

ASSEMBLY, No. 3059

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 24, 2014

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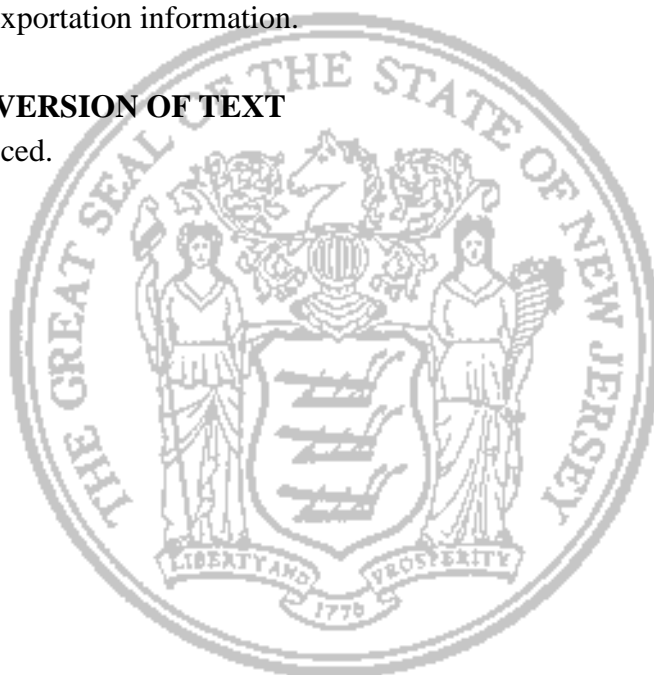
**Assemblymen S.Kean, O'Donnell, Benson, DeAngelo, Cryan, Eustace,
Lagana, Assemblywoman Quijano, Assemblyman Wisniewski,
Assemblywoman Pinkin and Assemblyman Coughlin**

SYNOPSIS

Requires use of goods made in the United States for State contracts; requires businesses that receive State contracts or economic development assistance to disclose job exportation information.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the use of goods made in the United States for
2 State contracts, requiring the disclosure of certain information by
3 certain businesses, and supplementing Title 52 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*
8

9 1. A State agency shall make provisions in the specifications
10 for all contracts that include or necessitate the procurement of
11 articles, materials, goods, equipment, or supplies, including
12 contracts for public works, for which the State pays any part of the
13 cost, that only products manufactured in the United States, be used
14 to fulfill those contracts. As used in this section, "State agency"
15 shall have the meaning as set forth in section 1 of P.L.1991, c.507
16 (C.52:32-40), and "manufactured in the United States" means, in
17 the case of assembled articles, material or supplies, components,
18 subcomponents, parts, and equipment used in manufacturing, final
19 assembly, processing, packaging, testing or other process that adds
20 value, quality, or reliability occurs in the United States.

21 Products manufactured in the United States shall be specified
22 and purchased unless the State agency determines that any of the
23 following apply:

24 the products are not manufactured in the United States in
25 reasonably available quantities; or

26 the cost of buying products manufactured in the United States is
27 unreasonable. There is a presumption of unreasonableness for
28 products manufactured in the United States that cost 25% above the
29 fair market value for such products.

30 Any waiver granted under this section shall be made public,
31 reported to the relevant State agencies, and posted publicly for a 30-
32 day comment period. The agency granted such a waiver shall work
33 with other State agencies to create a plan to ensure the domestic
34 supply of the relevant products will be available in the future.

35 Each contract awarded by a State agency on or after the effective
36 date of P.L. , c. (C.) (pending before the Legislature as this
37 bill), shall contain the contractor's certification that procured
38 products provided pursuant to the contract or a subcontract shall be
39 manufactured in the United States.

40 Nothing in this section is intended to contravene any existing
41 treaty, law, agreement, or regulation of the United States. Contracts
42 entered into in accordance with any treaty, law, agreement, or
43 regulation of the United States shall not be in violation of this
44 section to the extent of that accordance. No preference shall be
45 granted under this section if that preference would contravene any
46 treaty, law, agreement, or regulation of the United States.

47 If a contractor is awarded a contract that includes the use of a
48 preference under this section and knowingly supplies procured

1 products under that contract that are not manufactured in the United
2 States, then:

3 the contractor shall be barred from obtaining any State agency
4 contract, including State college contracts, for a period of five years
5 after the violation is discovered by the agency;

6 the agency may void the contract; and

7 the agency may recover damages in a civil action in an amount
8 three times the value of the preference.

9
10 2. A State college shall make provisions in the specifications
11 for all State college contracts that include or necessitate the
12 procurement of articles, materials, goods, equipment, or supplies,
13 including contracts for public works, for which the State college
14 pays any part of the cost, that only such products manufactured in
15 the United States, be used to fulfill those contracts. As used in this
16 section, “manufactured in the United States” means, in the case of
17 assembled articles, material or supplies, components,
18 subcomponents, parts, and equipment used in manufacturing, final
19 assembly, processing, packaging, testing or other process that adds
20 value, quality, or reliability occurs in the United States. “State
21 college” shall have the meaning as set forth in section 3 of
22 P.L.1994, c.48 (C.18A:3B-3).

