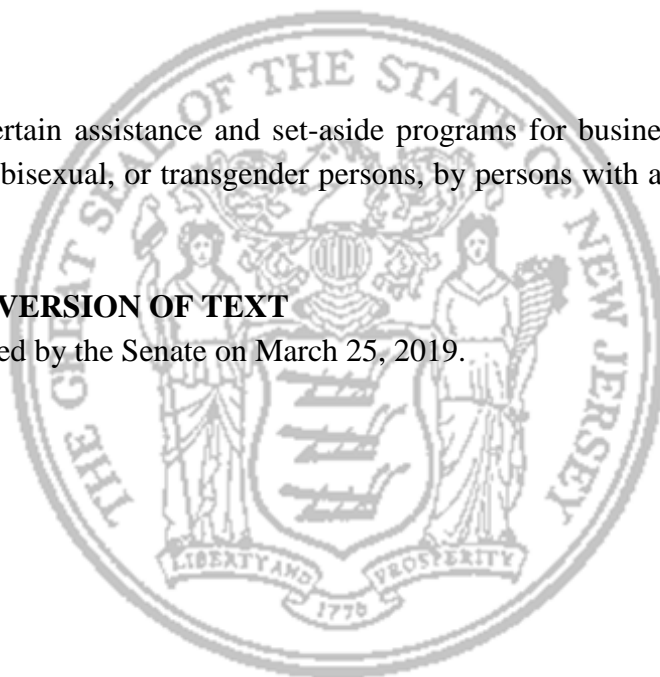
Assemblymen Mukherji, Holley, Armato, Johnson, Assemblywoman Lopez, Assemblyman Gusciora, Assemblywoman McKnight and Assemblyman Barclay

SYNOPSIS

Creates certain assistance and set-aside programs for businesses owned by lesbian, gay, bisexual, or transgender persons, by persons with a disability, and by veterans.

CURRENT VERSION OF TEXT

As amended by the Senate on March 25, 2019.



(Sponsorship Updated As Of: 5/25/2018)

1 **AN ACT** concerning certain assistance and set-aside programs for
2 businesses owned by lesbian, gay, bisexual, or transgender
3 persons, businesses owned by persons with a disability, and
4 businesses owned by veterans, and supplementing various parts
5 of the statutory law.

6

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

9

10 1. The Legislature finds and declares that:

11 a. The economy of the State of New Jersey is vitally dependent
12 upon the health and stability of the small and independent
13 businesses in the State;

14 b. The future welfare of the State depends on the continued
15 existence and development of these same small and independent
16 businesses;

17 c. Despite their contribution as major generators of
18 employment, small businesses are struggling to survive in the
19 private sector;

20 d. Due to a historical legacy of disregard and discrimination
21 toward persons with differing sexual orientations and gender
22 identities or expressions, and toward persons with a disability, and
23 due to lost opportunities suffered by veterans, these groups control
24 a disproportionately small fraction of the productive resources of
25 the State and are, therefore, largely excluded from the mainstream
26 of the overall economy;

27 e. Problems of inadequate capital and management expertise
28 that pertain to businesses owned by persons with differing sexual
29 orientations and gender identities or expressions, persons with a
30 disability, and veterans are the same problems that pertain, in
31 varying degrees, to all small businesses;

32 f. The public sector, at both the national and State levels, has
33 recognized the appropriateness of the role of encouraging small
34 businesses generally and persons with differing sexual orientations
35 and gender identities or expressions, persons with a disability, and
36 veterans in particular;

37 g. Economic development within populations of persons with
38 differing sexual orientations and gender identities or expressions,
39 persons with a disability, and veterans increases the prosperity of
40 the entire State by generating revenues and reducing the State
41 burden of unemployment, welfare, and other supportive social
42 services;

43 h. In order to promote these goals, a permanent government
44 entity, the New Jersey Economic Development Authority, is given a

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted March 25, 2019.

1 long-term mandate for the delivery of financial and overall
2 assistance to diverse business communities, to include business
3 enterprises owned by persons who are lesbian, gay, bisexual, and
4 transgender, or LGBT, persons with a disability, and persons who
5 are veterans;

6 i. The authority should focus its efforts clearly on areas of
7 greatest need and have commitment toward the establishment of
8 quality programs;

9 j. The authority should be responsible, both directly and as an
10 intermediary, for providing financing and for coordinating a wide
11 range of intensive and ongoing business expertise programs;

12 k. The authority should pursue its mandate in accordance with
13 a well-conceived business strategy and underwriting standards that
14 approximate those utilized by traditional lenders;

