

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1811

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED MAY 19, 2014

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

**Senators P.Barnes, III, Cunningham, Greenstein, Pou, Ruiz, Sarlo, Stack,
Van Drew and Norcross**

SYNOPSIS

Requires use of goods made in the United States for public contracts; requires businesses that receive public contracts or development assistance to disclose job exportation information.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



(Sponsorship Updated As Of: 6/13/2014)

1 **AN ACT** concerning the use of goods made in the United States for
2 public contracts, requiring the disclosure of certain information
3 by certain businesses, revising various parts of the statutory law,
4 and supplementing Title 18A of the New Jersey Statutes and
5 Title 52 of the Revised Statutes.

6

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

9

10 1. N.J.S.18A:18A-20 is amended to read as follows:

11 18A:18A-20. American goods and products to be used where
12 possible.

13 a. Each board of education shall provide, in the specifications for
14 all contracts for purchases or work, including public work contracts,
15 for which it will pay any part of the cost, or work which by contract
16 it will ultimately own and maintain, that only manufactured and
17 farm products of the United States, wherever available, be
18 purchased or be used in such work.

19 b. The provisions of subsection a. of this section may be
20 waived, pursuant to the procedures provided in this subsection, in
21 any case or category of cases in which the board of education
22 entering into the contract finds that manufactured products of the
23 United States are not available. At least 30 days before issuing a
24 waiver under this subsection, the board of education shall provide
25 to the public a notice summarizing the reason for the proposed
26 waiver, and an opportunity for public comment on the proposed
27 waiver. The notice shall be posted prominently on the public
28 Internet website of the board of education and provided by
29 electronic means to any person, firm, or corporation that makes a
30 written or electronic request for notification. If, after public notice
31 and an opportunity for public comment required by this subsection,
32 the board of education determines to issue a waiver, the board of
33 education shall provide a detailed justification for the waiver that
34 shall be posted prominently on the public Internet website of the
35 board of education and provided by electronic means to any person,
36 firm, or corporation that has made a written or electronic request to
37 receive notice of waiver actions. The justification shall include
38 responses to any public comments received pursuant to this
39 subsection, and be published before the waiver takes effect. The
40 board of education shall work with other affected contracting
41 boards of education and State agencies to create a plan to ensure the
42 domestic supply of the relevant products will be available in the
43 future.

44 c. If a contractor knowingly uses or supplies procured products

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.

1 that are not manufactured in the United States in violation of the
2 provisions of a contract subject to the provisions of this section,
3 then:

4 (1) The contractor shall be barred from obtaining any contract
5 with any board of education or other public body, including the
6 State or any State agency, or public institution of higher education,
7 for a period of three years after the violation is discovered by the
8 board of education;

9 (2) The board of education may void the contract; and

10 (3) The board of education may recover damages in a civil
11 action in an amount three times any cost incurred by the board as a
12 result of the violation.

13 d. The provisions of this section requiring the purchase and use
14 of products manufactured in the United States shall not apply to
15 replacement parts or components for equipment provided under a
16 contract approved prior to the effective date of P.L. , c. (C.)
17 (pending before the Legislature as this bill) or to replacement parts
18 or components for any equipment for which a waiver was provided
19 under the provisions of this section.

20 e. For the purposes of this section:

21 "Manufactured products of the United States" means, in the case
22 of assembled articles, material or supplies, components,
23 subcomponents, parts, and equipment used in manufacturing, that
24 all final assembly, processing, packaging, testing and any other
25 process that adds value, quality, or reliability occurs in the United
26 States; and

27 "Public work" means any public building, public highway,
28 bridge, or other public betterment, work or improvement of a
29 permanent nature, constructed, reconstructed, repaired or improved
30 at the expense of the public.

31 (cf: P.L.1999, c.440, s.66)

32
33 2. Section 18 of P.L.1971, c.198 (C.40A:11-18) is amended to
34 read as follows:

35 18. a. Each local unit shall provide, in the specifications for all
36 contracts for purchases, or county or municipal work, including
37 public work contracts, or for work for which it will pay any part of
38 the cost, or work which by contract or ordinance it will ultimately
39 own and maintain, that only manufactured and farm products of the
40 United States, wherever available, be purchased or used in such
41 work.

