

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4803 and 4811**

**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

Substitute as adopted by the Assembly Commerce and Economic Development Committee.

(Sponsorship Updated As Of: 10/29/2020)

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

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, State hospitals, and
44 State nursing homes without charging a fee. During public health
45 emergencies, the Director of the Division of Purchase and Property
46 in the Department of the Treasury, in consultation with the New

1 Jersey Office of Emergency Management, New Jersey Economic
2 Development Authority, and Department of Health, shall make the
3 remainder of the stockpiles available for purchase by other or
4 private entities at market price. New Jersey-based non-profits shall
5 be allowed to purchase personal protective equipment in the
6 stockpiles at 75 percent of market price during public health
7 emergencies. The New Jersey Office of Emergency Management,
8 New Jersey Economic Development Authority, and the Department
9 of Health, shall have discretion to establish orders of priority for
10 which entities may gain first access to the stockpiles.

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

21 f. The New Jersey Office of Emergency Management, in
22 consultation with the New Jersey Economic Development Authority
23 and the Department of Health, may adopt rules and regulations,
24 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
25 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
26 of this section.

27

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

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40 4. This act shall take effect immediately.