

ASSEMBLY, No. 2065

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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)

Co-Sponsored by:

**Assemblymen Mukherji, Holley, Armato, Johnson, Assemblywomen Lopez
and McKnight**

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

Introduced Pending Technical Review by Legislative Counsel.



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
45 long-term mandate for the delivery of financial and overall
46 assistance to diverse business communities, to include business
47 enterprises owned by persons who are lesbian, gay, bisexual, and

- 1 transgender, or LGBT, persons with a disability, and persons who
2 are veterans;
- 3 i. The authority should focus its efforts clearly on areas of
4 greatest need and have commitment toward the establishment of
5 quality programs;
- 6 j. The authority should be responsible, both directly and as an
7 intermediary, for providing financing and for coordinating a wide
8 range of intensive and ongoing business expertise programs;
- 9 k. The authority should pursue its mandate in accordance with
10 a well-conceived business strategy and underwriting standards that
11 approximate those utilized by traditional lenders;
- 12 l. The authority's success in fulfilling its mandate should be
13 measured by the ultimate viability of the enterprises it assists;
- 14 m. Small businesses, and businesses owned by LGBT persons,
15 persons with a disability, and veterans, in particular, are often in
16 need of financial and technical assistance which may be unavailable
17 to them through traditional sources;
- 18 n. It is the public policy of this State to provide a source of
19 technical assistance and financial assistance in order to encourage
20 the establishment and the growth of small businesses and businesses
21 owned by LGBT persons, persons with a disability, and veterans;
22 and
- 23 o. It is the intention of this Legislature that the Division of
24 Revenue in the Department of the Treasury, in concert with the
25 authority, provide a full range of financial and technical assistance
26 to small businesses and businesses owned by LGBT persons,
27 persons with a disability, and veterans in order to ensure their
28 success and their growth.
- 29
- 30 2. As used in sections 2 through 6 of this act,
31 P.L. , c. (C.) (pending before the Legislature as this bill):
- 32 "Eligible business" means a qualified LGBT business enterprise, a
33 qualified disability-owned business enterprise, or a qualified veteran
34 business enterprise, which is certified by the Division of Revenue in
35 the Department of the Treasury or an approved third-party agency and
36 which is determined to be eligible to receive assistance or participate
37 in programs according to the standards established pursuant to this act,
38 P.L. , c. (C.) (pending before the Legislature as this bill).
- 39 "LGBT" means lesbian, gay, bisexual, or transgender.
- 40 "Person with a disability" means a person with a disability as
41 defined under the "Americans with Disabilities Act of 1990,"
42 (42 U.S.C. s.12101 et seq.).
- 43 "Qualified LGBT business enterprise" means a business which has
44 its principal place of business in this State, is independently owned and
45 operated, is qualified pursuant to law and regulation as a prospective
46 bidder, and is certified as:
- 47 (1) a sole proprietorship owned and controlled by a lesbian, gay,
48 bisexual, or transgender person;

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

6 (3) a corporation or other entity whose management and daily
7 business operations are controlled by one or more lesbian, gay,
8 bisexual, or transgender persons who own it, and which is at least 51
9 percent owned by lesbian, gay, bisexual, or transgender persons, or, if
10 stock is issued, at least 51 percent of the stock is owned by one or
11 more such persons.

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

16 (1) a sole proprietorship owned and controlled by a person with a
17 disability;

18 (2) a partnership or joint venture owned and controlled by persons
19 with a disability, in which at least 51 percent of the ownership is held
20 by one or more such persons, and the management and daily business
21 operations of which are controlled by one or more such persons who
22 own it; or

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

28 “Qualified veteran business enterprise” means a business which
29 has its principal place of business in this State, is independently owned
30 and operated, is qualified pursuant to law and regulation as a
31 prospective bidder, and is certified as:

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

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

37 (3) a corporation or other entity whose management and daily
38 business operations are controlled by one or more veterans who own it,
39 and which is at least 51 percent owned by veterans, or, if stock is
40 issued, at least 51 percent of the stock is owned by one or more
41 veterans; or

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

47 “Third-party agency” means a nationally recognized organization
48 that adheres to generally accepted standards for supplier diversity

1 certification, and shall include, but not be limited to, the National Gay
2 and Lesbian Chamber of Commerce for the certification of LGBT
3 business enterprises and the United States Business Leadership
4 Network for the certification of disability-owned business enterprises.