42 b. The provisions of subsection a. of this section may be
43 waived, pursuant to the procedures provided in this subsection, in
44 any case or category of cases in which the local unit entering into
45 the contract finds that manufactured products of the United States
46 are not available. At least 30 days before issuing a waiver under
47 this subsection, the local unit shall provide to the public a notice

1 summarizing the reason for the proposed waiver, and an opportunity
2 for public comment on the proposed waiver. The notice shall be
3 posted prominently on the public Internet website of the local unit
4 and provided by electronic means to any person, firm, or
5 corporation that makes a written or electronic request for
6 notification. If, after public notice and an opportunity for public
7 comment required by this subsection, the local unit determines to
8 issue a waiver, the local unit shall provide a detailed justification
9 for the waiver that shall be posted prominently on the public
10 Internet website of the local unit and provided by electronic means
11 to any person, firm, or corporation that has made a written or
12 electronic request to receive notice of waiver actions. The
13 justification shall include responses to any public comments
14 received pursuant to this subsection; and be published before the
15 waiver takes effect. The local unit shall work with other affected
16 contracting local units, and other State agencies to create a plan to
17 ensure the domestic supply of the relevant products will be
18 available in the future.

19 c. If a contractor knowingly uses or supplies procured products
20 that are not manufactured in the United States in violation of the
21 provisions of a contract subject to the provisions of this section,
22 then:

23 (1) The contractor shall be barred from obtaining any contract
24 with any local unit or other public body, including the State or any
25 State agency or public institution of higher education, for a period
26 of three years after the violation is discovered by the local unit;

27 (2) The local unit may void the contract; and

28 (3) The local unit may recover damages in a civil action in an
29 amount three times any cost incurred by the local unit as a result of
30 the violation.

31 d. The provisions of this section requiring the purchase and use
32 of products manufactured in the United States shall not apply to
33 replacement parts or components for equipment provided under a
34 contract approved prior to the effective date of P.L. , c. (C.)
35 (pending before the Legislature as this bill) or to replacement parts
36 or components for any equipment for which a waiver was provided
37 under the provisions of this section.

38 e. For the purposes of this section:

39 “Manufactured products of the United States” means, in the case
40 of assembled articles, material or supplies, components,
41 subcomponents, parts, and equipment used in manufacturing, that
42 all final assembly, processing, packaging, testing and any other
43 process that adds value, quality, or reliability occurs in the United
44 States; and

45 “Public work” means any public building, public highway,
46 bridge, or other public betterment, work or improvement of a
47 permanent nature, constructed, reconstructed, repaired or improved

1 at the expense of the public.

2 (cf: P.L.1982, c.107, s.1)

3

4 3. (New section) a. A State agency shall make provisions in
5 the specifications for all contracts that include or necessitate the
6 procurement of articles, materials, goods, equipment, or supplies,
7 including contracts for public works, for which the State pays any
8 part of the cost, that only products manufactured in the United
9 States, be used to fulfill those contracts.

10 b. Products manufactured in the United States shall be
11 specified and purchased unless the State agency determines that any
12 of the following apply:

13 (1) The products are not manufactured in the United States in
14 reasonably available quantities; or

15 (2) The cost of buying products manufactured in the United
16 States is unreasonable. There is a presumption of unreasonableness
17 for products manufactured in the United States that cost 25% above
18 the fair market value for such products.

19 Any waiver proposed under this section shall be made public,
20 reported to the relevant State agencies, and posted publicly for a 30-
21 day comment period. If, after public notice and an opportunity for
22 public comment, it is decided to issue the waiver, the waiver, with
23 detailed justification including responses to any public comments,
24 shall, before the waiver takes effect, be posted prominently on a
25 public Internet website and made available upon request. The State
26 agency granted such a waiver shall work with other State agencies
27 to create a plan to ensure the domestic supply of the relevant
28 products will be available in the future.

29 c. Each contract awarded by a State agency on or after the
30 effective date of P.L. , c. (C.) (pending before the Legislature
31 as this bill), shall contain the contractor's certification that procured
32 products provided pursuant to the contract or a subcontract shall be
33 manufactured in the United States.

34 d. If a contractor is awarded a contract subject to the provisions
35 of this section and knowingly supplies procured products under that
36 contract that are not manufactured in the United States in violation
37 of the provisions of this section, then:

38 (1) The contractor shall be barred from obtaining any contract
39 with any State agency or other public body, including a political
40 subdivision or public institution of higher education, for a period of
41 three years after the violation is discovered by the State agency;

42 (2) The State agency may void the contract; and

43 (3) The State agency may recover damages in a civil action in
44 an amount three times any cost to the State or the State agency
45 caused by the violation or by any measures needed to achieve
46 compliance with the requirements of this section.

1 e. The provisions of this section requiring the purchase and use
2 of products manufactured in the United States shall not apply to
3 replacement parts or components for equipment provided under a
4 contract approved prior to the effective date of P.L. , c. (C.)
5 (pending before the Legislature as this bill) or to replacement parts
6 or components for any equipment for which a waiver was provided
7 under the provisions of this section.

