

[Third Reprint]

## **ASSEMBLY, No. 2146**

# **STATE OF NEW JERSEY**

## **220th LEGISLATURE**

INTRODUCED FEBRUARY 7, 2022

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### **SYNOPSIS**

Creates State business assistance program to establish contracting agency procurement goals for socially and economically disadvantaged business enterprises.

### **CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 6, 2023, with amendments.

(Sponsorship Updated As Of: 12/21/2023)

1 AN ACT concerning the establishment of State business assistance  
2 program for socially and economically disadvantaged business  
3 enterprises and supplementing Title 52 of the Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. As used in this act:

9 "Contracting agency" means the State or any board, commission,  
10 committee, authority, or agency of the State.

11 "Department" means the Department of the Treasury.

12 "Division" means the Division of Purchase and Property in the  
13 Department of the Treasury.

14 "Director" means the director of the Division of Purchase and  
15 Property.

16 "Economically disadvantaged" means that the owner or owners of  
17 a business enterprise:

18 demonstrate that the ability to compete in business has been  
19 impaired due to diminished capital and credit opportunities, as  
20 compared to others in the same or similar line of business who are not  
21 socially disadvantaged; <sup>1</sup>**[or]** and<sup>1</sup>

22 demonstrate a personal net worth that does not exceed a level  
23 established by the director, but does not include equity in any personal  
24 residence or business for which the person is applying for certification.

25 "Qualified business enterprise" means a business which has its  
26 principal place of business in the State, is independently owned and  
27 operated, meets all other qualifications as established in accordance  
28 with this act, and is certified for participation in the business assistance  
29 program by the director.

30 "Socially disadvantaged" means that the owner or owners of a  
31 business enterprise:

32 demonstrate membership in a racial minority group or show  
33 personal disadvantage due to color, ethnic origin, gender, <sup>3</sup>sexual  
34 orientation, gender identity,<sup>3</sup> physical disability <sup>2</sup>including, but not  
35 limited to, a service-connected disability declared by the United States  
36 Department of Veterans Affairs, or its successor<sup>2</sup>, long-term residence  
37 in an environment isolated from the mainstream of American society,  
38 or location in an area of high unemployment, with such demonstration  
39 creating a presumption that may be rebutted;

40 demonstrate personal disadvantage not common to other  
41 businesses, as determined by the director; or

42 demonstrate a business location in a qualified census tract having a  
43 poverty rate of 20 percent or more; or a census tract in which the  
44 median family income for the census tract does not exceed 80 percent  
45 of the greater of the Statewide median family income or the median

**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:

<sup>1</sup>Assembly ACD committee amendments adopted March 7, 2022.

<sup>2</sup>Assembly ACE committee amendments adopted October 20, 2022.

<sup>3</sup>Senate SBA committee amendments adopted March 6, 2023.

1 family income of the metropolitan statistical area in which the census  
2 tract is situated.

3

4 2. The director shall establish a business assistance program for  
5 qualified business enterprises that are socially disadvantaged and  
6 economically disadvantaged and certified as qualified in accordance  
7 with this act, P.L. , c. (C. ) (pending before the Legislature as  
8 this bill). The program shall be implemented in addition to any set-  
9 aside program established by law. The program shall:

10 a. establish procedures by which a socially and economically  
11 disadvantaged business enterprise may apply for certification as a  
12 qualified business enterprise;

13 b. establish a system of <sup>3</sup>accepting State-approved third party  
14 certifications or<sup>3</sup> certifying qualified business enterprises based on  
15 a requirement that the business owner or owners show both social  
16 and economic disadvantages, and the relative wealth of the business  
17 seeking certification as well as the personal wealth of the owner or  
18 owners of the business;

19 c. establish standards to determine when a qualified business  
20 enterprise no longer qualifies for qualified business enterprise  
21 certification;

22 d. establish a system to evaluate bid proposals to encourage  
23 qualified business enterprises to participate in the procurement of  
24 professional design and information technology services;

25 e. establish a process to mediate complaints and to review  
26 qualified business enterprise certification appeals;

27 f. implement an outreach program to educate potential  
28 participants about the business assistance program;

