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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 amended on January 8, 2024 by the General Assembly pursuant to the Governor's recommendations.

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

1 AN ACT concerning the establishment of ⁴**[State business**
2 assistance] a⁴ program for socially and economically
3 disadvantaged business ⁴**[enterprises]** owners⁴ and
4 supplementing Title 52 of the Revised Statutes.

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

8
9 1. As used in this act:
10 "Contracting agency" means the State or any board, commission,
11 committee, authority, ⁴instrumentality,⁴ or agency of the State ⁴over
12 which the Governor exercises executive authority⁴.

13 "Department" means the Department of the Treasury.

14 ⁴**[“Division”** means the Division of Purchase and Property in the
15 Department of the Treasury.

16 “Director” means the director of the Division of Purchase and
17 Property.]⁴

18 “Economically disadvantaged” means that the owner or owners
19 of a business enterprise:

20 demonstrate that the ability to compete ⁴**[in business]** for State
21 contracts⁴ has been impaired due to diminished capital and credit
22 opportunities, as compared to others in the same or similar line of
23 business who are not socially disadvantaged; ¹**[or]** and¹

24 demonstrate a personal net worth that does not exceed a level
25 established by the ⁴**[director]** department⁴, but does not include
26 equity in any personal residence or business for which the person is
27 applying for certification.

28 “Qualified business enterprise” means a business which has its
29 principal place of business in the State, is independently owned and
30 operated, meets all other qualifications as established in accordance
31 with this act, and is certified for participation in the ⁴**[business**
32 assistance]⁴ program by the ⁴**[director]** department⁴.

33 “Socially disadvantaged” means that the owner or owners of a
34 business enterprise:

35 demonstrate membership in a racial minority group or show
36 personal disadvantage due to color, ethnic origin, gender, ³sexual
37 orientation, gender identity,³ physical disability ²including, but not
38 limited to, a service-connected disability declared by the United
39 States Department of Veterans Affairs, or its successor², long-term
40 residence in an environment isolated from the mainstream of
41 American society, or location in an area of high unemployment,
42 with such demonstration creating a presumption that may be
43 rebutted;

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:

¹Assembly ACD committee amendments adopted March 7, 2022.

²Assembly ACE committee amendments adopted October 20, 2022.

³Senate SBA committee amendments adopted March 6, 2023.

⁴Assembly amendments adopted in accordance with Governor's recommendations January 8, 2024.

1 ⁴[demonstrate personal disadvantage not common to other
2 businesses, as determined by the director;]⁴ or

3 demonstrate a business location in a qualified census tract having
4 a poverty rate of 20 percent or more; or a census tract in which the
5 median family income for the census tract does not exceed 80
6 percent of the greater of the Statewide median family income or the
7 median family income of the metropolitan statistical area in which
8 the census tract is situated.

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

17 a. establish procedures by which a socially and economically
18 disadvantaged business enterprise may apply for certification as a
19 qualified business enterprise;

20 b. establish a system of ³accepting State-approved third party
21 certifications or³ certifying qualified business enterprises based on
22 a requirement that the business owner or owners show both social
23 and economic disadvantages, and the relative wealth of the business
24 seeking certification as well as the personal wealth of the owner or
25 owners of the business;

26 c. establish standards to determine when a qualified business
27 enterprise no longer qualifies for qualified business enterprise
28 certification;

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

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

34 f. implement an outreach program to educate potential
35 participants about the business assistance program;

36 g. establish a system to assist contracting agencies in
37 identifying and utilizing qualified business enterprises in their
38 contracting processes;

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

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

46 j. establish a process for monitoring overall program
47 compliance in which equal employment opportunity officers

1 primarily are responsible for monitoring their respective contracting
2 agencies; and

3 k. establish guidelines for public institutions of higher
4 education for awarding contracts to allow the institutions to
5 establish contracting agency procurement goals for contracting with
6 qualified business enterprises.】

7 a. The department shall establish a program for qualified
8 business enterprise owners that are socially and economically
9 disadvantaged and certified as qualified in accordance with this act,
10 P.L. , c. (C.) (pending before the Legislature as this bill). To
11 establish and implement the program, the department shall:

12 (1) establish a procedure through which a socially and
13 economically disadvantaged business owner may apply for
14 certification as a qualified business enterprise under the program,
15 which certification shall be supported by available data and
16 information;

17 (2) establish a system for accepting State-approved third party
18 certifications for the purpose of certifying qualified business
19 enterprises;

20 (3) establish reasonable regulations appropriate for controlling
21 the certification of socially and economically disadvantaged
22 businesses as qualified business enterprises and for maintaining a
23 list of such business enterprises;

24 (4) establish a procedure for annually reviewing the list of
25 qualified business enterprises for the purpose of determining
26 whether a business on the list is eligible to maintain its certification
27 as a qualified business enterprise; and

28 (5) establish a procedure through which the certification of a
29 business as a qualified business enterprise may be challenged by a
30 third party.

