ASSEMBLY, No. 4831



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED OCTOBER 24, 2022

Sponsored by:

Assemblywoman MARILYN PIPERNO

District 11 (Monmouth)

SYNOPSIS

Creates certain assistance and set-aside programs for businesses owned by lesbian, gay, bisexual, or transgender persons, by persons with a disability, and by veterans.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning certain assistance and set-aside programs for businesses owned by lesbian, gay, bisexual, or transgender persons, businesses owned by persons with a disability, and businesses owned by veterans, and supplementing Title 52 of the Revised Statutes and Title 40A and Title 18A of the New Jersey Statutes.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. The economy of the State of New Jersey is vitally dependent upon the health and stability of the small and independent businesses in the State;

b. The future welfare of the State depends on the continued existence and development of these same small and independent businesses;

c. Despite their contribution as major generators of employment, small businesses are struggling to survive in the private sector;

d. Due to a historical legacy of disregard and discrimination toward persons with differing sexual orientations and gender identities or expressions, and toward persons with a disability, and due to lost opportunities suffered by veterans, these groups control a disproportionately small fraction of the productive resources of the State and are, therefore, largely excluded from the mainstream of the overall economy;

e. Problems of inadequate capital and management expertise that pertain to businesses owned by persons with differing sexual orientations and gender identities or expressions, persons with a disability, and veterans are the same problems that pertain, in varying degrees, to all small businesses;

f. The public sector, at both the national and State levels, has recognized the appropriateness of the role of encouraging small businesses generally and persons with differing sexual orientations and gender identities or expressions, persons with a disability, and veterans in particular;

g. Economic development within populations of persons with differing sexual orientations and gender identities or expressions, persons with a disability, and veterans increases the prosperity of the entire State by generating revenues and reducing the State burden of unemployment, welfare, and other supportive social services;

h. In order to promote these goals, a permanent government entity, the New Jersey Economic Development Authority, is given a long-term mandate for the delivery of financial and overall assistance to diverse business communities, to include business enterprises owned by persons who are lesbian, gay, bisexual, and transgender, or LGBT, persons with a disability, and persons who are veterans;

i. The authority should focus its efforts clearly on areas of greatest need and have commitment toward the establishment of quality programs;

j. The authority should be responsible, both directly and as an intermediary, for providing financing and for coordinating a wide range of intensive and ongoing business expertise programs;

k. The authority should pursue its mandate in accordance with a well-conceived business strategy and underwriting standards that approximate those utilized by traditional lenders;

l. The authority’s success in fulfilling its mandate should be measured by the ultimate viability of the enterprises it assists;

m. Small businesses, and businesses owned by LGBT persons, persons with a disability, and veterans, in particular, are often in need of financial and technical assistance which may be unavailable to them through traditional sources;

n. It is the public policy of this State to provide a source of technical assistance and financial assistance in order to encourage the establishment and the growth of small businesses and businesses owned by LGBT persons, persons with a disability, and veterans; and

o. It is the intention of this Legislature that the Division of Revenue in the Department of the Treasury, in concert with the authority, provide a full range of financial and technical assistance to small businesses and businesses owned by LGBT persons, persons with a disability, and veterans, in order to ensure their success and their growth.

2. As used in sections 2 through 6 of this act, P.L.    , c.    (C.        ) (pending before the Legislature as this bill):

“Eligible business” means a qualified LGBT business enterprise, a qualified disability-owned business enterprise, or a qualified veteran business enterprise, which is certified by the Division of Revenue in the Department of the Treasury or an approved third-party agency and which is determined to be eligible to receive assistance or participate in programs according to the standards established pursuant to this act, P.L. , c. (C. ) (pending before the Legislature as this bill).

“LGBT” means lesbian, gay, bisexual, or transgender.

“Person with a disability” means a person with a disability as defined under the “Americans with Disabilities Act of 1990,” (42 U.S.C. s.12101 et seq.).