29 g. establish a system to assist contracting agencies in  
30 identifying and utilizing qualified business enterprises in their  
31 contracting processes;

32 h. implement a system of self-reporting by qualified business  
33 enterprises as well as an on-site inspection process to validate the  
34 qualifications of a qualified business enterprise;

35 i. establish a waiver mechanism to waive program goals or  
36 participation requirements for those contracting agencies that,  
37 despite their best-documented efforts, are unable to contract with  
38 qualified business enterprises;

39 j. establish a process for monitoring overall program  
40 compliance in which equal employment opportunity officers  
41 primarily are responsible for monitoring their respective contracting  
42 agencies; and

43 k. establish guidelines for public institutions of higher  
44 education for awarding contracts to allow the institutions to  
45 establish contracting agency procurement goals for contracting with  
46 qualified business enterprises.

1       3. a. (1) The director shall establish contracting agency  
2 procurement goals for contracting with qualified business  
3 enterprises in the awarding of contracts. These goals may, where  
4 appropriate, be attained by the direct designation of prime contracts  
5 for qualified business enterprises or, in the case of a prime contract  
6 not directly designated for qualified business enterprises, by  
7 requiring that a portion of such a prime contract be subcontracted to  
8 a qualified business enterprise. Each contracting agency shall make  
9 a good faith effort to attain the goals established in this section.

10       (2) The director shall develop a process for evaluating and  
11 adjusting goals to determine what adjustments are necessary to  
12 achieve participation goals.

13       b. Each contracting agency shall annually develop, in  
14 consultation with the department, a plan for achieving its qualified  
15 business enterprise goals.

16

17       4. a. The department shall establish reasonable regulations  
18 appropriate for controlling the designation of socially and  
19 economically disadvantaged businesses and shall maintain lists of  
20 designated businesses.

21       b. The department shall establish a procedure whereby  
22 businesses may request inclusion on appropriate lists for qualified  
23 business enterprises.

24       c. The department shall establish a procedure for annually  
25 reviewing the lists and determining whether the businesses on the  
26 lists shall continue to be designated as qualified business  
27 enterprises.

28       d. The department shall establish a procedure whereby the  
29 certification of a business as a qualified business enterprise may be  
30 challenged by a third party.

31       e. Any procedures established pursuant to subsections b., c.,  
32 and d. of this section shall include notice to the business whose  
33 certification is at issue and an opportunity for a hearing at the  
34 department. The hearing shall not be considered a contested case  
35 under the "Administrative Procedure Act," P.L. 1968, c. 410 (C.  
36 52:14B-1 et seq.).

37

38       5. Each contracting agency shall submit an annual report to the  
39 department according to a schedule announced by the department.  
40 This report shall include the following information:

41       a. the total dollar value and number of contracts awarded to  
42 qualified business enterprises, and the percentage of the total State  
43 procurements by the contracting agency that the figure of total  
44 dollar value reflects;

45       b. the types and sizes of businesses receiving contracts and the  
46 nature of the purchases and contracts; and

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

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

7  
8 6. The department shall consult regularly with representatives  
9 of the contracting industry for the purpose of implementing the  
10 provisions of this act, P.L. , c. (C. ) (pending before the  
11 Legislature as this bill). These consultations shall take place not less  
12 than once every six months.

13  
14 7. When the department determines that a business has been  
15 certified as a qualified business enterprise on the basis of false  
16 information knowingly supplied by the business and has been  
17 awarded a contract to which it would not otherwise have been  
18 entitled under this act, the department shall:

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

22 b. in addition to the amount due under paragraph a., assess the  
23 business a penalty in an amount of not more than 10 percent of the  
24 amount of the contract involved;

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

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

31 All payments to the State pursuant to paragraph a. of this section  
32 shall be deposited in the fund out of which the contract involved  
33 was awarded. All payments to the State pursuant to paragraph b. of  
34 this section shall be deposited in the State General Fund.

35  
36 8. The Department of the Treasury shall promulgate rules and  
37 regulations, in accordance with the "Administrative Procedure Act,"  
38 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions  
39 of this act.

40  
41 9. This act shall take effect immediately.