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

10
11 3. a. The New Jersey Economic Development Authority shall
12 establish requirements as may be necessary and practical for the use
13 of eligible businesses on projects financed in whole or in part by the
14 authority. The authority may waive bonding requirements in full or
15 in part in order to facilitate the participation of an eligible business
16 on such projects if the eligible business has been rejected by two
17 surety companies authorized to do business in this State. The
18 authority may require a cash deposit, increase the amount of
19 retention, or limit or eliminate periodic payments. No waiver may
20 be extended more than three times to any one contractor.

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

26
27 4. a. The Chief Executive Officer of the New Jersey Economic
28 Development Authority shall consider and may approve an
29 application for a financial assistance grant of State funds from any
30 county or municipality for the purpose of paying up to 50 percent of
31 the cost of a pilot program, established pursuant to section 8 of
32 P.L. , c. (C.) (pending before the Legislature as this bill), to
33 provide technical or certification assistance to eligible businesses.
34 The chief executive officer may approve any of the applications
35 based on such criteria as the chief executive officer deems
36 appropriate and shall not be required to provide a grant to every
37 applicant. Any application for a grant shall include such
38 information and documentation as the chief executive officer may
39 require to ensure that any financial assistance approved pursuant to
40 the provisions of this section will further the purpose and intent of
41 this section.

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

45 (1) the resolution or ordinance adopted that establishes the
46 program;

47 (2) a detailed budget for the services for which grant support is
48 being applied;

1 (3) evidence of the availability to the county or municipality of
2 otherwise unencumbered and uncommitted funds sufficient to
3 finance that portion of the services which is not to be funded from
4 the grant; and

5 (4) any other information and documentation as the chief
6 executive officer may require to ensure that any grant approved
7 pursuant to the provisions of this section will as effectively as
8 possible further the purpose and intent of this section.

9 c. The chief executive officer is authorized to require any
10 periodic reports necessary to ascertain the progress of any activity
11 supported directly or indirectly by a grant of financial assistance
12 pursuant to the provisions of this section, and further, to ascertain
13 the extent of compliance with any contract for a grant.

14 d. The chief executive officer shall submit to the Legislature,
15 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), not more
16 than 12 months following the effective date of this act,
17 P.L. , c. (pending before the Legislature as this bill), a report
18 evaluating the effectiveness of the pilot programs which receive
19 financial assistance pursuant to the provisions of this section. The
20 report shall include recommendations concerning the
21 appropriateness of continued State funding for the county and
22 municipal programs of technical or certification assistance.

23 e. The chief executive officer shall issue and promulgate rules
24 and regulations in accordance with the provisions of the
25 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
26 seq.), as are necessary and appropriate to carry out the purposes of
27 this section.

28

29 5. The Division of Revenue in the Department of the Treasury
30 shall have the power to:

31 a. establish loan programs for eligible businesses, using criteria
32 for eligibility which meet the standards established by the New
33 Jersey Economic Development Authority or which meet the
34 standards established by other State or federal programs;

35 b. compile lists of qualified professionals, including LGBT
36 persons, persons with a disability, and veterans, in specific areas of
37 expertise, to be disseminated to eligible businesses and to be used in
38 making referrals, provided a qualified professional included on such
39 lists submits to division written consent to be included thereon;

40 c. use available resources within the State to coordinate
41 managerial and technical assistance;

42 d. establish, in cooperation with institutions of higher
43 education, an internship program for candidates for undergraduate
44 and graduate degrees in business administration and related fields
45 for the purpose of providing assistance to the division, to the
46 authority, and to businesses which are eligible to receive assistance
47 under this act, P.L. , c. (C.) (pending before the Legislature as
48 this bill);

