

[First Reprint]

**SENATE, No. 2909**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED JUNE 20, 2022

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**Co-Sponsored by:**

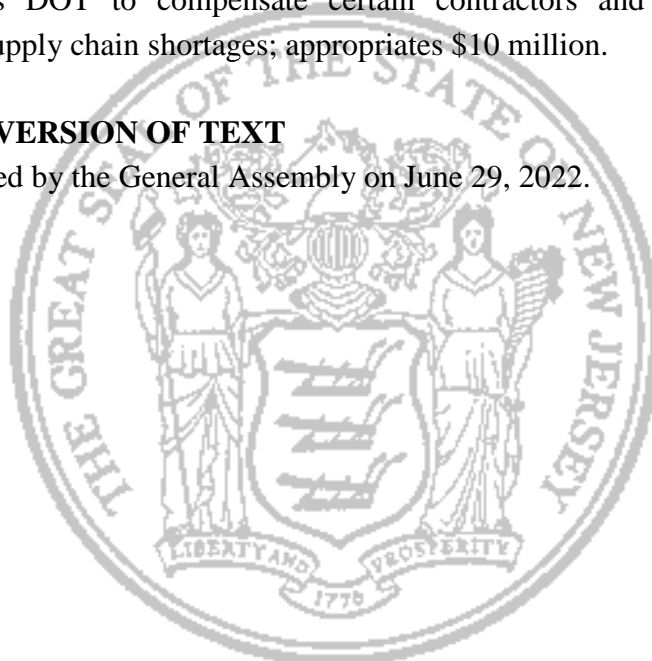
**Assemblyman Freiman, Assemblywomen Speight and Lopez**

**SYNOPSIS**

Authorizes DOT to compensate certain contractors and subcontractors affected by supply chain shortages; appropriates \$10 million.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on June 29, 2022.



**(Sponsorship Updated As Of: 6/29/2022)**

1 AN ACT concerning entities under contract with the Department of  
2 Transportation and making an appropriation.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 <sup>1</sup>**[**1. a. For the purposes of this act:

8 “Commissioner” means the Commissioner of Transportation.

9 “Department” means the Department of Transportation.

10 “Eligible contract” means a construction contract awarded by the  
11 department based upon bids submitted prior to April 1, 2020.

12 “Eligible materials” means materials purchased or invoiced in  
13 connection with an eligible contract after March 1, 2020 that have  
14 realized an increase in the cost of acquisition of such materials in  
15 excess of five percent between March 1, 2020 and the time of  
16 purchase or invoice.

17 b. If the Commissioner of Transportation determines, based  
18 upon the available evidence, including but not limited to an  
19 appropriate nationally recognized economic index published by the  
20 United States Department of Labor, that there has been an increase  
21 in excess of five percent in the cost of acquisition of materials for a  
22 contractor or subcontractor purchasing eligible materials for an  
23 eligible contract, the department may provide compensation to the  
24 contractor or subcontractor performing work on an eligible contract  
25 for the cost difference paid by the contractor or subcontractor for  
26 eligible materials in an amount equal to the increase in the cost of  
27 acquisition of those eligible materials.

28 c. In order to receive compensation pursuant to subsection b. of  
29 this section, a contractor or subcontractor shall apply to the  
30 department, in a form and manner prescribed by the commissioner  
31 and subject to any other conditions or requirements imposed by the  
32 commissioner.

33 d. The commissioner may impose any conditions or  
34 requirements for receipt of compensation pursuant to subsection b.  
35 of this section as the commissioner deems appropriate. <sup>1</sup>**]**  
36

37 <sup>1</sup>**[**2. For the purposes of this act, there is appropriated  
38 \$10,000,000 to the Department of Transportation to compensate  
39 contractors and subcontractors for increases in the cost of  
40 acquisition of materials for the completion of eligible contracts  
41 awarded by the department. <sup>1</sup>**]**  
42

43 <sup>1</sup>1. Findings and declarations.