15 l. The authority's success in fulfilling its mandate should be
16 measured by the ultimate viability of the enterprises it assists;

17 m. Small businesses, and businesses owned by LGBT persons,
18 persons with a disability, and veterans, in particular, are often in
19 need of financial and technical assistance which may be unavailable
20 to them through traditional sources;

21 n. It is the public policy of this State to provide a source of
22 technical assistance and financial assistance in order to encourage
23 the establishment and the growth of small businesses and businesses
24 owned by LGBT persons, persons with a disability, and veterans;
25 and

26 o. It is the intention of this Legislature that the Division of
27 Revenue in the Department of the Treasury, in concert with the
28 authority, provide a full range of financial and technical assistance
29 to small businesses and businesses owned by LGBT persons,
30 persons with a disability, and veterans in order to ensure their
31 success and their growth.

32
33 2. As used in sections 2 through 6 of this act,
34 P.L. , c. (C.) (pending before the Legislature as this bill):

35 "Eligible business" means a qualified LGBT business enterprise, a
36 qualified disability-owned business enterprise, or a qualified veteran
37 business enterprise, which is certified by the Division of Revenue in
38 the Department of the Treasury or an approved third-party agency and
39 which is determined to be eligible to receive assistance or participate
40 in programs according to the standards established pursuant to this act,
41 P.L. , c. (C.) (pending before the Legislature as this bill).

42 "LGBT" means lesbian, gay, bisexual, or transgender.

43 "Person with a disability" means a person with a disability as
44 defined under the "Americans with Disabilities Act of 1990,"
45 (42 U.S.C. s.12101 et seq.).

46 "Qualified LGBT business enterprise" means a business which has
47 its principal place of business in this State, is independently owned and
48 operated, is qualified pursuant to law and regulation as a prospective
49 bidder, and is certified as:

- 1 (1) a sole proprietorship owned and controlled by a lesbian, gay,
2 bisexual, or transgender person;
- 3 (2) a partnership or joint venture owned and controlled by lesbian,
4 gay, bisexual, or transgender persons in which at least 51 percent of
5 the ownership is held by one or more such persons, and the
6 management and daily business operations of which are controlled by
7 one or more such persons who own it; or
- 8 (3) a corporation or other entity whose management and daily
9 business operations are controlled by one or more lesbian, gay,
10 bisexual, or transgender persons who own it, and which is at least 51
11 percent owned by lesbian, gay, bisexual, or transgender persons, or, if
12 stock is issued, at least 51 percent of the stock is owned by one or
13 more such persons.
- 14 “Qualified disability-owned business enterprise” means a business
15 which has its principal place of business in this State, is independently
16 owned and operated, is qualified pursuant to law and regulation as a
17 prospective bidder, and is certified as:
- 18 (1) a sole proprietorship owned and controlled by a person with a
19 disability;
- 20 (2) a partnership or joint venture owned and controlled by persons
21 with a disability, in which at least 51 percent of the ownership is held
22 by one or more such persons, and the management and daily business
23 operations of which are controlled by one or more such persons who
24 own it; or
- 25 (3) a corporation or other entity whose management and daily
26 business operations are controlled by one or more persons with a
27 disability who own it, and which is at least 51 percent owned by such
28 persons, or, if stock is issued, at least 51 percent of the stock is owned
29 by one or more such persons.
- 30 “Qualified veteran business enterprise” means a business which
31 has its principal place of business in this State, is independently owned
32 and operated, is qualified pursuant to law and regulation as a
33 prospective bidder ¹, and is certified as¹:
- 34 (1) a sole proprietorship owned and controlled by a veteran;
- 35 (2) a partnership or joint venture owned and controlled by
36 veterans, in which at least 51 percent of the ownership is held by one
37 or more veterans and the management and daily business operations of
38 which are controlled by one or more veterans who own it;
- 39 (3) a corporation or other entity whose management and daily
40 business ¹~~operation~~ operations¹ are controlled by one or more
41 veterans who own it, and which is at least 51 percent owned by
42 veterans, or, if stock is issued, at least 51 percent of the stock is owned
43 by one or more veterans; or
- 44 (4) an enterprise wherein at least 25 percent of the required
45 workforce for the contract are veterans, including new hires if
46 additional workers are required to perform the contract, and which
47 also submits forms quarterly to the contracting unit showing proof of
48 veteran status for all the veteran employees.

1 “Third-party agency” means a nationally recognized organization
2 that adheres to generally accepted standards for supplier diversity
3 certification, and shall include, but not be limited to, the National Gay
4 and Lesbian Chamber of Commerce for the certification of LGBT
5 business enterprises and the United States Business Leadership
6 Network for the certification of disability-owned business enterprises.