- 1 e. provide assistance, consistent with the provisions of this
2 section and in conjunction with, or at the request of, the authority,
3 to eligible businesses, including, but not limited to:
- 4 (1) assistance in researching markets or in market analysis;
 - 5 (2) advice in advertising and marketing;
 - 6 (3) advice in selecting sales or other distribution channels;
 - 7 (4) information and training with respect to bidding on
8 government contracts;
 - 9 (5) assistance in obtaining legal counsel;
 - 10 (6) financial analysis and accounting assistance;
 - 11 (7) assistance in obtaining appropriate insurance, including
12 benefit packages for employees;
 - 13 (8) assistance in arranging contracts with franchisers;
 - 14 (9) assistance in arranging commercial loans made by a State or
15 federally chartered bank, savings bank, or savings and loan
16 association, if, with respect to loans made by State chartered
17 institutions, the loans are made in accordance with the powers
18 conferred on those institutions pursuant to Title 17 of the Revised
19 Statutes, including bridge loans and cash flow loans;
 - 20 (10) assistance in negotiating license agreements;
 - 21 (11) assistance in procuring bonding or substitutes therefor;
 - 22 (12) making referrals to private consultants, institutions, and
23 other providers of services, according to the specific needs of an
24 eligible business;
 - 25 (13) assistance in finding sources of financing from federal,
26 State, and local sources; and
 - 27 (14) assistance in gaining information about employee training
28 and development programs;
- 29 f. provide a central resource for eligible businesses in their
30 dealing with federal, State, and local governments, including
31 information regarding government regulations or laws which affect
32 eligible businesses;
- 33 g. initiate and encourage education programs for eligible
34 businesses;
- 35 h. exercise authority within the State to establish a uniform
36 procedure for departments, agencies, and authorities of the State
37 and of its political subdivisions to verify the eligibility of a business
38 to bid on contracts, or otherwise represent itself as an eligible
39 business;
- 40 i. provide any other service which it deems necessary or which
41 may be requested by the authority;
- 42 j. exercise authority within the State as the certification and
43 verification authority for departments, agencies, and authorities of
44 the State, except that when the division's procedure for certification
45 of a business as an eligible business conflicts with a federal
46 certification procedure that affects a State project in which the
47 federal government participates, the federal certification procedure

1 shall take precedence. Public agencies shall identify those projects
2 and shall notify the division; and

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

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

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

21 In furtherance of these objectives, the director shall:

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

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

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

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

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

40 c. The director shall report to the Governor and the Legislature
41 annually on the status of the certification and verification procedure
42 required by this section, including any recommendations for
43 legislation which would enable the division to more efficiently and
44 effectively carry out its duties and responsibilities under this
45 section. Any written report submitted to the Legislature shall be
46 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

1 operations of which are controlled by one or more such persons who
2 own it; or

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

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

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

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

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

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

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

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

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

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

1 value of total procurements to be awarded as set-aside contracts to
2 eligible businesses.

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

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

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

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

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

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

1 been entitled under this section, the governing body shall have the
2 authority to:

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

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

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

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

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

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

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

38

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

45 b. The county or municipality may submit an application for a
46 financial assistance grant to pay for up to 50 percent of the pilot
47 program to the Chief Executive Officer of the New Jersey
48 Economic Development Authority. The submission shall include

1 such information and documentation as the chief executive officer
2 may require pursuant to section 4 of P.L. , c. (C.) (pending
3 before the Legislature as this bill). Any county or municipality
4 approved for a financial assistance grant shall submit any periodic
5 reports as required by the chief executive officer.

6
7 9. a. As used in this section:

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

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

16 “Person with a disability” means a person with a disability as
17 defined under the “Americans with Disabilities Act of 1990,”
18 (42 U.S.C. s.12101 et seq.).

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

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

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

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

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

40 (1) a sole proprietorship owned and controlled by a person with a
41 disability;

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

47 (3) a corporation or other entity whose management and daily
48 business operations are controlled by one or more persons with a

1 disability who own it, and which is at least 51 percent owned by such
2 persons, or, if stock is issued, at least 51 percent of the stock is owned
3 by one or more such persons.

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

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

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

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

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

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

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

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

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

46 Any goal established pursuant to this subsection may be attained
47 by requiring that a portion of a contract be subcontracted to an eligible
48 business in addition to designating an entire contract to such business.

1 Each contracting unit shall make a good faith effort to attain any goal
2 established.

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

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

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

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

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

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

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

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

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

7 e. Each board of education that has established a qualified LGBT
8 business enterprise set-aside program, a qualified disability-owned
9 business enterprise set-aside program, or a qualified veteran business
10 enterprise set-aside program, shall prepare a report by January 31 of
11 each year describing the board of education's efforts in attaining the
12 set-aside goals and the percentage of the dollar value of its total
13 procurements awarded to qualified LGBT business enterprises,
14 qualified disability-owned business enterprises, or qualified veteran
15 business enterprises, as appropriate. The board of education shall
16 publish a list of its attainments in the immediately preceding local
17 fiscal year, to include the county or municipal average, in at least one
18 newspaper circulating in the school district by March 1 of each year.

19 f. (1) The State Board of Education, or any State department or
20 agency the State board may designate, may adopt rules and regulations
21 pursuant to the provisions of the "Administrative Procedure Act," P.L.
22 1968, c. 410 (C.52:14B-1 et seq.), as necessary to effectuate the
23 purposes of this section.