44 The Legislature finds and declares that:

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 floor amendments adopted June 29, 2022.

1     a. The COVID-19 pandemic has wreaked havoc on supply  
2 chains across the globe. Supply shortages have stemmed from a  
3 series of supply chain disruptions hitting industries around the  
4 world, from port congestion in Asia and the United States to labor  
5 shortages at factories.

6     b. In the construction sector, construction materials are in short  
7 supply and have seen price spikes, driving up project costs and  
8 affecting companies from contractors to insurers. In 2021, the  
9 construction industry saw steel prices rising 200 percent and lumber  
10 prices rising 288 percent at different points during the year.

11    c. Many small business enterprises (SBEs) have been strongly  
12 impacted by the escalation of the cost of the acquisition of materials  
13 to the point that some have been threatened with their survival as  
14 business enterprises.

15    d. It is in the public interest of the State of New Jersey that  
16 public works projects be administered efficiently and at a  
17 reasonable and equitable cost.

18    e. The unforeseen emergency of the unanticipated escalation in  
19 construction material prices has imposed substantial inequity upon  
20 the SBEs, which have been awarded contracts or are subcontractors  
21 on contracts after public bidding, and the inequities have threatened  
22 the ability of those contractors and subcontractors to fulfill their  
23 obligations under the contracts.

24    f. In these unique and unprecedented circumstances, it is in the  
25 public interest for the Department of Transportation to establish and  
26 administer a grant program, funded from the federal “Coronavirus  
27 State Fiscal Recovery Fund” established pursuant to the federal  
28 “American Rescue Plan Act”, Pub.L.117-2, to promptly and  
29 reasonably assist SBE contractors and subcontractors in meeting  
30 their obligations resulting from increases in the cost of acquisition  
31 of materials regarding eligible contracts awarded by the department.

32    g. Given the time sensitive nature of the circumstances  
33 presented here, the Legislature acknowledges that the department  
34 does not have time to promulgate rules regarding the establishment  
35 and administration of a grant program. In order to expedite the  
36 making of such grants, the department shall establish streamlined  
37 procedures for the application process and post such forms,  
38 conditions, and requirements on the department’s website as soon as  
39 reasonably possible.

40    h. In order to be considered eligible for a grant, a contractor or  
41 subcontractor shall be registered with the State of New Jersey as an  
42 SBE.

43    i. The department shall award grants to qualified SBE  
44 contractors and subcontractors under the grant program on a first  
45 come, first served basis.

46    j. This act does not create a right for subcontractors to submit  
47 direct claims to the department and preserves the department’s

1 immunity from subcontractors' direct claims under the New Jersey  
2 Contractual Liability Act, N.J.S.59:13-1 et seq.

3 k. This act is not intended to impact the contractual  
4 relationships and provisions contained within eligible contracts or  
5 other department contracts.

6 l. This act is not intended to allow for so-called equitable  
7 adjustments or for the recovery of force majeure claims regarding  
8 eligible contracts or other department contracts and preserves the  
9 department's rights under eligible contracts or other department  
10 contracts and immunities under the law, including the New Jersey  
11 Contractual Liability Act, N.J.S.59:13-1 et seq.

12 m. The grant of funds by the department under this act shall not  
13 create entitlement for a contractor or subcontractor for additional  
14 compensation, including time or money or both from the  
15 department under an eligible contract or other department  
16 contracts.<sup>1</sup>

17  
18 <sup>1</sup>2. Definitions.

19 For the purposes of this act:

20 "Commissioner" means the Commissioner of Transportation.

21 "Department" means the Department of Transportation.

22 "Eligible contract" means a construction contract awarded by the  
23 department based upon bids submitted prior to April 1, 2020.

24 "Eligible materials" means materials purchased or invoiced in  
25 connection with an eligible contract after March 1, 2020 that have  
26 realized an increase in the cost of acquisition of such materials in  
27 excess of five percent between March 1, 2020 and the time of  
28 purchase or invoice.