“Qualified LGBT business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a lesbian, gay, bisexual, or transgender person;

(2) a partnership or joint venture owned and controlled by lesbian, gay, bisexual, or transgender persons in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more lesbian, gay, bisexual, or transgender persons who own it, and which is at least 51 percent owned by lesbian, gay, bisexual, or transgender persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified disability-owned business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a person with a disability;

(2) a partnership or joint venture owned and controlled by persons with a disability, in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more persons with a disability who own it, and which is at least 51 percent owned by such persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified veteran business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a veteran;

(2) a partnership or joint venture owned and controlled by veterans, in which at least 51 percent of the ownership is held by one or more veterans and the management and daily business operations of which are controlled by one or more veterans who own it;

(3) a corporation or other entity whose management and daily business operations are controlled by one or more veterans who own it, and which is at least 51 percent owned by veterans, or, if stock is issued, at least 51 percent of the stock is owned by one or more veterans; or

(4) an enterprise wherein at least 25 percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and which also submits forms quarterly to the contracting unit showing proof of veteran status for all the veteran employees.

“Third-party agency” means a nationally recognized organization that adheres to generally accepted standards for supplier diversity certification, and shall include, but not be limited to, the National Gay and Lesbian Chamber of Commerce for the certification of LGBT business enterprises and the United States Business Leadership Network for the certification of disability-owned business enterprises.

“Veteran” shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans’ Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids.

3. a. The New Jersey Economic Development Authority shall establish requirements as may be necessary and practical for the use of eligible businesses on projects financed in whole or in part by the authority. The authority may waive bonding requirements in full or in part in order to facilitate the participation of an eligible business on such projects if the eligible business has been rejected by two surety companies authorized to do business in this State. The authority may require a cash deposit, increase the amount of retention, or limit or eliminate periodic payments. No waiver may be extended more than three times to any one contractor.

b. The authority may provide assistance to eligible businesses that are unable to secure bonding for projects other than those financed by the authority. Upon presentation of evidence in writing of an eligible business, the authority may guarantee the performance thereof through a letter of credit or by other means.

4. a. The Chief Executive Officer of the New Jersey Economic Development Authority shall consider and may approve an application for a financial assistance grant of State funds from any county or municipality for the purpose of paying up to 50 percent of the cost of a pilot program, established pursuant to section 8 of P.L.    , c. (C. ) (pending before the Legislature as this bill),to provide technical or certification assistance to eligible businesses. The chief executive officer may approve any of the applications based on such criteria as the chief executive officer deems appropriate and shall not be required to provide a grant to every applicant. Any application for a grant shall include such information and documentation as the chief executive officer may require to ensure that any financial assistance approved pursuant to the provisions of this section will further the purpose and intent of this section.

b. Any application to the chief executive officer for a financial assistance grant pursuant to the provisions of this section shall include the following:

(1) the resolution or ordinance adopted that establishes the program;

(2) a detailed budget for the services for which grant support is being applied;

(3) evidence of the availability to the county or municipality of otherwise unencumbered and uncommitted funds sufficient to finance that portion of the services which is not to be funded from the grant; and

(4) any other information and documentation as the chief executive officer may require to ensure that any grant approved pursuant to the provisions of this section will as effectively as possible further the purpose and intent of this section.

c. The chief executive officer is authorized to require any periodic reports necessary to ascertain the progress of any activity supported directly or indirectly by a grant of financial assistance pursuant to the provisions of this section, and further, to ascertain the extent of compliance with any contract for a grant.

d. The chief executive officer shall submit to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), not more than 12 months following the effective date of this act, P.L.    , c.      (pending before the Legislature as this bill), a report evaluating the effectiveness of the pilot programs which receive financial assistance pursuant to the provisions of this section. The report shall include recommendations concerning the appropriateness of continued State funding for the county and municipal programs of technical or certification assistance.

e. The chief executive officer shall issue and promulgate rules and regulations in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary and appropriate to carry out the purposes of this section.

