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

CURRENT VERSION OF TEXT
Substitute as adopted by the Assembly Labor Committee.

(Sponsorship Updated As Of: 12/12/2014)
AN ACT concerning the use of goods made in the United States for public contracts, requiring the disclosure of certain information by certain businesses, revising various parts of the statutory law, and supplementing Title 18A of the New Jersey Statutes and Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.18A:18A-20 is amended to read as follows:

18A:18A-20. American goods and products to be used where possible.

a. Each board of education shall provide, in the specifications for all contracts for purchases or work, including public work contracts, for which it will pay any part of the cost, or work which by contract it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available in reasonable quantity, be purchased or be used in such work.

b. The provisions of subsection a. of this section may be waived, pursuant to the procedures provided in this subsection, in any case or category of cases in which the board of education entering into the contract finds that:

(1) Manufactured or farm products of the United States are not available in reasonable quantity; or

(2) The cost of buying manufactured or farm products of the United States is unreasonable. There is a presumption of unreasonableness for manufactured or farm products of the United States that cost more than 20% above the fair market value for such products.

At least 30 days before issuing a waiver under this subsection, the board of education shall provide to the public a notice summarizing the reason for the proposed waiver, and an opportunity for public comment on the proposed waiver. The notice shall be posted prominently on the public Internet website of the board of education and provided by electronic means to any person, firm, or corporation that makes a written or electronic request for notification. If, after public notice and an opportunity for public comment required by this subsection, the board of education determines to issue a waiver, the board of education shall provide a detailed justification for the waiver that shall be posted prominently on the public Internet website of the board of education and provided by electronic means to any person, firm, or corporation that has made a written or electronic request to receive notice of waiver actions. The justification shall include responses to any

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.
public comments received pursuant to this subsection, and be
published before the waiver takes effect.

c. If a contractor knowingly uses or supplies procured products
that are not manufactured or farm products of the United States in
violation of the provisions of a contract subject to the provisions of
this section, then:

(1) The contractor shall be barred from obtaining any contract
with any board of education or other public body, including the
State or any State agency, or public institution of higher education,
for a period of three years after the violation is discovered by the
board of education;

(2) The board of education may void the contract; and

(3) The board of education may recover damages in a civil
action in an amount two times any cost incurred by the board as a
result of the violation.

d. The provisions of this section requiring the purchase and use
of manufactured products of the United States shall not apply:

(1) At any time to replacement parts or components for, or
modifications of, equipment or systems provided under a contract
approved prior to the effective date of P.L. , c. (C. )
(pending before the Legislature as this bill);

(2) At any time to replacement parts or components for, or
modifications of, any equipment or systems for which a waiver was
provided under the provisions of this section;

(3) To information technology, telecommunications, electronic,
digital, computing, or other sophisticated technology articles,
materials or supplies that are generally imported into the United
States fully assembled; or

(4) To any product approved or legally marketed under the
Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.),
e. For the purposes of this section:

"Manufactured product" means a product that has been:

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that
has different properties than the properties of the individual raw
materials;

"Products of the United States" means:

(1) In the case of a manufactured product that is comprised
predominantly of iron or steel, all manufacturing processes of the
product, from the initial melting through the application of coatings,
occurred in the United States; and

(2) In the case of a manufactured product that is not comprised
predominantly of iron or steel:

(a) The product has been mined, produced or manufactured in
the United States; and
(b) The cost of the product’s components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components.

"Public work" means any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved at the expense of the public.

(cf: P.L.1999, c.440, s.66)

2. Section 18 of P.L.1971, c.198 (C.40A:11-18) is amended to read as follows:

18. a. Each [local] contracting unit shall provide, in the specifications for all contracts for purchases, or county or municipal work, including public work contracts, or for work for which it will pay any part of the cost, or work which by contract or ordinance it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available in reasonable quantity, be purchased or used in such work.

b. The provisions of subsection a. of this section may be waived, pursuant to the procedures provided in this subsection, in any case or category of cases in which the contracting unit entering into the contract finds that:

(1) Manufactured or farm products of the United States are not available in reasonable quantity; or

(2) The cost of buying manufactured or farm products of the United States is unreasonable. There is a presumption of unreasonableness for manufactured or farm products of the United States that cost more than 20% above the fair market value for such products.

At least 30 days before issuing a waiver under this subsection, the contracting unit shall provide to the public a notice summarizing the reason for the proposed waiver, and an opportunity for public comment on the proposed waiver. The notice shall be posted prominently on the public Internet website of the contracting unit and provided by electronic means to any person, firm, or corporation that makes a written or electronic request for notification. If, after public notice and an opportunity for public comment required by this subsection, the contracting unit determines to issue a waiver, the contracting unit shall provide a detailed justification for the waiver that shall be posted prominently on the public Internet website of the contracting unit and provided by electronic means to any person, firm, or corporation that has made a written or electronic request to receive notice of waiver actions. The justification shall include responses to any public comments received pursuant to this subsection, and be published before the waiver takes effect.
c. If a contractor knowingly uses or supplies procured products that are not manufactured or farm products of the United States in violation of the provisions of a contract subject to the provisions of this section, then:

