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ASSEMBLY COMMITTEE SUBSTITUTE FOR
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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 amended on May 17, 2021 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 5/20/2021)

1 AN ACT concerning the ²[approval process for personal protective
2 equipment and State stockpiles] purchase² of personal protective
3 equipment, supplementing ²[P.L.1974, c.80 (C.34:1B-1 et seq.)]
4 P.L.2005, c.222 (C.26:13-1 et seq.)².
5

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

9 1. ²[a.]² The New Jersey Office of ²[Emergency
10 Management] Homeland Security and Preparedness², in
11 consultation with the New Jersey ²[Economic Development
12 Authority] Office of Emergency Management² and the Department
13 of Health, shall ²[establish a process to evaluate, provide feedback
14 on, and approve personal protective equipment for use during public
15 health emergencies. The process shall help businesses, not
16 otherwise in the business of producing personal protective
17 equipment and not approved by federal agencies, safely produce
18 and supply personal protective equipment] solicit bids for one or
19 more contracts for use by any State agency granting the agency the
20 right of first refusal to purchase personal protective equipment
21 during a public health emergency declared pursuant to P.L.2005,
22 c.222 (C.26:13-1 et seq.). A State agency electing to utilize such
23 contract shall provide all information requested by the New Jersey
24 Office of Homeland Security and Preparedness and the Department
25 of Health². The New Jersey Economic Development Authority shall
26 ²[help the New Jersey Office of Emergency Management review
27 businesses, including to ensure the businesses are legitimate and do
28 not have health complaints or unresolved safety or health citations]
29 develop a strategy to increase awareness concerning the contract
30 among companies whose principal place of businesses is in this
31 State. The Division of Purchase and Property shall provide all
32 support requested by the Office of Homeland Security and
33 Preparedness. A State agency shall not be prohibited from
34 establishing a new contract pursuant to this section, notwithstanding
35 any existing contract for such items². The New Jersey Office of
36 ²[Emergency Management] Homeland Security and Preparedness²
37 shall prioritize New Jersey-based manufacturers of personal
38 protective equipment when ²[evaluating,] awarding such contract,
39 in accordance with section 91 of P.L.2020, c.156 (C.52:34-27).²
40 ²[providing feedback on, and approving personal protective
41 equipment for use during public health emergencies.

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.

²Assembly amendments adopted in accordance with Governor's recommendations May 17, 2021.

1 b. The New Jersey Office of Emergency Management shall
2 employ a person or persons experienced with the federal agency
3 approval process of personal protective equipment. The person or
4 persons shall be allowed to work remotely as necessary and shall be
5 considered essential employees. The person or persons shall have
6 no personal interest or connection to any businesses submitting
7 personal protective equipment for approval.

8 c. No public or private entity or person shall be liable for
9 injury or death alleged to have been caused by the entity's or
10 person's use of personal protective equipment approved through the
11 process established pursuant to this section, in lieu of similar
12 equipment approved by federal agencies, as long as the public or
13 private entity or person used the personal protective equipment for
14 approved purposes. The liability protection granted pursuant to this
15 subsection shall not apply to acts or omissions constituting a crime,
16 actual fraud, actual malice, gross negligence, recklessness, or
17 willful misconduct.

18 d. ²The New Jersey Office of ²**[Emergency Management]**
19 Homeland Security and Preparedness², in consultation with ²**[the**
20 New Jersey Economic Development Authority and] and using any
21 equipment specification provided by² the Department of Health,
22 may adopt rules and regulations, pursuant to the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be
24 necessary to effectuate the purposes of this section. The rules and
25 regulations ²**[shall]** may² be guided by standards established by,
26 among other sources, the National Institute for Occupational Safety
27 and Health and other federal agencies.

28
29 2. ²**[a.** Six months following the end of the public health
30 emergency first declared in Executive Order No. 103 of 2020, or
31 one year following enactment of P.L. , c. (C.) (pending
32 before the Legislature as this bill), whichever is later, the Director
33 of the Division of Purchase and Property in the Department of the
34 Treasury, in consultation with the New Jersey Office of Emergency
35 Management, New Jersey Economic Development Authority, and
36 Department of Health, shall award a contract or contracts, in
37 accordance with the provisions of chapter 34 of Title 52 of the
38 Revised Statutes, for the procurement of personal protective
39 equipment for the creation of two stockpiles pursuant to this
40 section. The director may make awards to multiple bidders in
41 accordance with section 1 of P.L.1986, c.26 (C.52:34-12.1). To the
42 extent feasible, money to purchase personal protective equipment
43 for each stockpile shall come from federal public health emergency
44 relief funds.