23 Products manufactured in the United States shall be specified
24 and purchased unless the State college determines that any of the
25 following apply:

26 the products are not manufactured in the United States in
27 reasonably available quantities; or

28 the cost of buying products manufactured in the United States is
29 unreasonable. There is a presumption of unreasonableness for
30 products manufactured in the United States that cost 25% above the
31 fair market value for such products.

32 Any waiver granted under this section shall be made public,
33 reported to the relevant State agencies, and posted publicly for a 30-
34 day comment period. The State college granted such a waiver shall
35 work with other State agencies to create a plan to ensure the
36 domestic supply of the relevant products will be available in the
37 future.

38 Each contract awarded by a State college on or after the effective
39 date of P.L. , c. (C.) (pending before the Legislature as this
40 bill) shall contain the contractor’s certification that procured
41 products provided pursuant to the contract or a subcontract shall be
42 manufactured in the United States.

43 Nothing in this section is intended to contravene any existing
44 treaty, law, agreement, or regulation of the United States. Contracts
45 entered into in accordance with any treaty, law, agreement, or
46 regulation of the United States shall not be in violation of this
47 section to the extent of that accordance. No preference shall be

1 granted under this section if that preference would contravene any
2 treaty, law, agreement, or regulation of the United States.

3 If a contractor is awarded a contract that includes the use of a
4 preference under this section and knowingly supplies procured
5 products under that contract that are not manufactured in the United
6 States, then;

7 the contractor shall be barred from obtaining any State college
8 contract or State contract for a period of five years after the
9 violation is discovered by the State college;

10 the State college may void the contract; and

11 the State college may recover damages in a civil action in an
12 amount three times the value of the preference.

13

14 3. a. The Legislature finds that there is widespread concern
15 that State contracts and economic development assistance financed
16 by the taxpayer's of the State are being given to companies that
17 send work outside of the United States. Business, labor, and
18 government leaders recognize the need for an objective and
19 thorough study of the extent to which State contracts and projects
20 financed by taxpayers are being performed outside the United
21 States, and the impact of this practice on the State's economy.

22 Therefore, the Legislature finds it necessary to:

23 require bidders for State contracts and applicants for economic
24 development assistance to disclose where the contract or project
25 will be performed;

26 compile this data and make it available for public review and
27 comment; and

28 study the impact on the State's economy.

29 b. As used in this section:

30 "development assistance" means any form of public assistance,
31 including tax expenditures, made for the purpose of stimulating
32 economic development of a corporation, industry, geographic
33 jurisdiction, or any other sector of the State's economy, including,
34 but not limited to, industrial development bonds, training grants,
35 loans, loan guarantees, enterprise zones, empowerment zones, tax
36 increment financing, fee waivers, land price subsidies,
37 infrastructure whose principal beneficiary is a single business or
38 defined group of businesses at the time it is built or improved,
39 matching funds, tax abatements, tax credits, and tax discounts of
40 every kind, including corporate franchise, personal income, sales
41 and compensating use, raw materials, real property, job creation,
42 individual investment, excise, utility, inventory, accelerated
43 depreciation, and research and development tax credits and
44 discounts.

45 "Corporate parent" means any person, association, corporation,
46 joint venture, partnership, or other entity that owns or controls 50
47 percent or more of a recipient corporation.

1 “State” shall have the meaning as set forth in section 1 of
2 P.L.1991, c.507 (C.52:32-40).

3 c. (1) The State shall require each vendor submitting a bid or
4 contract to provide services and all development assistance
5 applicants to certify where the services covered by the bid, contract,
6 or development assistance will be performed.

7 (2) The State shall require each vendor with a contract, each
8 subcontractor, and each recipient of development assistance, in
9 effect on the effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill), notwithstanding any other requirements
11 that have been imposed, to:

12 certify where the services covered by the bid, contract, or
13 development assistance are being performed; and

14 disclose the name and headquarters location of its parent
15 company.

16 d. The joint legislative task force, established under subsection
17 (f) of this section, shall create and maintain a comprehensive
18 database of contract awards and development assistance provided
19 by all State agencies that includes, but is not limited to, the
20 information included in this section.