8 f. As used in this section:

9 “Manufactured in the United States” means, in the case of
10 assembled articles, material or supplies, components,
11 subcomponents, parts, and equipment used in manufacturing, that
12 all final assembly, processing, packaging, testing and any other
13 process that adds value, quality, or reliability occurs in the United
14 States;

15 “Public work” means any public building, public highway,
16 bridge, or other public betterment, work or improvement of a
17 permanent nature, constructed, reconstructed, repaired or improved
18 at the expense of the public; and

19 “State agency” shall have the meaning as set forth in section 1 of
20 P.L.1991, c.507 (C.52:32-40).

21

22 4. (New section) a. A public institution of higher education
23 shall make provisions in the specifications for all contracts of the
24 institution that include or necessitate the procurement of articles,
25 materials, goods, equipment, or supplies, including contracts for
26 public works, for which the institution pays any part of the cost,
27 that only such products manufactured in the United States be used
28 to fulfill those contracts.

29 b. Products manufactured in the United States shall be
30 specified and purchased unless the public institution of higher
31 education determines that any of the following apply:

32 (1) The products are not manufactured in the United States in
33 reasonably available quantities; or

34 (2) The cost of buying products manufactured in the United
35 States is unreasonable. There is a presumption of unreasonableness
36 for products manufactured in the United States that cost 25% above
37 the fair market value for such products.

38 Any waiver proposed under this section shall be made public,
39 reported to the relevant State agencies, and posted publicly for a 30-
40 day comment period. If, after public notice and an opportunity for
41 public comment, it is decided to issue the waiver, the waiver, with
42 detailed justification including responses to any public comments,
43 shall, before the waiver takes effect, be posted prominently on a
44 public Internet website and made available upon request. The
45 public institution of higher education granted such a waiver shall
46 work with other public institutions of higher education and State

1 agencies to create a plan to ensure the domestic supply of the
2 relevant products will be available in the future.

3 c. Each contract awarded by a public institution of higher
4 education on or after the effective date of P.L. , c. (C.)
5 (pending before the Legislature as this bill) shall contain the
6 contractor's certification that procured products provided pursuant
7 to the contract or a subcontract shall be manufactured in the United
8 States.

9 d. If a contractor is awarded a contract subject to the provisions
10 of this section and knowingly supplies procured products under that
11 contract that are not manufactured in the United States in violation
12 of the provisions of this section, then:

13 (1) The contractor shall be barred from obtaining any contract
14 with a public institution of higher education, or any other public
15 body, including the State or any agency or political subdivision of
16 the State, for a period of three years after the violation is discovered
17 by the public institution of higher education;

18 (2) The public institution of higher education may void the
19 contract; and

20 (3) The public institution of higher education may recover
21 damages in a civil action in an amount three times any cost to the
22 institution caused by the violation or by any measures needed to
23 achieve compliance with the requirements of this section.

24 e. The provisions of this section requiring the purchase and use
25 of products manufactured in the United States shall not apply to
26 replacement parts or components for equipment provided under a
27 contract approved prior to the effective date of P.L. , c. (C.)
28 (pending before the Legislature as this bill) or to replacement parts
29 or components for any equipment for which a waiver was provided
30 under the provisions of this section.

31 f. As used in this section:

32 "Manufactured in the United States" means, in the case of
33 assembled articles, material or supplies, components,
34 subcomponents, parts, and equipment used in manufacturing, that
35 all final assembly, processing, packaging, testing and any other
36 process that adds value, quality, or reliability occurs in the United
37 States;

38 "Public institution of higher education" shall have the meaning
39 as set forth in N.J.S.18A:72A-3; and

40 "Public work" means any public building, public highway,
41 bridge, or other public betterment, work or improvement of a
42 permanent nature, constructed, reconstructed, repaired or improved
43 at the expense of the public.

44

45 5. (New section) a. The Legislature finds that there is
46 widespread concern that public contracts and economic
47 development assistance financed by the taxpayers of the State are

1 being given to companies that send work outside of the United
2 States. Business, labor, and government leaders recognize the need
3 for an objective and thorough study of the extent to which public
4 contracts and projects financed by taxpayers are being performed
5 outside the United States, and the impact of this practice on the
6 State's economy. Therefore, the Legislature finds it necessary to:

7 (1) Require bidders for public contracts and applicants for
8 development assistance to disclose where the contract or project
9 will be performed;

10 (2) Compile this data and make it available for public review
11 and comment; and

12 (3) Study the impact on the State's economy of taxpayer-
13 financed contracts and projects being performed outside the United
14 States.