5. The Division of Revenue in the Department of the Treasury shall have the power to:

a. establish loan programs for eligible businesses, using criteria for eligibility which meet the standards established by the New Jersey Economic Development Authority or which meet the standards established by other State or federal programs;

b. compile lists of qualified professionals, including LGBT persons, persons with a disability, and veterans, in specific areas of expertise, to be disseminated to eligible businesses and to be used in making referrals, provided a qualified professional included on such lists submits to division written consent to be included thereon;

c. use available resources within the State to coordinate managerial and technical assistance;

d. establish, in cooperation with institutions of higher education, an internship program for candidates for undergraduate and graduate degrees in business administration and related fields for the purpose of providing assistance to the division, to the authority, and to businesses which are eligible to receive assistance under this act, P.L. , c. (C. ) (pending before the Legislature as this bill);

e. provide assistance, consistent with the provisions of this section and in conjunction with, or at the request of, the authority, to eligible businesses, including, but not limited to:

(1) assistance in researching markets or in market analysis;

(2) advice in advertising and marketing;

(3) advice in selecting sales or other distribution channels;

(4) information and training with respect to bidding on government contracts;

(5) assistance in obtaining legal counsel;

(6) financial analysis and accounting assistance;

(7) assistance in obtaining appropriate insurance, including benefit packages for employees;

(8) assistance in arranging contracts with franchisers;

(9) assistance in arranging commercial loans made by a State or federally chartered bank, savings bank, or savings and loan association, if, with respect to loans made by State chartered institutions, the loans are made in accordance with the powers conferred on those institutions pursuant to Title 17 of the Revised Statutes, including bridge loans and cash flow loans;

(10) assistance in negotiating license agreements;

(11) assistance in procuring bonding or substitutes therefor;

(12) making referrals to private consultants, institutions, and other providers of services, according to the specific needs of an eligible business;

(13) assistance in finding sources of financing from federal, State, and local sources; and

(14) assistance in gaining information about employee training and development programs;

f. provide a central resource for eligible businesses in their dealing with federal, State, and local governments, including information regarding government regulations or laws which affect eligible businesses;

g. initiate and encourage education programs for eligible businesses;

h. exercise authority within the State to establish a uniform procedure for departments, agencies, and authorities of the State and of its political subdivisions to verify the eligibility of a business to bid on contracts, or otherwise represent itself as an eligible business;

i. provide any other service which it deems necessary or which may be requested by the authority;

j. exercise authority within the State as the certification and verification authority for departments, agencies, and authorities of the State, except that when the division’s procedure for certification of a business as an eligible business conflicts with a federal certification procedure that affects a State project in which the federal government participates, the federal certification procedure shall take precedence. Public agencies shall identify those projects and shall notify the division; and

k. issue and promulgate rules and regulations in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary and appropriate to carry out the purposes of this section.

6. a. The Director of the Division of Revenue in the Department of the Treasury shall approve third-party agencies to perform certification of eligible businesses. The division shall have the authority to accept certifications by approved third-party agencies, and is authorized to develop and implement a streamlined verification process for any eligible business that has a certification through an approved third-party agency.

b. In establishing and administering the procedure required by this section, the director shall ensure that the application and certification and verification process is clear, concise, and, to the extent practicable, does not require duplication of effort on the part of the applicant, the division, or the public agency administering the program. In furtherance of these objectives, the director shall:

(1) provide a single form for application for certification or verification, which form shall be written in a simple, clear, understandable, and easily readable way, and include instructions as to the certification or verification procedure and any additional documents or information required to be separately supplied by the applicant for a particular program;

(2) have the authority to require the payment of a single fee, to be established by the director, to compensate the division for its cost in administering the certification or verification process;

(3) compile, maintain, and make available to the public agencies lists of businesses certified and verified as eligible businesses; and

(4) provide for dissemination of information to interested parties, and the public at large, concerning the certification and verification of businesses as eligible businesses with the assistance of approved third-party agencies.