   (1) The contractor shall be barred from obtaining any contract with any contracting unit or other public body, including the State or any State agency or public institution of higher education, for a period of three years after the violation is discovered by the contracting unit;

   (2) The contracting unit may void the contract; and

   (3) The contracting unit may recover damages in a civil action in an amount two times any cost incurred by the contracting unit as a result of the violation.

d. The provisions of this section requiring the purchase and use of manufactured products of the United States shall not apply:

   (1) At any time to replacement parts or components for, or modifications of, equipment or systems provided under a contract approved prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill);

   (2) At any time to replacement parts or components for, or modifications of, any equipment or systems for which a waiver was provided under the provisions of this section;

   (3) To information technology, telecommunications, electronic, digital, computing, or other sophisticated technology articles, materials or supplies that are generally imported into the United States fully assembled; or

   (4) To any product approved or legally marketed under the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

e. For the purposes of this section:

   “Manufactured product” means a product that has been:

   (1) Processed into a specific form and shape; or

   (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials;

   “Products of the United States” means:

   (1) In the case of a manufactured product that is comprised predominantly of iron or steel, all manufacturing processes of the product, from the initial melting through the application of coatings, occurred in the United States; and

   (2) In the case of a manufactured product that is not comprised predominantly of iron or steel:

      (a) The product has been mined, produced or manufactured in the United States; and

      (b) The cost of the product’s components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components.
"Public work" means any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved at the expense of the public.

(cf: P.L.1982, c.107, s.1)

3. (New section) a. A State agency shall make provisions in the specifications for all contracts that include or necessitate the procurement of articles, materials, goods, equipment, or supplies, including contracts for public works, for which the State pays any part of the cost, that only products that are manufactured or farm products of the United States, be used to fulfill those contracts.

b. Products that are manufactured or farm products of the United States shall be specified and purchased unless the State agency determines that any of the following apply:

(1) There are not manufactured or farm products of the United States available in reasonable quantities; or

(2) The cost of buying manufactured or farm products of the United States is unreasonable. There is a presumption of unreasonableness for manufactured or farm products of the United States that cost more than 20% above the fair market value for such products.

Any waiver proposed under this section shall be made public, reported to the relevant State agencies, and posted publicly for a 30-day comment period. If, after public notice and an opportunity for public comment, it is decided to issue the waiver, the waiver, with detailed justification including responses to any public comments, shall, before the waiver takes effect, be posted prominently on a public Internet website and made available upon request.

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

d. If a contractor is awarded a contract subject to the provisions of this section and knowingly supplies procured products under that contract that are not manufactured or farm products of the United States in violation of the provisions of this section, then:

(1) The contractor shall be barred from obtaining any contract with any State agency or other public body, including a political subdivision or public institution of higher education, for a period of three years after the violation is discovered by the State agency;

(2) The State agency may void the contract; and

(3) The State agency may recover damages in a civil action in an amount two times any cost to the State or the State agency caused by the violation or by any measures needed to achieve compliance with the requirements of this section.
e. The provisions of this section requiring the purchase and use of manufactured products of the United States shall not apply:

1. At any time to replacement parts or components for, or modifications of, equipment or systems provided under a contract approved prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill);
2. At any time to replacement parts or components for, or modifications of, any equipment or systems for which a waiver was provided under the provisions of this section;
3. To information technology, telecommunications, electronic, digital, computing, or other sophisticated technology articles, materials or supplies that are generally imported into the United States fully assembled; or
4. To any product approved or legally marketed under the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

f. As used in this section:

"Manufactured product" means a product that has been:
1. Processed into a specific form and shape; or
2. Combined with other raw material to create a material that has different properties than the properties of the individual raw materials;

"Products of the United States” means:
1. In the case of a manufactured product that is comprised predominantly of iron or steel, all manufacturing processes of the product, from the initial melting through the application of coatings, occurred in the United States; and
2. In the case of a manufactured product that is not comprised predominantly of iron or steel:
   a. The product has been mined, produced or manufactured in the United States; and
   b. The cost of the product’s components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components.

“Public work” means any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved at the expense of the public; and

“State agency” means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency, but not a county, municipality or other political subdivision of the State.
4. (New section) a. A public institution of higher education shall make provisions in the specifications for all contracts of the institution that include or necessitate the procurement of articles, materials, goods, equipment, or supplies, including contracts for public works, for which the institution pays any part of the cost, that only such products that are manufactured or farm products of the United States be used to fulfill those contracts.

b. Products that are manufactured or farm products of the United States shall be specified and purchased unless the public institution of higher education determines that any of the following apply:

(1) There are not manufactured or farm products of the United States available in reasonable quantities; or

(2) The cost of buying manufactured or farm products of the United States is unreasonable. There is a presumption of unreasonableness for manufactured or farm products of the United States that cost more than 20% above the fair market value for such products.

