

**SENATE, No. 3417**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED FEBRUARY 9, 2021

**Sponsored by:**

**Senator VIN GOPAL**

**District 11 (Monmouth)**

**SYNOPSIS**

Creates State contract set-aside program for businesses owned and operated by persons with disabilities.

**CURRENT VERSION OF TEXT**

As introduced.



1   **AN ACT** concerning the designation of certain State purchase and  
2       construction contracts as set-asides for businesses owned and  
3       operated by persons with disabilities and supplementing Title 52  
4       of the Revised Statutes.

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

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9       1. This act shall be known and may be cited as the "Set-Aside  
10      Act for Disability-Owned Business Enterprises."

11  
12      2. As used in this act:

13       "Contracting agency" means the State or any board, commission,  
14      committee, authority, or agency of the State.

15       "Department" means the Department of the Treasury.

16       "Disability" means a physical or mental disability that  
17      substantially impairs a major life activity.

18       "Disability-owned business enterprise" means a business which  
19      has its principal place of business in the State, is independently  
20      owned and operated and at least 51 percent of which is owned and  
21      controlled by persons with disabilities, and is certified by nonprofit  
22      organizations focused on business disability inclusion, including  
23      Disability:IN, as a disability-owned business enterprise.

24       "Disability-owned business enterprise set-aside contract" means  
25      (1) a contract for goods, equipment, construction, or services which  
26      is designated as a contract with respect to which bids are invited  
27      and accepted only from small businesses, or (2) a portion of a  
28      contract when that portion has been so designated.

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30      3. The Department of the Treasury shall administer a  
31      disability-owned business enterprise set-aside program which shall  
32      be in addition to any other set-aside program established by law.  
33      The department shall require proof of disability status for all  
34      appropriate individuals.

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36      4. a. Notwithstanding the provisions of any State bidding or  
37      public contracts laws to the contrary, but subject to any supervening  
38      federal statutes or rules, contracting agencies, in consultation with  
39      the department, may designate a contract, or a portion thereof, for  
40      goods, equipment, construction or services to be awarded by a  
41      contracting agency as a disability-owned business enterprise set-  
42      aside contract pursuant to the goals and procedures established in  
43      this act, whenever there is a reasonable expectation that bids may be  
44      obtained from at least three qualified disability-owned business  
45      enterprises capable of furnishing the desired goods, equipment,  
46      construction or services at a fair and reasonable price. The  
47      designation shall be made prior to the advertisement for bids.

1       b. When application of the goals and procedures established  
2 under this act would jeopardize the State's participation in a  
3 program from which the State receives federal funds or other  
4 benefits, the contracting agency may, in consultation with the  
5 department, withdraw the affected contracts from consideration or  
6 calculation.

7  
8       5. a. There are established the goals that contracting agencies  
9 award at least three percent of their contracts to disability-owned  
10 business enterprises. These goals may, when appropriate, be  
11 attained by the direct designation of prime contracts for these  
12 businesses or, in the case of a prime contract not directly so  
13 designated, by requiring that a portion of such a prime contract be  
14 subcontracted to a disability-owned business enterprise. Each  
15 contracting agency shall make a good faith effort to attain the goals  
16 established in this subsection.

17       b. For purposes of attaining this goal, contracting agencies  
18 shall, when necessary, specifically set aside contracts or portions of  
19 contracts for which only these businesses may bid.

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21       6. If the department and the contracting agency disagree as to  
22 whether a set-aside is appropriate for a contract or a portion of a  
23 contract, the dispute shall, within seven days, be submitted to the  
24 State Treasurer, or his designee, for final determination.

25  
26       7. The advertisement for bids on a disability-owned business  
27 enterprise set-aside contract shall indicate the invitation to bid as a  
28 set-aside. The advertisement shall be in such newspaper or  
29 newspapers as will best give notice thereof to appropriate bidders  
30 and shall be sufficiently in advance of the purchase or contract to  
31 promote competitive bidding among the businesses for which the  
32 contract is being set aside. The newspaper or newspapers in which  
33 the advertisement shall appear shall be selected by the contracting  
34 agency in consultation with the department. The advertisement  
35 shall designate the time and place at which sealed proposals shall be  
36 received and publicly opened and read, the certified check, if any,  
37 which shall accompany each bid and such other items as the  
38 contracting agency may deem proper. The advertisement shall be  
39 made by that contracting agency pursuant to the procedure set forth  
40 in the law governing State contracts, when this act is inconsistent  
41 with that law.

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43       8. a. The department shall establish reasonable regulations  
44 appropriate for controlling the designation of prospective disability-  
45 owned business enterprise bidders and shall maintain lists of  
46 designated businesses.

1       b. The department shall establish a procedure whereby  
2 businesses may request inclusion on appropriate lists for disability-  
3 owned business enterprises.

4       c. The department shall establish a procedure for annually  
5 reviewing the lists and determining whether the businesses on the  
6 lists shall continue to be designated as disability-owned business  
7 enterprises.

8       d. The department shall establish a procedure whereby the  
9 designation of a business as a disability-owned business enterprise  
10 may be challenged by a third party.