21 e. The State shall conduct a study that includes, but need not be
22 limited to, an evaluation of the following:

23 (1) the extent to which current State contracts, and any
24 subcontracts under such contracts, are being performed outside of
25 the United States;

26 (2) the extent to which the performance of State contracts in
27 whole or in part in other countries results in the creation or loss of
28 family-wage or other jobs in the State;

29 (3) the extent to which State contracts being performed in whole
30 or in part in other countries creates a need for adjustment assistance
31 and retraining programs to ensure the State’s business climate, its
32 employers, and its workers remain competitive globally;

33 (4) the extent to which State contracts performed at locations
34 outside the United States involve a risk of unauthorized use or
35 disclosure of personal information, as well as a review of applicable
36 State and federal laws regarding the privacy of personal
37 information;

38 (5) the economic costs and benefits of awarding State contracts,
39 and any subcontracts under such contracts, to New Jersey
40 companies;

41 (6) the applicability of international trade agreements and
42 federal law to State procurement policies;

43 (7) the extent to which legislative authority over State
44 procurement is adequately protected, including the ability of State
45 agencies to adequately supervise the performance of contracts when
46 all or a portion of the work is performed in a country other than the
47 United States; and

1 (8) the reason New Jersey businesses choose to locate
2 operations outside the United States.

3 f. The study shall be conducted by a joint task force of the
4 Senate and the General Assembly consisting of the following: two
5 members of the General Assembly to be appointed by the Speaker
6 of the General Assembly; two members of the General Assembly to
7 be appointed by the General Assembly Minority Leader; two
8 members of the Senate to be appointed by the Senate Majority
9 Leader; and two members of the Senate to be appointed by the
10 Senate Minority Leader.

11 g. The joint task force shall consult with and be advised and
12 monitored by an advisory committee consisting of seven members:
13 three members representing labor, appointed jointly by the
14 President of the Senate and the Speaker of the General Assembly,
15 from a list of names recommended by a statewide organization
16 representing a cross-section of organized labor in the State; three
17 members representing business, one of whom shall represent small
18 business, appointed jointly by the President of the Senate and the
19 Speaker of the General Assembly, from a list of names
20 recommended by a statewide organization of employers
21 representing a cross-section of employers of the State, and one
22 member representing the public.

23 h. The information maintained in the comprehensive database
24 outlined above shall be made available online to the Legislature and
25 the public.

26 i. The findings and recommendations of the joint task force
27 shall be reported in writing annually to the Legislature, with the
28 first report to be submitted within 14 months following the effective
29 date of this act, P.L. , c. (C.) (pending before the Legislature
30 as this bill). In addition to filing each report with the Legislature,
31 the joint task force shall make each report available to the public on
32 the Legislature's Internet homepage.

33
34 4. This act shall take effect immediately.
35
36

37 STATEMENT 38

39 This bill would require that vendors receiving State contracts
40 purchase goods manufactured in the United States to fulfill those
41 contracts, when such products are available. This bill also requires
42 disclosure by certain businesses that receive State contracts or
43 economic development assistance from the State of where the
44 services covered by the bid, contract, or development assistance are
45 being performed and establishes a joint task force to conduct a
46 study of the impact of job exportation on the State economy.

47 Currently, New Jersey requires the purchase of goods
48 manufactured in the United States in fulfillment of public works

1 contracts, local public contracts, State construction contracts, and
2 local schools contracts. This bill requires that all State contracts
3 have provisions that require the use of goods manufactured in the
4 United States to fulfill the contracts, including contracts negotiated
5 by State colleges, which includes State universities.

6 The bill includes a provision that allows for a State agency or
7 State college to receive a waiver in the event that products
8 manufactured in the United States are unavailable or too costly. If a
9 State agency or State college seeks a waiver, the information will be
10 made public, reported to relevant State agencies, and there will be a
11 30-day comment period. Any State agency or State college that
12 receives a waiver must work with other State agencies to create a
13 plan to ensure that there is a domestic supply in the future of the
14 relevant products.

15 The purpose of this waiver is to recognize that it is not always
16 possible or practical to use products manufactured in the United
17 States. However, the 30-day public comment period is also
18 included as a safeguard to prevent abuse of the waiver system. If
19 there are reasonably priced products available that are manufactured
20 in the United States, the 30-day comment period will allow for
21 American companies to come forward and provide products
22 manufactured in the United States that may have been overlooked
23 or ignored. The State agency or State college will also be
24 responsible for creating a plan to ensure the future supply of
25 products manufactured in the United States so that the United States
26 economy may be bolstered.

27 This bill has a penalty provision that, in the event a contractor
28 knowingly supplies products that are not manufactured in the
29 United States, bars the contractor from obtaining State contracts for
30 a period of five years, permits the State agency to void the contract,
31 and provides a civil remedy for the State agency to recover
32 damages.

33 The disclosure requirements of the bill serve two primary
34 purposes. First, they provide for greater transparency for the State
35 contracting process. Second, they will allow the State to compile
36 data so that accurate studies may be done to investigate the true
37 impact that job exportation has on the State economy.

38 A bi-partisan joint task force of members of the Legislature will
39 be created by this bill to conduct the study into the economic effects
40 of job exportation and how pervasive the problem is within the
41 State, ultimately providing the State with a more informed way to
42 approach the issue of job exportation.

43 Lastly, this bill requires that the information compiled by the
44 joint task force will be made available to the public and the
45 Legislature. Accordingly, both the public and the Legislature will
46 be able to review the data and discuss ideas on how to counteract
47 any problems associated with job exportation.