45 b. One stockpile shall consist of personal protective equipment
46 approved by federal agencies and the other stockpile shall consist of

1 personal protective equipment approved by the New Jersey Office
 2 of Emergency Management pursuant to section 1 of
 3 P.L. , c. (C.) (pending before the Legislature as this bill).
 4 Each stockpile shall be gradually filled to a capacity, as determined
 5 by the New Jersey Office of Emergency Management, New Jersey
 6 Economic Development Authority, and the Department of Health.
 7 In filling the stockpiles to capacity, at least one third of the capacity
 8 shall be filled each year until capacity is met. If personal protective
 9 equipment from a stockpile is used, the stockpile shall be refilled in
 10 a manner similar to how the initial stockpile was filled.

11 c. To the extent feasible, at least 50 percent of each stockpile
 12 shall consist of personal protective equipment made in New Jersey,
 13 but in no case shall less than 25 percent of the New Jersey Office of
 14 Emergency Management-approved stockpile be made in New
 15 Jersey. At least 66 percent of each stockpile shall consist of
 16 personal protective equipment made in the United States, including
 17 personal protective equipment made in New Jersey.

18 d. During public health emergencies, the New Jersey Office of
 19 Emergency Management shall make the personal protective
 20 equipment in the stockpiles available to the State and its political
 21 subdivisions, to public New Jersey schools ¹, New Jersey-based
 22 non-profit private schools, New Jersey-based non-profit charter
 23 schools¹, State hospitals, and State nursing homes without charging
 24 a fee. During public health emergencies, the Director of the
 25 Division of Purchase and Property in the Department of the
 26 Treasury, in consultation with the New Jersey Office of Emergency
 27 Management, New Jersey Economic Development Authority, and
 28 Department of Health, shall make the remainder of the stockpiles
 29 available for purchase by other or private entities at market price
 30 ¹or cost price, whichever is higher¹. New Jersey-based non-profits
 31 shall be allowed to purchase personal protective equipment in the
 32 stockpiles at 75 percent of market price ¹or cost price, whichever is
 33 higher,¹ during public health emergencies. ¹The “Sales and Use Tax
 34 Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), shall not apply to
 35 purchases made pursuant to this subsection.¹ The New Jersey Office
 36 of Emergency Management, New Jersey Economic Development
 37 Authority, and the Department of Health, shall have discretion to
 38 establish orders of priority for which entities may gain first access
 39 to the stockpiles.

40 e. When personal protective equipment in the stockpiles is
 41 within one year of expiration, the personal protective equipment
 42 shall **】** Except to the extent inconsistent with any provision of State
 43 or federal law, personal protective equipment held by any State
 44 agency that is deemed to be held in surplus may² be made available
 45 for sale ²or grant² to the following entities, in order of priority: 1)
 46 New Jersey-based Federally Qualified Health Centers; 2) State

1 hospitals; 3) non-profit hospitals within the State; 4) New Jersey
2 public school districts ¹, New Jersey-based non-profit private
3 schools, New Jersey-based non-profit charter schools¹; ¹and¹ 5) for-
4 profit New Jersey-based hospitals ¹]; and 6) New Jersey based
5 private schools and non-public charter schools¹. To the extent
6 feasible ²and not inconsistent with any provision of State or federal
7 law², any personal protective equipment ²[in the stockpiles]² that
8 ²[expire] expires² shall be disposed in an environmentally sound
9 manner ¹or ²may be² donated to a charity in the State¹.
10 ²[f. The New Jersey Office of Emergency Management, in
11 consultation with the New Jersey Economic Development Authority
12 and the Department of Health, may adopt rules and regulations,
13 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
14 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
15 of this section.]²
16
17 ²[3. The New Jersey Office of Emergency Management shall
18 annually submit a report, compiled in consultation with the New
19 Jersey Economic Development Authority and the Department of
20 Health, to the Governor and to the Legislature, in accordance with
21 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the status of the
22 stockpiles required pursuant to section 2 of P.L. , c. (C.)
23 (pending before the Legislature as this bill). The report shall include
24 data on the price paid by the State for personal protective
25 equipment and data on any personal protective equipment sold by
26 the State. The reports shall be made available to the public on the
27 Office of Emergency Management’s website.]²
28
29 ²[4] ³. This act shall take effect ²[immediately] on the first
30 day of the sixth month next following enactment².