31 b. Any procedures established pursuant to paragraphs (1), (4),
32 and (5) of subsection a. of this section shall include notice to the
33 business owner whose certification is at issue and an opportunity
34 for a hearing before the department. The hearing shall not be
35 considered a contested case pursuant to the “Administrative
36 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).⁴

37
38 3. a. (1) The ⁴【director】 department⁴ shall establish
39 contracting agency procurement goals for contracting with qualified
40 business enterprises in the awarding of contracts. These goals may,
41 where appropriate, be attained by the direct designation of prime
42 contracts for qualified business enterprises or ⁴【, in the case of a
43 prime contract not directly designated for qualified business
44 enterprises, by requiring that a portion of such a prime contract be
45 subcontracted to a qualified business enterprise】 by subcontracting,
46 and in accordance with and supported by available data and

1 information⁴. Each contracting agency shall make a good faith
2 effort to attain the goals established in this section.

3 (2) The ⁴**[director]** department⁴ shall develop a process for
4 evaluating and adjusting goals to determine what adjustments are
5 necessary to achieve participation goals.

6 b. Each contracting agency shall annually develop, in
7 consultation with the department, a plan for achieving its qualified
8 business enterprise goals.

9
10 ⁴**[4.** a. The department shall establish reasonable regulations
11 appropriate for controlling the designation of socially and
12 economically disadvantaged businesses and shall maintain lists of
13 designated businesses.

14 b. The department shall establish a procedure whereby
15 businesses may request inclusion on appropriate lists for qualified
16 business enterprises.

17 c. The department shall establish a procedure for annually
18 reviewing the lists and determining whether the businesses on the
19 lists shall continue to be designated as qualified business
20 enterprises.

21 d. The department shall establish a procedure whereby the
22 certification of a business as a qualified business enterprise may be
23 challenged by a third party.

24 e. Any procedures established pursuant to subsections b., c.,
25 and d. of this section shall include notice to the business whose
26 certification is at issue and an opportunity for a hearing at the
27 department. The hearing shall not be considered a contested case
28 under the "Administrative Procedure Act," P.L. 1968, c. 410 (C.
29 52:14B-1 et seq.).]⁴

30
31 ⁴**[5.] 4.**⁴ Each contracting agency shall submit an annual report
32 to the department according to a schedule announced by the
33 department. This report shall include the following information:

34 a. the total dollar value and number of contracts awarded to
35 qualified business enterprises, and the percentage of the total State
36 procurements by the contracting agency that the figure of total
37 dollar value reflects;

38 b. the types and sizes of businesses receiving contracts and the
39 nature of the purchases and contracts; and

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

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

1 ⁴[6. The department shall consult regularly with representatives
2 of the contracting industry for the purpose of implementing the
3 provisions of this act, P.L. , c. (C.) (pending before the
4 Legislature as this bill). These consultations shall take place not less
5 than once every six months.]⁴

6
7 ⁴[7. When the department determines that a business has been
8 certified as a qualified business enterprise on the basis of false
9 information knowingly supplied by the business and has been
10 awarded a contract to which it would not otherwise have been
11 entitled under this act, the department shall:

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

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

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

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

24 All payments to the State pursuant to paragraph a. of this section
25 shall be deposited in the fund out of which the contract involved
26 was awarded. All payments to the State pursuant to paragraph b. of
27 this section shall be deposited in the State General Fund.]⁴

28
29 ⁴[8.] 5.⁴ The Department of the Treasury shall promulgate rules
30 and regulations, in accordance with the “Administrative Procedure
31 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
32 provisions of this act.

33
34 ⁴[9.] 6.⁴ This act shall take effect ⁴[immediately] the 181st
35 day next following enactment, except the State Treasurer may take
36 any anticipatory administrative action in advance as shall be
37 necessary for the implementation of this act⁴.