29 "SBE" means a contractor or subcontractor which is registered  
30 with the State of New Jersey as a small business enterprise.<sup>1</sup>

31  
32 <sup>1</sup>3. Eligibility for a Grant.

33 a. A contractor or subcontractor shall demonstrate to the  
34 satisfaction of the department that it holds an eligible contract.

35 b. The contractor or subcontractor shall provide documentation  
36 sufficient for the department to determine, based upon the available  
37 documentation, including but not limited to, an appropriate  
38 nationally recognized economic index published by the United  
39 States Department of Labor, that there has been an increase in  
40 excess of five percent in the cost of acquisition of materials for a  
41 contractor or subcontractor purchasing eligible materials for an  
42 eligible contract.

43 c. The contractor or subcontractor as applicable shall  
44 demonstrate that it is an SBE.

45 d. A contractor or subcontractor shall not be eligible for a grant  
46 if the department determines that there is unacceptable or excessive  
47 material under an eligible contract.

1     e. An application by a contractor or subcontractor under the  
2 grant program shall preclude the contractor or subcontractor from  
3 otherwise submitting claims to the department regarding or related  
4 to the same materials under an eligible contract.<sup>1</sup>

5  
6     <sup>1</sup>4. Grant Program.

7     a. The department shall establish a grant program to issue  
8 grants to eligible contractors and subcontractors.

9     b. The department shall establish streamlined procedures for  
10 the application process and post such forms, conditions, and  
11 requirements on the department's website as soon as reasonably  
12 possible. The application period shall remain open for 90 days. If  
13 funds appropriated under this act remain, following the initial  
14 application period and eligibility determinations, the department  
15 may open the application period for an additional 30 days.

16     c. The grant program shall provide that grant awards shall be  
17 made in the order in which applications are received and approved.

18     d. If a contractor or subcontractor is determined to be eligible  
19 pursuant to this act, the department may provide a grant to the  
20 contractor or subcontractor for the cost difference paid by the  
21 contractor or subcontractor for eligible materials in an amount equal  
22 to the increase in the cost of acquisition of those eligible materials.

23     e. The commissioner may impose any additional conditions or  
24 requirements for receipt of a grant as the commissioner deems  
25 appropriate.

26     f. The New Jersey Contractual Liability Act, N.J.S.59:13-1 et  
27 seq., shall apply to all applications submitted under this act.<sup>1</sup>

28  
29     <sup>1</sup>5. Appropriation.

30     There is appropriated \$10,000,000 to the Division of Disaster  
31 Recovery and Mitigation in the Department of Community Affairs  
32 from the federal "Coronavirus State Fiscal Recovery Fund"  
33 established pursuant to the federal "American Rescue Plan Act",  
34 Pub.L.117-2, which shall be made available to and used by the  
35 Department of Transportation to effectuate the provisions of P.L.     ,  
36 c. (pending before the Legislature as this bill), and of which a  
37 reasonable amount, not to exceed 2.5 percent, may be used by the  
38 department for organizational, administrative, and other work and  
39 services, including salaries, equipment, services, and materials  
40 necessary to administer the activities authorized by this act. The  
41 Department of Transportation shall enter into a memorandum of  
42 understanding or grant agreement, as applicable, with the division  
43 to effectuate the purposes of this subsection, to establish  
44 appropriate administrative costs, and to ensure compliance with  
45 federal rules and guidance, including with respect to the "American  
46 Rescue Plan Act," Pub.L.117-2.<sup>1</sup>

**S2909 [1R] DIEGNAN**

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1       <sup>1</sup>**【3.】** 6.<sup>1</sup> This act shall take effect immediately and shall expire  
2       upon the exhaustion of funds appropriated pursuant to section <sup>1</sup>**【2】**  
3       5<sup>1</sup> of this act.