7 “Veteran” shall have the same meaning as set forth in subsection b.
8 of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant
9 General of the Department of Military and Veterans’ Affairs sufficient
10 evidence of a record of service and receive a determination of status no
11 later than the date established for the submission of bids.

12
13 3. a. The New Jersey Economic Development Authority shall
14 establish requirements as may be necessary and practical for the use
15 of eligible businesses on projects financed in whole or in part by the
16 authority. The authority may waive bonding requirements in full or
17 in part in order to facilitate the participation of an eligible business
18 on such projects if the eligible business has been rejected by two
19 surety companies authorized to do business in this State. The
20 authority may require a cash deposit, increase the amount of
21 retention, or limit or eliminate periodic payments. No waiver may
22 be extended more than three times to any one contractor.

23 The authority may provide assistance to eligible businesses that
24 are unable to secure bonding for projects other than those financed
25 by the authority. Upon presentation of evidence in writing of an
26 eligible business, the authority may guarantee the performance
27 thereof through a letter of credit or by other means.

28
29 4. a. The Chief Executive Officer of the New Jersey Economic
30 Development Authority shall consider and may approve an
31 application for a financial assistance grant of State funds from any
32 county or municipality for the purpose of paying up to 50 percent of
33 the cost of a pilot program, established pursuant to section 8 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), to
35 provide technical or certification assistance to eligible businesses.
36 The chief executive officer may approve any of the applications
37 based on such criteria as the chief executive officer deems
38 appropriate and shall not be required to provide a grant to every
39 applicant. Any application for a grant shall include such
40 information and documentation as the chief executive officer may
41 require to ensure that any financial assistance approved pursuant to
42 the provisions of this section will further the purpose and intent of
43 this section.

44 b. Any application to the chief executive officer for a financial
45 assistance grant pursuant to the provisions of this section shall
46 include the following:

47 (1) the resolution or ordinance adopted that establishes the
48 program;

- 1 (2) a detailed budget for the services for which grant support is
2 being applied;
- 3 (3) evidence of the availability to the county or municipality of
4 otherwise unencumbered and uncommitted funds sufficient to
5 finance that portion of the services which is not to be funded from
6 the grant; and
- 7 (4) any other information and documentation as the chief
8 executive officer may require to ensure that any grant approved
9 pursuant to the provisions of this section will as effectively as
10 possible further the purpose and intent of this section.
- 11 c. The chief executive officer is authorized to require any
12 periodic reports necessary to ascertain the progress of any activity
13 supported directly or indirectly by a grant of financial assistance
14 pursuant to the provisions of this section, and further, to ascertain
15 the extent of compliance with any contract for a grant.
- 16 d. The chief executive officer shall submit to the Legislature,
17 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), not more
18 than 12 months following the effective date of this act,
19 P.L. , c. (pending before the Legislature as this bill), a report
20 evaluating the effectiveness of the pilot programs which receive
21 financial assistance pursuant to the provisions of this section. The
22 report shall include recommendations concerning the
23 appropriateness of continued State funding for the county and
24 municipal programs of technical or certification assistance.
- 25 e. The chief executive officer shall issue and promulgate rules
26 and regulations in accordance with the provisions of the
27 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
28 seq.), as are necessary and appropriate to carry out the purposes of
29 this section.
- 30
- 31 5. The Division of Revenue in the Department of the Treasury
32 shall have the power to:
- 33 a. establish loan programs for eligible businesses, using criteria
34 for eligibility which meet the standards established by the New
35 Jersey Economic Development Authority or which meet the
36 standards established by other State or federal programs;
- 37 b. compile lists of qualified professionals, including LGBT
38 persons, persons with a disability, and veterans, in specific areas of
39 expertise, to be disseminated to eligible businesses and to be used in
40 making referrals, provided a qualified professional included on such
41 lists submits to division written consent to be included thereon;
- 42 c. use available resources within the State to coordinate
43 managerial and technical assistance;
- 44 d. establish, in cooperation with institutions of higher
45 education, an internship program for candidates for undergraduate
46 and graduate degrees in business administration and related fields
47 for the purpose of providing assistance to the division, to the
48 authority, and to businesses which are eligible to receive assistance

1 under this act, P.L. , c. (C.) (pending before the Legislature as
2 this bill);

3 e. provide assistance, consistent with the provisions of this
4 section and in conjunction with, or at the request of, the authority,
5 to eligible businesses, including, but not limited to:

6 (1) assistance in researching markets or in market analysis;
7 (2) advice in advertising and marketing;
8 (3) advice in selecting sales or other distribution channels;
9 (4) information and training with respect to bidding on
10 government contracts;
11 (5) assistance in obtaining legal counsel;
12 (6) financial analysis and accounting assistance;
13 (7) assistance in obtaining appropriate insurance, including
14 benefit packages for employees;
15 (8) assistance in arranging contracts with franchisers;
16 (9) assistance in arranging commercial loans made by a State or
17 federally chartered bank, savings bank, or savings and loan
18 association, if, with respect to loans made by State chartered
19 institutions, the loans are made in accordance with the powers
20 conferred on those institutions pursuant to Title 17 of the Revised
21 Statutes, including bridge loans and cash flow loans;
22 (10) assistance in negotiating license agreements;
23 (11) assistance in procuring bonding or substitutes therefor;
24 (12) making referrals to private consultants, institutions, and
25 other providers of services, according to the specific needs of an
26 eligible business;
27 (13) assistance in finding sources of financing from federal,
28 State, and local sources; and
29 (14) assistance in gaining information about employee training
30 and development programs;

31 f. provide a central resource for eligible businesses in their
32 dealing with federal, State, and local governments, including
33 information regarding government regulations or laws which affect
34 eligible businesses;

35 g. initiate and encourage education programs for eligible
36 businesses;

37 h. exercise authority within the State to establish a uniform
38 procedure for departments, agencies, and authorities of the State
39 and of its political subdivisions to verify the eligibility of a business
40 to bid on contracts, or otherwise represent itself as an eligible
41 business;

42 i. provide any other service which it deems necessary or which
43 may be requested by the authority;

44 j. exercise authority within the State as the certification and
45 verification authority for departments, agencies, and authorities of
46 the State, except that when the division's procedure for certification
47 of a business as an eligible business conflicts with a federal
48 certification procedure that affects a State project in which the

1 federal government participates, the federal certification procedure
2 shall take precedence. Public agencies shall identify those projects
3 and shall notify the division; and

4 k. issue and promulgate rules and regulations in accordance
5 with the provisions of the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary and
7 appropriate to carry out the purposes of this section.

8
9 6. a. The Director of the Division of Revenue in the
10 Department of the Treasury shall approve third-party agencies to
11 perform certification of eligible businesses. The division shall have
12 the authority to accept certifications by approved third-party
13 agencies, and is authorized to develop and implement a streamlined
14 verification process for any eligible business that has a certification
15 through an approved third-party agency.

16 b. In establishing and administering the procedure required by
17 this section, the director shall ensure that the application and
18 certification and verification process is clear, concise, and, to the
19 extent practicable, does not require duplication of effort on the part
20 of the applicant, the division, or the public agency administering the
21 program.

22 In furtherance of these objectives, the director shall:

23 (1) provide a single form for application for certification or
24 verification, which form shall be written in a simple, clear,
25 understandable, and easily readable way, and include instructions as
26 to the certification or verification procedure and any additional
27 documents or information required to be separately supplied by the
28 applicant for a particular program;

29 (2) have the authority to require the payment of a single fee, to
30 be established by the director, to compensate the division for its
31 cost in administering the certification or verification process;

32 (3) compile, maintain, and make available to the public agencies
33 lists of businesses certified and verified as eligible businesses; and

34 (4) provide for dissemination of information to interested
35 parties, and the public at large, concerning the certification and
36 verification of businesses as eligible businesses with the assistance
37 of approved third-party agencies.

38 For the purposes of this section, "public agency" means the State
39 or any department, division, agency, authority, board, commission,
40 or committee thereof.

41 c. The director shall report to the Governor and the Legislature
42 annually on the status of the certification and verification procedure
43 required by this section, including any recommendations for
44 legislation which would enable the division to more efficiently and
45 effectively carry out its duties and responsibilities under this
46 section. Any written report submitted to the Legislature shall be
47 provided pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

1 d. The director may require an eligible business that has been
2 certified or verified pursuant to this section to re-certify or re-verify
3 eligibility annually.

4 e. The State Treasurer shall issue and promulgate rules and
5 regulations in accordance with the provisions of the
6 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
7 seq.) as are necessary and appropriate to carry out the purposes of
8 this section.

9
10 7. a. As used in this section:

11 “Eligible business” means a qualified LGBT business enterprise, a
12 qualified disability-owned business enterprise, a or a qualified veteran
13 business enterprise, which is certified by the Division of Revenue in
14 the Department of the Treasury or an approved third-party agency and
15 which is determined to be eligible to receive assistance or participate
16 in programs according to the standards established pursuant to this act,
17 P.L. , c. (C.) (pending before the Legislature as this bill).