For the purposes of this section, “public agency” means the State or any department, division, agency, authority, board, commission, or committee thereof.

c. The director shall report to the Governor and the Legislature annually on the status of the certification and verification procedure required by this section, including any recommendations for legislation which would enable the division to more efficiently and effectively carry out its duties and responsibilities under this section. Any written report submitted to the Legislature shall be provided pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

d. The director may require an eligible business that has been certified or verified pursuant to this section to re-certify or re-verify eligibility annually.

e. The State Treasurer shall issue and promulgate rules and regulations in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary and appropriate to carry out the purposes of this section.

7. a. As used in this section:

“Eligible business” means a qualified LGBT business enterprise, a qualified disability-owned business enterprise, a or a qualified veteran business enterprise, which is certified by the Division of Revenue in the Department of the Treasury or an approved third-party agency and which is determined to be eligible to receive assistance or participate in programs according to the standards established pursuant to this act, P.L. , c. (C. ) (pending before the Legislature as this bill).

“LGBT” means lesbian, gay, bisexual, or transgender.

“Person with a disability” means a person with a disability as defined under the “Americans with Disabilities Act of 1990,” (42 U.S.C. s.12101 et seq.).

“Qualified LGBT business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a lesbian, gay, bisexual, or transgender person;

(2) a partnership or joint venture owned and controlled by lesbian, gay, bisexual, or transgender persons in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more lesbian, gay, bisexual, or transgender persons who own it, and which is at least 51 percent owned by lesbian, gay, bisexual, or transgender persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified disability-owned business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a person with a disability;

(2) a partnership or joint venture owned and controlled by persons with a disability, in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more persons with a disability who own it, and which is at least 51 percent owned by such persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified veteran business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a veteran;

(2) a partnership or joint venture owned and controlled by veterans, in which at least 51 percent of the ownership is held by one or more veterans and the management and daily business operations of which are controlled by one or more veterans who own it;

(3) a corporation or other entity whose management and daily business operations are controlled by one or more veterans who own it, and which is at least 51 percent owned by veterans, or, if stock is issued, at least 51 percent of the stock is owned by one or more veterans; or

(4) an enterprise wherein at least 25 percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and which also submits forms quarterly to the contracting unit showing proof of veteran status for all the veteran employees.

“Third-party agency” means a nationally recognized organization that adheres to generally accepted standards for supplier diversity certification, and shall include, but not be limited to, the National Gay and Lesbian Chamber of Commerce for the certification of LGBT business enterprises and the United States Business Leadership Network for the certification of disability-owned business enterprises.

“Total procurements” means all purchases, contracts, or acquisitions of a contracting unit whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law.

“Veteran” shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids.

b. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish any or all of the following: a qualified LGBT business enterprise set-aside program; a qualified disability-owned business enterprise set-aside program; or a qualified veteran business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to eligible businesses. Any goal established pursuant to this subsection may be attained by requiring that a portion of a contract be subcontracted to an eligible business in addition to designating an entire contract to such business. Each contracting unit shall make a good faith effort to attain any goal established.

c. (1) A contracting unit of a county or municipality that has established a qualified LGBT business enterprise set-aside program, a qualified disability-owned business enterprise set-aside program, or a qualified veteran business enterprise set-aside program, shall designate that a contract, subcontract, or other means of procurement of goods, services, equipment, or construction be awarded to an eligible business if the contracting unit is likely to receive bids from at least two such eligible businesses at a fair and reasonable price. Such designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a qualified LGBT business enterprise set-aside contract, a qualified disability-owned business enterprise set-aside contract, or a qualified veteran business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to eligible businesses for the program sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