11       e. Any procedures established pursuant to subsections b., c.,  
12 and d. of this section shall include notice to the business whose  
13 designation is at issue and an opportunity for a hearing at the  
14 department. The hearing shall not be considered a contested case  
15 under the "Administrative Procedure Act," P.L.1968, c.410  
16 (C.52:14B-1 et seq.).  
17

18       9. When a contract or portion thereof has been designated as a  
19 disability-owned business enterprise set-aside, invitations for bids  
20 shall be confined to businesses designated by the department as  
21 appropriate for the set-aside and bids from other bidders shall be  
22 rejected. The purchase, contract, or expenditure of funds shall be  
23 awarded among the businesses, considering conformity with  
24 specifications and terms, in accordance with the statutes and rules  
25 governing purchases by the contracting agency. The award shall be  
26 made with reasonable promptness by the contracting agency with  
27 written notice to the department.  
28

29       10. If the contracting agency determines that the acceptance of  
30 the lowest responsible bid on a disability-owned business enterprise  
31 set-aside contract will result either in the payment of an  
32 unreasonable price or in a contract otherwise unacceptable pursuant  
33 to the statutes and rules governing purchases by that agency, the  
34 contracting agency shall reject all bids and withdraw the  
35 designation of the set-aside contract. Bidders shall be notified of  
36 the set-aside cancellation, the reasons for the rejection and the  
37 State's intent to resolicit bids on an unrestricted basis. The canceled  
38 solicitation shall not be counted as a set-aside for the purpose of  
39 attaining established set-aside goals. Except in cases of emergency,  
40 prior to the final award of the contract, the contracting agency shall  
41 provide an opportunity for a hearing on the reasons for the rejection  
42 of the set-aside designation. This hearing shall not be considered a  
43 contested case under the "Administrative Procedure Act," P.L.1968,  
44 c.410 (C.52:14B-1 et seq.).  
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46       11. Each contracting agency shall submit an annual report to the  
47 department according to a schedule announced by the department.  
48 This report shall include the following information:

1       a. the total dollar value and number of contracts awarded to  
2       disability-owned business enterprises, including a separate  
3       accounting of any set-aside contracts, and the percentage of the  
4       total State procurements by the contracting agency that the figure of  
5       total dollar value and the number of set-asides reflect;

6       b. the types and sizes of businesses receiving set-aside awards  
7       and the nature of the purchases and contracts; and

8       c. the efforts made to publicize and promote the program.

9       The department shall receive and analyze the reports submitted  
10      by the contracting agencies and, utilizing these data, submit an  
11      annual report to the Governor, and pursuant to section 2 of  
12      P.L.1991, c.164 (C.52:14-19.1), the Legislature, showing the  
13      progress being made toward the objectives and goals of this act  
14      during the preceding fiscal year.

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16      12. Each contracting agency shall annually develop, in  
17      consultation with the department, a plan for achieving its disability-  
18      owned business enterprise goals.

19  
20      13. The department shall consult regularly with representatives  
21      of the contracting industry for the purpose of implementing the  
22      provisions of this act. These consultations shall take place no less  
23      than once every six months.

24  
25      14. When the department determines that a business has been  
26      classified as a disability-owned business enterprise on the basis of  
27      false information knowingly supplied by the business and has been  
28      awarded a contract to which it would not otherwise have been  
29      entitled under this act, the department shall:

30      a. assess the business any difference between the contract  
31      amount and what the State's cost would have been if the contract  
32      had not been awarded in accordance with the provisions of this act;

33      b. in addition to the amount due under subsection a., assess the  
34      business a penalty in an amount of not more than 10 percent of the  
35      amount of the contract involved;

36      c. order the business ineligible to transact any business with  
37      the State for a period of not less than three months and not more  
38      than 24 months; and

39      d. prior to any final determination, assessment or order under  
40      this section, afford the business an opportunity for a contested case  
41      hearing pursuant to P.L.1968, c.410 (C.52:14B-1 et seq.).

42      All payments to the State pursuant to subsection a. of this section  
43      shall be deposited in the fund out of which the contract involved  
44      was awarded. All payments to the State pursuant to subsection b. of  
45      this section shall be deposited in the General Fund.

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47      15. Whenever any obligation is imposed by law upon a  
48      contracting agency to set aside a percentage of State contracts

1 awarded by that agency for disability-owned business enterprises,  
2 compliance with that requirement shall be calculated based,  
3 according to objective and verifiable standards as promulgated  
4 pursuant to administrative regulation, upon the dollar value of  
5 payments actually made each year to, and received by, disability-  
6 owned business enterprises pursuant to State contracts awarded by  
7 that agency, or subcontracts thereto, compared to the total of all  
8 payments made to, and received by, all parties awarded State  
9 contracts by that agency.

10 Compliance with any such set-aside requirement shall not be  
11 calculated using statements made by bidders with respect to the  
12 portion of a contract which the bidder intends to subcontract to  
13 disability-owned business enterprises.

14

15 16. The Department of the Treasury shall develop such other  
16 regulations as may be necessary to interpret and implement all  
17 provisions of this act, including rules governing the determination  
18 of which type or class of contract is covered by this act.

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20 17. This act shall take effect immediately.

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## 23 STATEMENT

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25 This bill creates a State contract set-aside program for businesses  
26 owned and operated by persons with disabilities.

27 This bill would add a new three percent set-aside program for  
28 disability-owned business enterprises which is in addition to other  
29 State set-aside programs. The three percent set-aside would  
30 represent three percent of all contracts awarded by contracting  
31 agencies.

32 “Disability-owned business enterprise” would be defined to  
33 mean a business which has its principal place of business in the  
34 State, is independently owned and operated and at least 51 percent  
35 of which is owned and controlled by persons with disabilities and is  
36 certified by nonprofit organizations focused on business disability  
37 inclusion, including Disability:IN, as a disability-owned business  
38 enterprise. Disability-owned business enterprise is a commonly  
39 used term by several non-profit organizations focused on business  
40 disability inclusion, such as Disability:IN, to recognize such  
41 businesses. The term “disability” would be defined to mean a  
42 physical or mental disability that substantially impairs a major life  
43 activity.