24 (2) All provisions of the "Public School Contracts Law,"
25 N.J.S.18A:18A-1 et seq., and any supplements thereto, shall apply to
26 purchases, contracts and agreements made pursuant to this section
27 unless otherwise superseded by this section.

28
29 10. This act shall take effect immediately.
30
31

32 STATEMENT

33
34 The bill creates certain assistance and set-aside programs for
35 businesses owned by lesbian, gay, bisexual, or transgender, or
36 LGBT, persons, by persons with a disability, and by veterans. The
37 bill designates these businesses as eligible businesses for the
38 purpose of qualifying for the programs or assistance established by
39 the bill when the businesses have their principal place of business in
40 this State; are independently owned and operated; are qualified
41 pursuant to law and regulation as a prospective bidder; and are
42 certified by the Division of Revenue, or an appropriate third-party
43 agency, as:

44 (1) a sole proprietorship owned and controlled by a lesbian, gay,
45 bisexual, or transgender person, a person with a disability, or a
46 veteran;

47 (2) a partnership or joint venture owned and controlled by
48 lesbian, gay, bisexual, or transgender persons, persons with a

1 disability, or veterans, in which at least 51 percent of the ownership
2 is held by one or more such persons, and the management and daily
3 business operations of which are controlled by one or more such
4 persons who own it; or

5 (3) a corporation or other entity whose management and daily
6 business operations are controlled by one or more lesbian, gay,
7 bisexual, or transgender persons, persons with a disability, or
8 veterans who own it, and which is at least 51 percent owned such
9 persons, or, if stock is issued, at least 51 percent of the stock is
10 owned by one or more such persons.

11 A third-party agency in the bill is a nationally recognized
12 organization that adheres to generally accepted standards for
13 supplier diversity certification, and includes the National Gay and
14 Lesbian Chamber of Commerce for the certification of LGBT
15 business enterprises and the United States Business Leadership
16 Network for the certification of disability-owned business
17 enterprises. A veteran must present to the Adjutant General
18 evidence of a record of service and receive a determination before
19 the date for the submission of bids.

20 The bill permits the New Jersey Economic Development
21 Authority (EDA) to waive bonding requirements to facilitate the
22 participation of an eligible business on projects financed by the
23 authority if the business has been rejected by two surety companies.
24 The EDA may also provide assistance to eligible businesses that are
25 unable to secure bonding for other projects that are not financed by
26 the EDA.

27 The bill permits the Division of Revenue in the Department of
28 the Treasury to: establish loan programs for eligible businesses,
29 compile lists of qualified professionals, including LGBT persons,
30 persons with a disability, and veterans, in specific areas of
31 expertise, to be disseminated to eligible businesses and to be used in
32 making referrals, provided those professionals submit written
33 consent to be included the lists; coordinate managerial and technical
34 assistance; establish an internship program for undergraduate and
35 graduate students in business administration and related fields; and
36 provide assistance and advice to eligible businesses in areas
37 including, but not limited to, advertising, marketing, sales,
38 distribution, government contract bidding and procurement,
39 obtaining legal counsel, financial analysis and accounting,
40 insurance, commercial loans, and professional development.

41 The bill requires the division to certify and verify that a business
42 is an eligible business, either directly or through a third-party
43 agency. The division is required to approve third-party agencies to
44 perform the certifications, which it has the authority to accept in
45 lieu of performing its own certification. The division may also
46 develop a streamlined process for verification of eligible business.
47 The process for certification and verification is to be clear, concise,

1 and streamlined. The director is to submit an annual report to the
2 Governor and Legislature concerning these processes.

3 The bill permits counties and municipalities to establish a pilot
4 program that provides technical or certification assistance to
5 eligible businesses, and permits those counties and municipalities to
6 apply to the EDA for a financial assistance grant to pay for up to 50
7 percent of the cost of a pilot program.

8 The bill also permits counties and municipalities, as well as
9 boards of education, to establish set-aside programs for eligible
10 businesses. The goals set for the programs could be met by the use
11 of subcontracting. The bill establishes requirements related to how
12 local governments and boards of education could administer those
13 programs, including advertising and bidding processes, and
14 establishes penalties that local governments and boards of education
15 could assess against businesses that are classified as eligible
16 businesses based on false information.

17 Local governments and boards of education with these programs
18 are to publish their attainments of the set-aside goals in at least one
19 newspaper in the county, municipality, or school district, as
20 appropriate, by March 1 of each year.