(2) If the contracting unit determines that two bids from eligible businesses cannot be obtained, the contracting unit may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.). The cancelled designation shall not be considered in determining the percentage of contracts awarded pursuant to this section. If the contracting unit determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the contracting unit shall reject all bids and withdraw the designation of the set-aside contract. Eligible businesses for the program shall be notified in writing of the set-aside cancellation, the reasons for the rejection, and the contracting unit’s intent to resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.). The cancelled bid solicitation shall not be considered in determining the percentage of contracts awarded pursuant to this section.

d. When the governing body of a county or municipality determines that a business has been classified as an eligible business on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this section, the governing body shall have the authority to:

(1) assess against the business any difference between the contract amount and what the governing body’s cost would have been if the contract had not been awarded in accordance with this section;

(2) in addition to the amount due under paragraph (1) of this subsection, assess against the business a penalty in an amount of not more than 10 percent of the amount of the contract involved; and

(3) order that the business is ineligible to transact any business with the governing body or contracting unit of the governing body for a period deemed appropriate by the governing body.

Prior to the issuance of any final determination, assessment, or order under this subsection, the governing body shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in this subsection.

e. Each contracting unit of a county or municipality that has established a qualified LGBT business enterprise set-aside program, a qualified disability-owned business enterprise set-aside program, or a qualified veteran business enterprise set-aside program, shall submit a report to its governing body by January 31 of each year describing the contracting unit’s efforts in attaining the set-aside goals and the percentage of the dollar value of its total procurements awarded to qualified LGBT business enterprises, qualified disability-owned business enterprises, or qualified veteran business enterprises, as appropriate. The governing body shall publish a list of each unit’s attainments in the immediately preceding local fiscal year, to include the county or municipal average, in at least one newspaper circulating in the county or municipality, as appropriate, by March 1 of each year.

f. (1) The Director of the Division of Local Government Services in the Department of Community Affairs may adopt rules and regulations pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to effectuate the purposes of this section.

(2) All provisions of the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) and any supplements thereto, shall apply to purchases, contracts, and agreements made pursuant to this section unless otherwise superseded by this section.

8. a. The governing body of any county or municipality may adopt, by resolution or ordinance, a pilot program to provide technical or certification assistance to eligible businesses, as that term is defined in section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), within the jurisdiction of the county or municipality.

b. The county or municipality may submit an application for a financial assistance grant to pay for up to 50 percent of the pilot program to the Chief Executive Officer of the New Jersey Economic Development Authority. The submission shall include such information and documentation as the chief executive officer may require pursuant to section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill). Any county or municipality approved for a financial assistance grant shall submit any periodic reports as required by the chief executive officer.

9. a. As used in this section:

“Eligible business” means a qualified LGBT business enterprise, a qualified disability-owned business enterprise, or a qualified veteran business enterprise, which is certified by the Division of Revenue in the Department of the Treasury or an approved third-party agency and which is determined to be eligible to receive assistance or participate in programs according to the standards established pursuant to this act, P.L. , c. (C. ) (pending before the Legislature as this bill).

“LGBT” means lesbian, gay, bisexual, or transgender.

“Person with a disability” means a person with a disability as defined under the “Americans with Disabilities Act of 1990,” (42 U.S.C. s.12101 et seq.).

“Qualified LGBT business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a lesbian, gay, bisexual, or transgender person;

(2) a partnership or joint venture owned and controlled by lesbian, gay, bisexual, or transgender persons in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more lesbian, gay, bisexual, or transgender persons who own it, and which is at least 51 percent owned by lesbian, gay, bisexual, or transgender persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified disability-owned business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a person with a disability;

(2) a partnership or joint venture owned and controlled by persons with a disability, in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more persons with a disability who own it, and which is at least 51 percent owned by such persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

“Qualified veteran business enterprise” means a business which has its principal place of business in this State, is independently owned and operated, is qualified pursuant to law and regulation as a prospective bidder, and is certified as:

(1) a sole proprietorship owned and controlled by a veteran;

(2) a partnership or joint venture owned and controlled by veterans, in which at least 51 percent of the ownership is held by one or more veterans and the management and daily business operations of which are controlled by one or more veterans who own it;

(3) a corporation or other entity whose management and daily business operations are controlled by one or more veterans who own it, and which is at least 51 percent owned by veterans, or, if stock is issued, at least 51 percent of the stock is owned by one or more veterans; or

(4) an enterprise wherein at least 25 percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and which also submits forms quarterly to the contracting unit showing proof of veteran status for all the veteran employees.