18 “LGBT” means lesbian, gay, bisexual, or transgender.

19 “Person with a disability” means a person with a disability as
20 defined under the “Americans with Disabilities Act of 1990,”
21 (42 U.S.C. s.12101 et seq.).

22 “Qualified LGBT business enterprise” means a business which
23 has its principal place of business in this State, is independently owned
24 and operated, is qualified pursuant to law and regulation as a
25 prospective bidder, and is certified as:

26 (1) a sole proprietorship owned and controlled by a lesbian, gay,
27 bisexual, or transgender person;

28 (2) a partnership or joint venture owned and controlled by lesbian,
29 gay, bisexual, or transgender persons in which at least 51 percent of
30 the ownership is held by one or more such persons, and the
31 management and daily business operations of which are controlled by
32 one or more such persons who own it; or

33 (3) a corporation or other entity whose management and daily
34 business operations are controlled by one or more lesbian, gay,
35 bisexual, or transgender persons who own it, and which is at least 51
36 percent owned by lesbian, gay, bisexual, or transgender persons, or, if
37 stock is issued, at least 51 percent of the stock is owned by one or
38 more such persons.

39 “Qualified disability-owned business enterprise” means a business
40 which has its principal place of business in this State, is independently
41 owned and operated, is qualified pursuant to law and regulation as a
42 prospective bidder, and is certified as:

43 (1) a sole proprietorship owned and controlled by a person with a
44 disability;

45 (2) a partnership or joint venture owned and controlled by persons
46 with a disability, in which at least 51 percent of the ownership is held
47 by one or more such persons, and the management and daily business
48 operations of which are controlled by one or more such persons who
49 own it; or

1 (3) a corporation or other entity whose management and daily
2 business operations are controlled by one or more persons with a
3 disability who own it, and which is at least 51 percent owned by such
4 persons, or, if stock is issued, at least 51 percent of the stock is owned
5 by one or more such persons.

6 “Qualified veteran business enterprise” means a business which
7 has its principal place of business in this State, is independently owned
8 and operated, is qualified pursuant to law and regulation as a
9 prospective bidder ¹, and is certified as ¹:

10 (1) a sole proprietorship owned and controlled by a veteran;

11 (2) a partnership or joint venture owned and controlled by
12 veterans, in which at least 51 percent of the ownership is held by one
13 or more veterans and the management and daily business operations of
14 which are controlled by one or more veterans who own it;

15 (3) a corporation or other entity whose management and daily
16 business ¹~~operation~~ operations are controlled by one or more
17 veterans who own it, and which is at least 51 percent owned by
18 veterans, or, if stock is issued, at least 51 percent of the stock is owned
19 by one or more veterans; or

20 (4) an enterprise wherein at least 25 percent of the required
21 workforce for the contract are veterans, including new hires if
22 additional workers are required to perform the contract, and which
23 also submits forms quarterly to the contracting unit showing proof of
24 veteran status for all the veteran employees.

25 “Third-party agency” means a nationally recognized organization
26 that adheres to generally accepted standards for supplier diversity
27 certification, and shall include, but not be limited to, the National Gay
28 and Lesbian Chamber of Commerce for the certification of LGBT
29 business enterprises and the United States Business Leadership
30 Network for the certification of disability-owned business enterprises.

31 “Total procurements” means all purchases, contracts, or
32 acquisitions of a contracting unit whether by competitive bidding,
33 single source contracting, or other method of procurement, as
34 prescribed or permitted by law.

35 “Veteran” shall have the same meaning as set forth in subsection b.
36 of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant
37 General of the Department of Military and Veterans' Affairs sufficient
38 evidence of a record of service and receive a determination of status no
39 later than the date established for the submission of bids

40 b. The governing body of a county or municipality may, by
41 ordinance or resolution, as appropriate, establish any or all of the
42 following: a qualified LGBT business enterprise set-aside program, a
43 qualified disability-owned business enterprise set-aside program, or a
44 qualified veteran business enterprise set-aside program. In authorizing
45 such a program, the governing body of a county or municipality shall
46 establish a goal for setting aside a certain percentage of the dollar
47 value of total procurements to be awarded as set-aside contracts to
48 eligible businesses.

1 Any goal established pursuant to this subsection may be attained
2 by requiring that a portion of a contract be subcontracted to an eligible
3 business in addition to designating an entire contract to such business.
4 Each contracting unit shall make a good faith effort to attain any goal
5 established.

