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STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED OCTOBER 22, 2020

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SYNOPSIS

Concerns approval process for personal protective equipment and State stockpiles of personal protective equipment.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on December 10, 2020, with amendments.

(Sponsorship Updated As Of: 3/1/2021)

1 **AN ACT** concerning the approval process for personal protective
2 equipment and State stockpiles of personal protective equipment,
3 supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).
4

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

8 1. a. The New Jersey Office of Emergency Management, in
9 consultation with the New Jersey Economic Development Authority
10 and the Department of Health, shall establish a process to evaluate,
11 provide feedback on, and approve personal protective equipment for
12 use during public health emergencies. The process shall help
13 businesses, not otherwise in the business of producing personal
14 protective equipment and not approved by federal agencies, safely
15 produce and supply personal protective equipment. The New Jersey
16 Economic Development Authority shall help the New Jersey Office
17 of Emergency Management review businesses, including to ensure
18 the businesses are legitimate and do not have health complaints or
19 unresolved safety or health citations. The New Jersey Office of
20 Emergency Management shall prioritize New Jersey-based
21 manufacturers of personal protective equipment when evaluating,
22 providing feedback on, and approving personal protective
23 equipment for use during public health emergencies.

24 b. The New Jersey Office of Emergency Management shall
25 employ a person or persons experienced with the federal agency
26 approval process of personal protective equipment. The person or
27 persons shall be allowed to work remotely as necessary and shall be
28 considered essential employees. The person or persons shall have
29 no personal interest or connection to any businesses submitting
30 personal protective equipment for approval.

31 c. No public or private entity or person shall be liable for
32 injury or death alleged to have been caused by the entity's or
33 person's use of personal protective equipment approved through the
34 process established pursuant to this section, in lieu of similar
35 equipment approved by federal agencies, as long as the public or
36 private entity or person used the personal protective equipment for
37 approved purposes. The liability protection granted pursuant to this
38 subsection shall not apply to acts or omissions constituting a crime,
39 actual fraud, actual malice, gross negligence, recklessness, or
40 willful misconduct.

41 d. The New Jersey Office of Emergency Management, in
42 consultation with the New Jersey Economic Development Authority
43 and the Department of Health, may adopt rules and regulations,
44 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
45 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
46 of this section. The rules and regulations shall be guided by

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 SLP committee amendments adopted December 10, 2020.

1 standards established by, among other sources, the National
2 Institute for Occupational Safety and Health and other federal
3 agencies.
4

5 2. a. Six months following the end of the public health
6 emergency first declared in Executive Order No. 103 of 2020, or
7 one year following enactment of P.L. , c. (C.) (pending
8 before the Legislature as this bill), whichever is later, the Director
9 of the Division of Purchase and Property in the Department of the
10 Treasury, in consultation with the New Jersey Office of Emergency
11 Management, New Jersey Economic Development Authority, and
12 Department of Health, shall award a contract or contracts, in
13 accordance with the provisions of chapter 34 of Title 52 of the
14 Revised Statutes, for the procurement of personal protective
15 equipment for the creation of two stockpiles pursuant to this
16 section. The director may make awards to multiple bidders in
17 accordance with section 1 of P.L.1986, c.26 (C.52:34-12.1). To the
18 extent feasible, money to purchase personal protective equipment
19 for each stockpile shall come from federal public health emergency
20 relief funds.

21 b. One stockpile shall consist of personal protective equipment
22 approved by federal agencies and the other stockpile shall consist of
23 personal protective equipment approved by the New Jersey Office
24 of Emergency Management pursuant to section 1 of
25 P.L. , c. (C.) (pending before the Legislature as this bill).
26 Each stockpile shall be gradually filled to a capacity, as determined
27 by the New Jersey Office of Emergency Management, New Jersey
28 Economic Development Authority, and the Department of Health.
29 In filling the stockpiles to capacity, at least one third of the capacity
30 shall be filled each year until capacity is met. If personal protective
31 equipment from a stockpile is used, the stockpile shall be refilled in
32 a manner similar to how the initial stockpile was filled.

33 c. To the extent feasible, at least 50 percent of each stockpile
34 shall consist of personal protective equipment made in New Jersey,
35 but in no case shall less than 25 percent of the New Jersey Office of
36 Emergency Management-approved stockpile be made in New
37 Jersey. At least 66 percent of each stockpile shall consist of
38 personal protective equipment made in the United States, including
39 personal protective equipment made in New Jersey.

40 d. During public health emergencies, the New Jersey Office of
41 Emergency Management shall make the personal protective
42 equipment in the stockpiles available to the State and its political
43 subdivisions, to public New Jersey schools ¹, New Jersey-based
44 non-profit private schools, New Jersey-based non-profit charter
45 schools¹, State hospitals, and State nursing homes without charging
46 a fee. During public health emergencies, the Director of the
47 Division of Purchase and Property in the Department of the

1 Treasury, in consultation with the New Jersey Office of Emergency
 2 Management, New Jersey Economic Development Authority, and
 3 Department of Health, shall make the remainder of the stockpiles
 4 available for purchase by other or private entities at market price
 5 'or cost price, whichever is higher'. New Jersey-based non-profits
 6 shall be allowed to purchase personal protective equipment in the
 7 stockpiles at 75 percent of market price 'or cost price, whichever is
 8 higher,' during public health emergencies. 'The "Sales and Use Tax
 9 Act," P.L.1966, c.30 (C.54:32B-1 et seq.), shall not apply to
 10 purchases made pursuant to this subsection.' The New Jersey Office
 11 of Emergency Management, New Jersey Economic Development
 12 Authority, and the Department of Health, shall have discretion to
 13 establish orders of priority for which entities may gain first access
 14 to the stockpiles.

15 e. When personal protective equipment in the stockpiles is
 16 within one year of expiration, the personal protective equipment
 17 shall be made available for sale to the following entities, in order of
 18 priority: 1) New Jersey-based Federally Qualified Health Centers;
 19 2) State hospitals; 3) non-profit hospitals within the State; 4) New
 20 Jersey public school districts ¹, New Jersey-based non-profit private
 21 schools, New Jersey-based non-profit charter schools¹; ¹and¹ 5) for-
 22 profit New Jersey-based hospitals ¹]; and 6) New Jersey based
 23 private schools and non-public charter schools¹. To the extent
 24 feasible, any personal protective equipment in the stockpiles that
 25 expire shall be disposed in an environmentally sound manner ¹or
 26 donated to a charity in the State¹.

27 f. The New Jersey Office of Emergency Management, in
 28 consultation with the New Jersey Economic Development Authority
 29 and the Department of Health, may adopt rules and regulations,
 30 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
 31 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
 32 of this section.

33
 34 3. The New Jersey Office of Emergency Management shall
 35 annually submit a report, compiled in consultation with the New
 36 Jersey Economic Development Authority and the Department of
 37 Health, to the Governor and to the Legislature, in accordance with
 38 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the status of the
 39 stockpiles required pursuant to section 2 of P.L. , c. (C.)
 40 (pending before the Legislature as this bill). The report shall include
 41 data on the price paid by the State for personal protective
 42 equipment and data on any personal protective equipment sold by
 43 the State. The reports shall be made available to the public on the
 44 Office of Emergency Management's website.

45
 46 4. This act shall take effect immediately.