15 b. Each vendor submitting a bid or contract to provide services
16 and all development assistance applicants shall certify where the
17 services covered by the bid, contract, or development assistance
18 will be performed. Each vendor with a contract, each
19 subcontractor, and each recipient of development assistance, in
20 effect on the effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill), notwithstanding any other requirements
22 that have been imposed, shall certify where the services covered by
23 the bid, contract, or development assistance are being performed;
24 and disclose the name and headquarters location of its parent
25 company.

26 c. The joint legislative task force, established under subsection
27 e. of this section, shall create and maintain a comprehensive
28 database of contract awards and development assistance provided
29 by all State agencies that includes, but is not limited to, the
30 information included in this section.

31 d. The State shall conduct a study that includes, but need not be
32 limited to, an evaluation of the following:

33 (1) The extent to which current public contracts, and any
34 subcontracts under such contracts, are being performed outside of
35 the United States and products and materials necessary in
36 connection with the contracts are obtained outside of the United
37 States;

38 (2) The extent to which the performance of public contracts in
39 whole or in part in other countries results in the creation or loss of
40 family-wage or other jobs in the State;

41 (3) The extent to which public contracts being performed in
42 whole or in part in other countries creates a need for adjustment
43 assistance and retraining programs to ensure the State's business
44 climate, its employers, and its workers remain competitive globally;

45 (4) The extent to which public contracts performed at locations
46 outside the United States involve a risk of unauthorized use or
47 disclosure of personal information, as well as a review of applicable

- 1 State and federal laws regarding the privacy of personal
2 information;
- 3 (5) The economic costs and benefits of awarding public
4 contracts, and any subcontracts under such contracts, to New Jersey
5 companies;
- 6 (6) The applicability of international trade agreements and
7 federal law to State procurement policies;
- 8 (7) The extent to which legislative authority over State
9 procurement is adequately protected, including the ability of State
10 agencies to adequately supervise the performance of contracts when
11 all or a portion of the work is performed in a country other than the
12 United States; and
- 13 (8) The reason New Jersey businesses choose to locate
14 operations outside the United States.
- 15 e. The study shall be conducted by a joint task force of the
16 Senate and the General Assembly consisting of the following: two
17 members of the General Assembly to be appointed by the Speaker
18 of the General Assembly; two members of the General Assembly to
19 be appointed by the General Assembly Minority Leader; two
20 members of the Senate to be appointed by the Senate Majority
21 Leader; and two members of the Senate to be appointed by the
22 Senate Minority Leader.
- 23 f. The joint task force shall consult with and be advised and
24 monitored by an advisory committee consisting of seven members:
25 three members representing labor, appointed jointly by the
26 President of the Senate and the Speaker of the General Assembly,
27 from a list of names recommended by a Statewide organization
28 representing a cross-section of organized labor in the State; three
29 members representing business, one of whom shall represent small
30 business, appointed jointly by the President of the Senate and the
31 Speaker of the General Assembly, from a list of names
32 recommended by a Statewide organization of employers
33 representing a cross-section of employers of the State, and one
34 member representing the public.
- 35 g. The information maintained in the comprehensive database
36 outlined above shall be made available online to the Legislature and
37 the public.
- 38 h. The findings and recommendations of the joint task force
39 shall be reported in writing annually to the Legislature, with the
40 first report to be submitted within 14 months following the effective
41 date of P.L. , c. (C.) (pending before the Legislature as this
42 bill). In addition to filing each report with the Legislature, the joint
43 task force shall make each report available to the public on the
44 Legislature's Internet homepage.
- 45 i. As used in this section:

- 1 “Parent company” means any person, association, corporation,
2 joint venture, partnership, or other entity that owns or controls 50
3 percent or more of a recipient corporation;
- 4 “Development assistance” means any form of public assistance,
5 including tax expenditures, made for the purpose of stimulating
6 economic development of a corporation, industry, geographic
7 jurisdiction, or any other sector of the State’s economy, including,
8 but not limited to, industrial development bonds, training grants,
9 loans, loan guarantees, enterprise zones, empowerment zones, tax
10 increment financing, fee waivers, land price subsidies,
11 infrastructure whose principal beneficiary is a single business or
12 defined group of businesses at the time it is built or improved,
13 matching funds, tax abatements, tax credits, and tax discounts of
14 every kind, including corporate franchise, personal income, sales
15 and compensating use, raw materials, real property, job creation,
16 individual investment, excise, utility, inventory, accelerated
17 depreciation, and research and development tax credits and
18 discounts;
- 19 "Public body" means the State or any county, municipality,
20 school district, authority or other political subdivision of the State;
21 and
- 22 “Public contract” means a contract between a public body and a
23 private entity for the private entity to provide goods or services,
24 including public work.
- 25
- 26 6. R.S.52:33-1 through R.S.52:33-4 are repealed.
- 27
- 28 7. This act shall take effect immediately.