

ASSEMBLY, No. 857

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

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Assemblyman DeAngelo

SYNOPSIS

Creates State contract set-aside program for businesses owned and operated by disabled veterans.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/30/2011)

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

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

8
9 1. This act shall be known and may be cited as the "Set-Aside
10 Act for Disabled Veterans' Businesses."

11
12 2. As used in this act:

13 "Commission" means the New Jersey Commerce and Economic
14 Growth Commission.

15 "Contracting agency" means the State or any board, commission,
16 committee, authority or agency of the State.

17 "Disabled veteran" means a resident of this State who is certified
18 by the federal Department of Veterans' Affairs as having any degree
19 of service-connected disability.

20 "Disabled veterans' business" means a business which has its
21 principal place of business in the State, is independently owned and
22 operated and at least 51% of which is owned and controlled by
23 persons who are disabled veterans.

24 "Disabled veterans' business set-aside contract" means a contract
25 for goods, equipment, construction or services which is designated
26 as a contract with respect to which bids are invited and accepted
27 only from disabled veterans' businesses, or a portion of a contract
28 when that portion has been so designated.

29 "Office" means the Office of Small Business Assistance in the
30 New Jersey Commerce and Economic Growth Commission.

31
32 3. The Office of Small Business Assistance in the New Jersey
33 Commerce and Economic Growth Commission shall administer a
34 disabled veterans' business set-aside program which shall be in
35 addition to any other set-aside program established by law.

36
37 4. a. Notwithstanding the provisions of any State bidding or
38 public contracts laws to the contrary, but subject to any supervening
39 federal statutes or rules, contracting agencies, in consultation with
40 the commission, may designate a contract, or a portion thereof, for
41 goods, equipment, construction or services to be awarded by a
42 contracting agency as a disabled veterans' business set-aside
43 contract pursuant to the goals and procedures established in this act,
44 whenever there is a reasonable expectation that bids may be
45 obtained from at least three qualified disabled veterans' businesses
46 capable of furnishing the desired goods, equipment, construction or
47 services at a fair and reasonable price. The designation shall be
48 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 commission, 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 3% of their contracts to disabled veterans' businesses.
10 These goals may, when appropriate, be attained by the direct
11 designation of prime contracts for these business or, in the case of a
12 prime contract not directly so designated, by requiring that a portion
13 of such a prime contract be subcontracted to a disabled veterans'
14 business. Each contracting agency shall make a good faith effort to
15 attain the goals established in this subsection.

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

19
20 6. If the commission and the contracting agency disagree as to
21 whether a set-aside is appropriate for a contract or a portion of a
22 contract, the dispute shall, within seven days, be submitted to the
23 State Treasurer, or his designee, for final determination.

24
25 7. The advertisement for bids on a disabled veterans' business
26 set-aside contract shall indicate the invitation to bid as a set-aside.
27 The advertisement shall be in such newspaper or newspapers as will
28 best give notice thereof to appropriate bidders and shall be
29 sufficiently in advance of the purchase or contract to promote
30 competitive bidding among the businesses for which the contract is
31 being set aside. The newspaper or newspapers in which the
32 advertisement shall appear shall be selected by the contracting
33 agency in consultation with the office. The advertisement shall
34 designate the time and place at which sealed proposals shall be
35 received and publicly opened and read, the amount of the cash or
36 certified check, if any, which shall accompany each bid and such
37 other items as the contracting agency may deem proper. The
38 advertisement shall be made by that contracting agency pursuant to
39 the procedure set forth in the law governing State contracts, when
40 this act is inconsistent with that law.

41
42 8. a. The commission shall establish reasonable regulations
43 appropriate for controlling the designation of prospective disabled
44 veterans' business bidders and shall maintain lists of designated
45 businesses.

46 b. The commission shall establish a procedure whereby
47 businesses may request inclusion on appropriate lists for disabled
48 veterans' businesses.

1 c. The commission shall establish a procedure for annually
2 reviewing the lists and determining whether the businesses on the
3 lists shall continue to be designated as disabled veterans'
4 businesses.

5 d. The commission shall establish a procedure whereby the
6 designation of a business as a disabled veterans' business may be
7 challenged by a third party.

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

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

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

46 a. the total dollar value and number of contracts awarded to
47 disabled veterans' businesses, including a separate accounting of
48 any set-aside contracts, and the percentage of the total State

1 procurements by the contracting agency that the figure of total
2 dollar value and the number of set-asides reflect;

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

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

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

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13 12. Each contracting agency shall annually develop, in
14 consultation with the commission, a plan for achieving its disabled
15 veterans' business goals.

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17 13. The commission and office shall consult regularly with
18 representatives of the contracting industry for the purpose of
19 implementing the provisions of this act. These consultations shall
20 take place no less than once every six months.

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22 14. When the commission determines that a business has been
23 classified as a disabled veterans' business on the basis of false
24 information knowingly supplied by the business and has been
25 awarded a contract to which it would not otherwise have been
26 entitled under this act, the commission shall:

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

30 b. in addition to the amount due under subsection a., assess the
31 business a penalty in an amount of not more than 10% of the
32 amount of the contract involved;

33 c. order the business ineligible to transact any business with the
34 State for a period of not less than three months and not more than
35 24 months; and

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

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

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44 15. This act shall take effect immediately.

STATEMENT

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This bill creates a State contract set-aside program for disabled veterans to be administered by the Office of Small Business Assistance in the New Jersey Commerce and Economic Growth Commission. It establishes a goal that contracting agencies set aside at least 3% of their contracts for disabled veterans' businesses. A disabled veterans' business is defined as a business which has its principal place of business in New Jersey, is independently owned and operated and at least 51% of which is owned and controlled by persons who are disabled veterans. The set-aside program would create economic opportunity for disabled veterans and recognize their service and sacrifice.