

§§1-4
C.52:32-31.15
to 52:32-31.18
§6
Note

P.L. 2023, CHAPTER 300, *approved January 16, 2024*
Assembly, No. 2146 (*Fourth Reprint*)

1 AN ACT concerning the establishment of ⁴**[State business**
2 assistance] ^a a 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:

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

10 ⁴**【demonstrate personal disadvantage not common to other**
11 **businesses, as determined by the director;】**⁴ or

12 demonstrate a business location in a qualified census tract having
13 a poverty rate of 20 percent or more; or a census tract in which the
14 median family income for the census tract does not exceed 80
15 percent of the greater of the Statewide median family income or the
16 median family income of the metropolitan statistical area in which
17 the census tract is situated.

18
19 2. ⁴**【The director shall establish a business assistance program**
20 **for qualified business enterprises that are socially disadvantaged**
21 **and economically disadvantaged and certified as qualified in**
22 **accordance with this act, P.L. , c. (C.) (pending before the**
23 **Legislature as this bill). The program shall be implemented in**
24 **addition to any set-aside program established by law. The program**
25 **shall:**

26 a. establish procedures by which a socially and economically
27 disadvantaged business enterprise may apply for certification as a
28 qualified business enterprise;

29 b. establish a system of ³accepting State-approved third party
30 certifications or³ certifying qualified business enterprises based on
31 a requirement that the business owner or owners show both social
32 and economic disadvantages, and the relative wealth of the business
33 seeking certification as well as the personal wealth of the owner or
34 owners of the business;

35 c. establish standards to determine when a qualified business
36 enterprise no longer qualifies for qualified business enterprise
37 certification;

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

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

43 f. implement an outreach program to educate potential
44 participants about the business assistance program;

1 g. establish a system to assist contracting agencies in
2 identifying and utilizing qualified business enterprises in their
3 contracting processes;

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

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

11 j. establish a process for monitoring overall program
12 compliance in which equal employment opportunity officers
13 primarily are responsible for monitoring their respective contracting
14 agencies; and

15 k. establish guidelines for public institutions of higher
16 education for awarding contracts to allow the institutions to
17 establish contracting agency procurement goals for contracting with
18 qualified business enterprises.】

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

24 (1) establish a procedure through which a socially and
25 economically disadvantaged business owner may apply for
26 certification as a qualified business enterprise under the program,
27 which certification shall be supported by available data and
28 information;

29 (2) establish a system for accepting State-approved third party
30 certifications for the purpose of certifying qualified business
31 enterprises;

32 (3) establish reasonable regulations appropriate for controlling
33 the certification of socially and economically disadvantaged
34 businesses as qualified business enterprises and for maintaining a
35 list of such business enterprises;

36 (4) establish a procedure for annually reviewing the list of
37 qualified business enterprises for the purpose of determining
38 whether a business on the list is eligible to maintain its certification
39 as a qualified business enterprise; and

40 (5) establish a procedure through which the certification of a
41 business as a qualified business enterprise may be challenged by a
42 third party.

43 b. Any procedures established pursuant to paragraphs (1), (4),
44 and (5) of subsection a. of this section shall include notice to the
45 business owner whose certification is at issue and an opportunity
46 for a hearing before the department. The hearing shall not be

1 considered a contested case pursuant to the “Administrative
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).⁴

3
4 3. a. (1) The ⁴**[director]** department⁴ shall establish
5 contracting agency procurement goals for contracting with qualified
6 business enterprises in the awarding of contracts. These goals may,
7 where appropriate, be attained by the direct designation of prime
8 contracts for qualified business enterprises or ⁴**[**, in the case of a
9 prime contract not directly designated for qualified business
10 enterprises, by requiring that a portion of such a prime contract be
11 subcontracted to a qualified business enterprise**]** by subcontracting,
12 and in accordance with and supported by available data and
13 information⁴. Each contracting agency shall make a good faith
14 effort to attain the goals established in this section.

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

18 b. Each contracting agency shall annually develop, in
19 consultation with the department, a plan for achieving its qualified
20 business enterprise goals.

21
22 ⁴**[**4. a. The department shall establish reasonable regulations
23 appropriate for controlling the designation of socially and
24 economically disadvantaged businesses and shall maintain lists of
25 designated businesses.

26 b. The department shall establish a procedure whereby
27 businesses may request inclusion on appropriate lists for qualified
28 business enterprises.

29 c. The department shall establish a procedure for annually
30 reviewing the lists and determining whether the businesses on the
31 lists shall continue to be designated as qualified business
32 enterprises.

33 d. The department shall establish a procedure whereby the
34 certification of a business as a qualified business enterprise may be
35 challenged by a third party.

36 e. Any procedures established pursuant to subsections b., c.,
37 and d. of this section shall include notice to the business whose
38 certification is at issue and an opportunity for a hearing at the
39 department. The hearing shall not be considered a contested case
40 under the "Administrative Procedure Act," P.L. 1968, c. 410 (C.
41 52:14B-1 et seq.).⁴

42
43 ⁴**[**5.] 4.⁴ Each contracting agency shall submit an annual report
44 to the department according to a schedule announced by the
45 department. This report shall include the following information:

46 a. the total dollar value and number of contracts awarded to
47 qualified business enterprises, and the percentage of the total State

1 procurements by the contracting agency that the figure of total
2 dollar value reflects;

3 b. the types and sizes of businesses receiving contracts and the
4 nature of the purchases and contracts; and

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

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

12
13 ⁴6. The department shall consult regularly with representatives
14 of the contracting industry for the purpose of implementing the
15 provisions of this act, P.L. , c. (C.) (pending before the
16 Legislature as this bill). These consultations shall take place not less
17 than once every six months. ⁴

18
19 ⁴7. When the department determines that a business has been
20 certified as a qualified business enterprise on the basis of false
21 information knowingly supplied by the business and has been
22 awarded a contract to which it would not otherwise have been
23 entitled under this act, the department shall:

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

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

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

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

36 All payments to the State pursuant to paragraph a. of this section
37 shall be deposited in the fund out of which the contract involved
38 was awarded. All payments to the State pursuant to paragraph b. of
39 this section shall be deposited in the State General Fund. ⁴

40
41 ⁴8. 5.⁴ The Department of the Treasury shall promulgate rules
42 and regulations, in accordance with the "Administrative Procedure
43 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
44 provisions of this act.

45
46 ⁴9. 6.⁴ This act shall take effect ⁴immediately the 181st
47 day next following enactment, except the State Treasurer may take

1 any anticipatory administrative action in advance as shall be
2 necessary for the implementation of this act⁴.

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5

6

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