“Third-party agency” means a nationally recognized organization that adheres to generally accepted standards for supplier diversity certification, and shall include, but not be limited to, the National Gay and Lesbian Chamber of Commerce for the certification of LGBT business enterprises and the United States Business Leadership Network for the certification of disability-owned business enterprises.

“Total procurements” means all purchases, contracts, or acquisitions of a contracting unit whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law.

“Veteran” shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans’ Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids.

b. A board of education may, by resolution, establish any or all of the following: a qualified LGBT business enterprise set-aside program; a qualified disability-owned business enterprise set-aside program; or a qualified veteran business enterprise set-aside program. In authorizing such a program, the board of education shall establish a goal for setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to eligible businesses. Any goal established pursuant to this subsection may be attained by requiring that a portion of a contract be subcontracted to an eligible business in addition to designating an entire contract to such business. Each contracting unit shall make a good faith effort to attain any goal established.

c. (1) A board of education that has established a qualified LGBT business enterprise set-aside program, a qualified disability-owned business enterprise set-aside program, or a qualified veteran business enterprise set-aside program, shall designate that a contract, subcontract, or other means of procurement of goods, services, equipment, or construction be awarded to an eligible business if the board of education is likely to receive bids from at least two such eligible business at a fair and reasonable price. Such designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a qualified LGBT business enterprise set-aside contract, a qualified disability-owned business enterprise set-aside contract, or a qualified veteran business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to eligible businesses for the program sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

(2) If the board of education determines that two bids from eligible businesses cannot be obtained, the board may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of N.J.S.18A:18A-1 et seq. The cancelled designation shall not be considered in determining the percentage of contracts awarded pursuant to this section. If the board of education determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the board shall reject all bids and withdraw the designation of the set-aside contract. Eligible businesses for the program shall be notified in writing of the set-aside cancellation, the reasons for the rejection, and the board’s intent to resolicit bids on an unrestricted basis pursuant to the provisions of N.J.S.18A:18A-1 et seq. The cancelled bid solicitation shall not be considered in determining the percentage of contracts awarded pursuant to this section.

d. When a board of education determines that a business has been classified as an eligible business on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this section, the board shall have the authority to:

(1) assess against the business any difference between the contract amount and what the board’s cost would have been if the contract had not been awarded in accordance with this section;

(2) in addition to the amount due under paragraph (1) of this subsection, assess against the business a penalty in an amount of not more than 10 percent of the amount of the contract involved; and

(3) order that the business is ineligible to transact any business with the board of education for a period it deems appropriate.

Prior to the issuance of any final determination, assessment, or order under this subsection, the board of education shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in this subsection.

e. Each board of education that has established a qualified LGBT business enterprise set-aside program, a qualified disability-owned business enterprise set-aside program, or a qualified veteran business enterprise set-aside program, shall prepare a report by January 31 of each year describing the board of education’s efforts in attaining the set-aside goals and the percentage of the dollar value of its total procurements awarded to qualified LGBT business enterprises, qualified disability-owned business enterprises, or qualified veteran business enterprises, as appropriate. The board of education shall publish a list of its attainments in the immediately preceding local fiscal year, to include the county or municipal average, in at least one newspaper circulating in the school district by March 1 of each year.

f. (1) The State Board of Education, or any State department or agency the State board may designate, may adopt rules and regulations pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to effectuate the purposes of this section.