6 c. (1) A contracting unit of a county or municipality that has
7 established a qualified LGBT business enterprise set-aside program, a
8 qualified disability-owned business enterprise set-aside program, or a
9 qualified veteran business enterprise set-aside program shall designate
10 that a contract, subcontract, or other means of procurement of goods,
11 services, equipment, or construction be awarded to an eligible business
12 if the contracting unit is likely to receive bids from at least two such
13 eligible businesses at a fair and reasonable price.

14 Such designations shall be made prior to any advertisement for
15 bids, if required. Once designated, the advertisement for bids, if
16 necessary, shall indicate that the contract to be awarded is a qualified
17 LGBT business enterprise set-aside contract, a qualified disability-
18 owned business enterprise set-aside contract, or a qualified veteran
19 business enterprise set-aside contract, as appropriate. All
20 advertisements for bids shall be published in at least one newspaper
21 which will best provide notice thereof to eligible businesses for the
22 program sufficiently in advance of the date fixed for receiving the bids
23 to promote competitive bidding, but shall not be published less than 10
24 days prior to that date.

25 (2) If the contracting unit determines that two bids from eligible
26 businesses cannot be obtained, the contracting unit may withdraw the
27 designation of the set-aside contract and resolicit bids on an
28 unrestricted basis pursuant to the provisions of P.L.1971, c.198
29 (C.40A:11-1 et seq.). The cancelled designation shall not be
30 considered in determining the percentage of contracts awarded
31 pursuant to this section.

32 If the contracting unit determines that the acceptance of the lowest
33 responsible bid will result in the payment of an unreasonable price, the
34 contracting unit shall reject all bids and withdraw the designation of
35 the set-aside contract. Eligible businesses for the program shall be
36 notified in writing of the set-aside cancellation, the reasons for the
37 rejection, and the contracting unit's intent to resolicit bids on an
38 unrestricted basis pursuant to the provisions of P.L.1971, c.198
39 (C.40A:11-1 et seq.). The cancelled bid solicitation shall not be
40 considered in determining the percentage of contracts awarded
41 pursuant to this section.

42 d. When the governing body of a county or municipality
43 determines that a business has been classified as an eligible business
44 on the basis of false information knowingly supplied by the business
45 and has been awarded a contract to which it would not otherwise have
46 been entitled under this section, the governing body shall have the
47 authority to:

1 (1) assess against the business any difference between the contract
2 amount and what the governing body's cost would have been if the
3 contract had not been awarded in accordance with this section;

4 (2) in addition to the amount due under paragraph (1) of this
5 subsection, assess against the business a penalty in an amount of not
6 more than 10 percent of the amount of the contract involved; and

7 (3) order that the business is ineligible to transact any business
8 with the governing body or contracting unit of the governing body for
9 a period deemed appropriate by the governing body.

10 Prior to the issuance of any final determination, assessment, or
11 order under this subsection, the governing body shall afford the
12 business an opportunity for a hearing on the reasons for the imposition
13 of the penalties set forth in this subsection.

14 e. Each contracting unit of a county or municipality that has
15 established a qualified LGBT business enterprise set-aside program, a
16 qualified disability-owned business enterprise set-aside program, or a
17 qualified veteran business enterprise set-aside program, shall submit a
18 report to its governing body by January 31 of each year describing the
19 contracting unit's efforts in attaining the set-aside goals and the
20 percentage of the dollar value of its total procurements awarded to
21 qualified LGBT business enterprises, qualified disability-owned
22 business enterprises, or qualified veteran business enterprises, as
23 appropriate. The governing body shall publish a list of each unit's
24 attainments in the immediately preceding local fiscal year, to include
25 the county or municipal average, in at least one newspaper circulating
26 in the county or municipality, as appropriate, by March 1 of each year.

27 f. (1) The Director of the Division of Local Government Services
28 in the Department of Community Affairs may adopt rules and
29 regulations pursuant to the provisions of the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as necessary to
31 effectuate the purposes of this section.

32 (2) All provisions of the "Local Public Contracts Law," P.L.1971,
33 c.198 (C.40A:11-1 et seq.) and any supplements thereto, shall apply to
34 purchases, contracts, and agreements made pursuant to this section
35 unless otherwise superseded by this section.

36
37 8. a. The governing body of any county or municipality may
38 adopt, by resolution or ordinance, a pilot program to provide
39 technical or certification assistance to eligible businesses, as that
40 term is defined in section 7 of P.L. , c. (C.) (pending before
41 the Legislature as this bill), within the jurisdiction of the county or
42 municipality.