Any waiver proposed under this section shall be made public, reported to the relevant State agencies, and posted publicly for a 30-day comment period. If, after public notice and an opportunity for public comment, it is decided to issue the waiver, the waiver, with detailed justification including responses to any public comments, shall, before the waiver takes effect, be posted prominently on a public Internet website and made available upon request.

c. Each contract awarded by a public institution of higher education on or after the effective date of P.L. , c. (pending before the Legislature as this bill) shall contain the contractor’s certification that procured products provided pursuant to the contract or a subcontract shall be manufactured or farm products of the United States.

d. If a contractor is awarded a contract subject to the provisions of this section and knowingly supplies procured products under that contract that are not manufactured or farm products of the United States in violation of the provisions of this section, then:

(1) The contractor shall be barred from obtaining any contract with a public institution of higher education, or any other public body, including the State or any agency or political subdivision of the State, for a period of three years after the violation is discovered by the public institution of higher education;

(2) The public institution of higher education may void the contract; and

(3) The public institution of higher education may recover damages in a civil action in an amount two times any cost to the institution caused by the violation or by any measures needed to achieve compliance with the requirements of this section.
e. The provisions of this section requiring the purchase and use of manufactured products of the United States shall not apply:

(1) At any time to replacement parts or components for, or modifications of, equipment or systems provided under a contract approved prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill);

(2) At any time to replacement parts or components for, or modifications of, any equipment or systems for which a waiver was provided under the provisions of this section;

(3) To information technology, telecommunications, electronic, digital, computing, or other sophisticated technology articles, materials or supplies that are generally imported into the United States fully assembled; or

(4) To any product approved or legally marketed under the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

f. As used in this section:

“Manufactured product” means a product that has been:

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials;

“Products of the United States” means:

(1) In the case of a manufactured product that is comprised predominantly of iron or steel, all manufacturing processes of the product, from the initial melting through the application of coatings, occurred in the United States; and

(2) In the case of a manufactured product that is not comprised predominantly of iron or steel:

(a) The product has been mined, produced or manufactured in the United States; and

(b) The cost of the product’s components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components.

“Public institution of higher education” shall have the meaning as set forth in N.J.S.18A:72A-3; and

“Public work” means any public building, public highway, bridge, or other public betterment, work or improvement of a permanent nature, constructed, reconstructed, repaired or improved at the expense of the public.

5. (New section) a. The Legislature finds that there is widespread concern that public contracts and economic development assistance financed by the taxpayers of the State are being given to companies that send work outside of the United States. Business, labor, and government leaders recognize the need for an objective and thorough study of the extent to which public contracts and projects financed by taxpayers are being performed
outside the United States, and the impact of this practice on the State’s economy. Therefore, the Legislature finds it necessary to:

(1) Require bidders for public contracts and applicants for development assistance to disclose where the contract or project will be performed;

(2) Compile this data and make it available for public review and comment; and

(3) Study the impact on the State’s economy of taxpayer-financed contracts and projects being performed outside the United States.

b. Each vendor submitting a bid or contract to provide services and all development assistance applicants shall certify where the services covered by the bid, contract, or development assistance will be performed. Each vendor with a contract, each subcontractor, and each recipient of development assistance, in effect on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), notwithstanding any other requirements that have been imposed, shall certify where the services covered by the bid, contract, or development assistance are being performed; and disclose the name and headquarters location of its parent company.

c. The joint legislative task force, established under subsection e. of this section, shall create and maintain a comprehensive database of contract awards and development assistance provided by all State agencies that includes, but is not limited to, the information included in this section.

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

(1) The extent to which current public contracts, and any subcontracts under such contracts, are being performed outside of the United States and products and materials necessary in connection with the contracts are obtained outside of the United States;

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

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

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

(5) The economic costs and benefits of awarding public contracts, and any subcontracts under such contracts, to New Jersey companies;
(6) The applicability of international trade agreements and federal law to State procurement policies;

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

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

e. The study shall be conducted by a joint task force of the Senate and the General Assembly consisting of the following: two members of the General Assembly to be appointed by the Speaker of the General Assembly; two members of the General Assembly to be appointed by the General Assembly Minority Leader; two members of the Senate to be appointed by the Senate Majority Leader; and two members of the Senate to be appointed by the Senate Minority Leader.

f. The joint task force shall consult with and be advised and monitored by an advisory committee consisting of seven members: three members representing labor, appointed jointly by the President of the Senate and the Speaker of the General Assembly, from a list of names recommended by a Statewide organization representing a cross-section of organized labor in the State; three members representing business, one of whom shall represent small business, appointed jointly by the President of the Senate and the Speaker of the General Assembly, from a list of names recommended by a Statewide organization of employers representing a cross-section of employers of the State, and one member representing the public.

g. The information maintained in the comprehensive database outlined above shall be made available online to the Legislature and the public.

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

i. As used in this section:

“Parent company” means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation;

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

"Public body" means the State or any county, municipality, school district, authority or other political subdivision of the State; and

“Public contract” means a contract between a public body and a private entity for the private entity to provide goods or services, including public work.

6. The following sections are repealed:

R.S.52:32-1; and


7. This act shall take effect immediately.