(2) All provisions of the “Public School Contracts Law,” N.J.S.18A:18A-1 et seq., and any supplements thereto, shall apply to purchases, contracts, and agreements made pursuant to this section unless otherwise superseded by this section.

10. This act shall take effect immediately.

STATEMENT

This bill creates certain assistance and set-aside programs for businesses owned by lesbian, gay, bisexual, or transgender, or LGBT, persons, by persons with a disability, and by veterans. The bill designates these businesses as eligible businesses for the purpose of qualifying for the programs or assistance established by the bill when the businesses have their principal place of business in this State; are independently owned and operated; are qualified pursuant to law and regulation as a prospective bidder; and are certified by the Division of Revenue, or an appropriate third-party agency, as:

(1) a sole proprietorship owned and controlled by a LGBT person, a person with a disability, or a veteran;

(2) a partnership or joint venture owned and controlled by LGBT persons, persons with a disability, or veterans, in which at least 51 percent of the ownership is held by one or more such persons, and the management and daily business operations of which are controlled by one or more such persons who own it; or

(3) a corporation or other entity whose management and daily business operations are controlled by one or more LGBT persons, persons with a disability, or veterans who own it, and which is at least 51 percent owned such persons, or, if stock is issued, at least 51 percent of the stock is owned by one or more such persons.

A business may additionally qualify for the program if the business is an enterprise wherein at least 25 percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and which also submits forms quarterly to the contracting unit showing proof of veteran status for all the veteran employees.

A third-party agency in the bill is a nationally recognized organization that adheres to generally accepted standards for supplier diversity certification, and includes the National Gay and Lesbian Chamber of Commerce for the certification of LGBT business enterprises and the United States Business Leadership Network for the certification of disability-owned business enterprises. A veteran will be required to present to the Adjutant General evidence of a record of service and receive a determination before the date for the submission of bids.

The bill permits the New Jersey Economic Development Authority (EDA) to waive bonding requirements to facilitate the participation of an eligible business on projects financed by the authority if the business has been rejected by two surety companies. The EDA may also provide assistance to eligible businesses that are unable to secure bonding for other projects that are not financed by the EDA.

The bill permits the Division of Revenue in the Department of the Treasury to: establish loan programs for eligible businesses, compile lists of qualified professionals, including LGBT persons, persons with a disability, and veterans, in specific areas of expertise, to be disseminated to eligible businesses and to be used in making referrals, provided those professionals submit written consent to be included the lists; coordinate managerial and technical assistance; establish an internship program for undergraduate and graduate students in business administration and related fields; and provide assistance and advice to eligible businesses in areas including, but not limited to, advertising, marketing, sales, distribution, government contract bidding and procurement, obtaining legal counsel, financial analysis and accounting, insurance, commercial loans, and professional development.

The bill requires the division to certify and verify that a business is an eligible business, either directly or through a third-party agency. The division is required to approve third-party agencies to perform the certifications, which it has the authority to accept in lieu of performing its own certification. The division may also develop a streamlined process for verification of eligible business. The process for certification and verification is to be clear, concise, and streamlined. The director is to submit an annual report to the Governor and Legislature concerning these processes.

The bill permits counties and municipalities to establish a pilot program that provides technical or certification assistance to eligible businesses, and permits those counties and municipalities to apply to the EDA for a financial assistance grant to pay for up to 50 percent of the cost of a pilot program.

The bill also permits counties and municipalities, as well as boards of education, to establish set-aside programs for eligible businesses. The goals set for the programs could be met by the use of subcontracting. The bill establishes requirements related to how local governments and boards of education could administer those programs, including advertising and bidding processes, and establishes penalties that local governments and boards of education could assess against businesses that are classified as eligible businesses based on false information.

Local governments and boards of education with these programs are to publish their attainments of the set-aside goals in at least one newspaper in the county, municipality, or school district, as appropriate, by March 1 of each year.