43 b. The county or municipality may submit an application for a
44 financial assistance grant to pay for up to 50 percent of the pilot
45 program to the Chief Executive Officer of the New Jersey
46 Economic Development Authority. The submission shall include
47 such information and documentation as the chief executive officer
48 may require pursuant to section 4 of P.L. , c. (C.) (pending
49 before the Legislature as this bill). Any county or municipality

1 approved for a financial assistance grant shall submit any periodic
2 reports as required by the chief executive officer.

3
4 9. a. As used in this section:

5 “Eligible business” means a qualified LGBT business enterprise, a
6 qualified disability-owned business enterprise, or a qualified veteran
7 business enterprise, which is certified by the Division of Revenue in
8 the Department of the Treasury or an approved third-party agency and
9 which is determined to be eligible to receive assistance or participate
10 in programs according to the standards established pursuant to this act,
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12 “LGBT” means lesbian, gay, bisexual, or transgender.

13 “Person with a disability” means a person with a disability as
14 defined under the “Americans with Disabilities Act of 1990,”
15 (42 U.S.C. s.12101 et seq.).

16 “Qualified LGBT business enterprise” means a business which has
17 its principal place of business in this State, is independently owned and
18 operated, is qualified pursuant to law and regulation as a prospective
19 bidder, and is certified as:

20 (1) a sole proprietorship owned and controlled by a lesbian, gay,
21 bisexual, or transgender person;

22 (2) a partnership or joint venture owned and controlled by lesbian,
23 gay, bisexual, or transgender persons in which at least 51 percent of
24 the ownership is held by one or more such persons, and the
25 management and daily business operations of which are controlled by
26 one or more such persons who own it; or

27 (3) a corporation or other entity whose management and daily
28 business operations are controlled by one or more lesbian, gay,
29 bisexual, or transgender persons who own it, and which is at least 51
30 percent owned by lesbian, gay, bisexual, or transgender persons, or, if
31 stock is issued, at least 51 percent of the stock is owned by one or
32 more such persons.

33 “Qualified disability-owned business enterprise” means a business
34 which has its principal place of business in this State, is independently
35 owned and operated, is qualified pursuant to law and regulation as a
36 prospective bidder, and is certified as:

37 (1) a sole proprietorship owned and controlled by a person with a
38 disability;

39 (2) a partnership or joint venture owned and controlled by persons
40 with a disability, in which at least 51 percent of the ownership is held
41 by one or more such persons, and the management and daily business
42 operations of which are controlled by one or more such persons who
43 own it; or

44 (3) a corporation or other entity whose management and daily
45 business operations are controlled by one or more persons with a
46 disability who own it, and which is at least 51 percent owned by such
47 persons, or, if stock is issued, at least 51 percent of the stock is owned
48 by one or more such persons.

1 “Qualified veteran business enterprise” means a business which
2 has its principal place of business in this State, is independently owned
3 and operated, is qualified pursuant to law and regulation as a
4 prospective bidder ¹, and is certified as¹:

5 (1) a sole proprietorship owned and controlled by a veteran;

6 (2) a partnership or joint venture owned and controlled by
7 veterans, in which at least 51 percent of the ownership is held by one
8 or more veterans and the management and daily business operations of
9 which are controlled by one or more veterans who own it;

10 (3) a corporation or other entity whose management and daily
11 business ¹~~operation~~ operations¹ are controlled by one or more
12 veterans who own it, and which is at least 51 percent owned by
13 veterans, or, if stock is issued, at least 51 percent of the stock is owned
14 by one or more veterans; or

15 (4) an enterprise wherein at least 25 percent of the required
16 workforce for the contract are veterans, including new hires if
17 additional workers are required to perform the contract, and which
18 also submits forms quarterly to the contracting unit showing proof of
19 veteran status for all the veteran employees.

20 “Third-party agency” means a nationally recognized organization
21 that adheres to generally accepted standards for supplier diversity
22 certification, and shall include, but not be limited to, the National Gay
23 and Lesbian Chamber of Commerce for the certification of LGBT
24 business enterprises and the United States Business Leadership
25 Network for the certification of disability-owned business enterprises.

26 “Total procurements” means all purchases, contracts, or
27 acquisitions of a contracting unit whether by competitive bidding,
28 single source contracting, or other method of procurement, as
29 prescribed or permitted by law.

30 “Veteran” shall have the same meaning as set forth in subsection b.
31 of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant
32 General of the Department of Military and Veterans’ Affairs sufficient
33 evidence of a record of service and receive a determination of status no
34 later than the date established for the submission of bids.

35 b. A board of education may, by resolution, establish any or all of
36 the following: a qualified LGBT business enterprise set-aside program,
37 a qualified disability-owned business enterprise set-aside program, or a
38 qualified veteran business enterprise set-aside program. In authorizing
39 such a program, the board of education shall establish a goal for
40 setting aside a certain percentage of the dollar value of total
41 procurements to be awarded as set-aside contracts to eligible
42 businesses.

43 Any goal established pursuant to this subsection may be attained
44 by requiring that a portion of a contract be subcontracted to an eligible
45 business in addition to designating an entire contract to such business.
46 Each contracting unit shall make a good faith effort to attain any goal
47 established.

48 c. (1) A board of education that has established a qualified LGBT
49 business enterprise set-aside program, a qualified disability-owned

1 business enterprise set-aside program, or a qualified veteran business
2 enterprise set-aside program shall designate that a contract,
3 subcontract, or other means of procurement of goods, services,
4 equipment, or construction be awarded to an eligible business if the
5 board of education is likely to receive bids from at least two such
6 eligible business at a fair and reasonable price.

7 Such designations shall be made prior to any advertisement for
8 bids, if required. Once designated, the advertisement for bids, if
9 necessary, shall indicate that the contract to be awarded is a qualified
10 LGBT business enterprise set-aside contract, a qualified disability-
11 owned business enterprise set-aside contract, or a qualified veteran
12 business enterprise set-aside contract, as appropriate. All
13 advertisements for bids shall be published in at least one newspaper
14 which will best provide notice thereof to eligible businesses for the
15 program sufficiently in advance of the date fixed for receiving the bids
16 to promote competitive bidding, but shall not be published less than 10
17 days prior to that date.

18 (2) If the board of education determines that two bids from eligible
19 businesses cannot be obtained, the board may withdraw the
20 designation of the set-aside contract and resolicit bids on an
21 unrestricted basis pursuant to the provisions of N.J.S.18A:18A-1 et
22 seq. The cancelled designation shall not be considered in determining
23 the percentage of contracts awarded pursuant to this section.

24 If the board of education determines that the acceptance of the
25 lowest responsible bid will result in the payment of an unreasonable
26 price, the board shall reject all bids and withdraw the designation of
27 the set-aside contract. Eligible businesses for the program shall be
28 notified in writing of the set-aside cancellation, the reasons for the
29 rejection, and the board's intent to resolicit bids on an unrestricted
30 basis pursuant to the provisions of N.J.S.18A:18A-1 et seq. The
31 cancelled bid solicitation shall not be considered in determining the
32 percentage of contracts awarded pursuant to this section.

33 d. When a board of education determines that a business has been
34 classified as an eligible business on the basis of false information
35 knowingly supplied by the business and has been awarded a contract
36 to which it would not otherwise have been entitled under this section,
37 the board shall have the authority to:

38 (1) assess against the business any difference between the contract
39 amount and what the board's cost would have been if the contract had
40 not been awarded in accordance with this section;

41 (2) in addition to the amount due under paragraph (1) of this
42 subsection, assess against the business a penalty in an amount of not
43 more than 10 percent of the amount of the contract involved; and

44 (3) order that the business is ineligible to transact any business
45 with the board of education for a period it deems appropriate.

46 Prior to the issuance of any final determination, assessment, or
47 order under this subsection, the board of education shall afford the
48 business an opportunity for a hearing on the reasons for the imposition
49 of the penalties set forth in this subsection.

- 1 e. Each board of education that has established a qualified LGBT
2 business enterprise set-aside program, a qualified disability-owned
3 business enterprise set-aside program, or a qualified veteran business
4 enterprise set-aside program, shall prepare a report by January 31 of
5 each year describing the board of education's efforts in attaining the
6 set-aside goals and the percentage of the dollar value of its total
7 procurements awarded to qualified LGBT business enterprises,
8 qualified disability-owned business enterprises, or qualified veteran
9 business enterprises, as appropriate. The board of education shall
10 publish a list of its attainments in the immediately preceding local
11 fiscal year, to include the county or municipal average, in at least one
12 newspaper circulating in the school district by March 1 of each year.
- 13 f. (1) The State Board of Education, or any State department or
14 agency the State board may designate, may adopt rules and regulations
15 pursuant to the provisions of the "Administrative Procedure Act," P.L.
16 1968, c. 410 (C.52:14B-1 et seq.), as necessary to effectuate the
17 purposes of this section.
- 18 (2) All provisions of the "Public School Contracts Law,"
19 N.J.S.18A:18A-1 et seq., and any supplements thereto, shall apply to
20 purchases, contracts and agreements made pursuant to this section
21 unless otherwise superseded by this section.
- 22
- 23 10. This act shall take effect immediately.