

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2991 and 3117

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED DECEMBER 10, 2020

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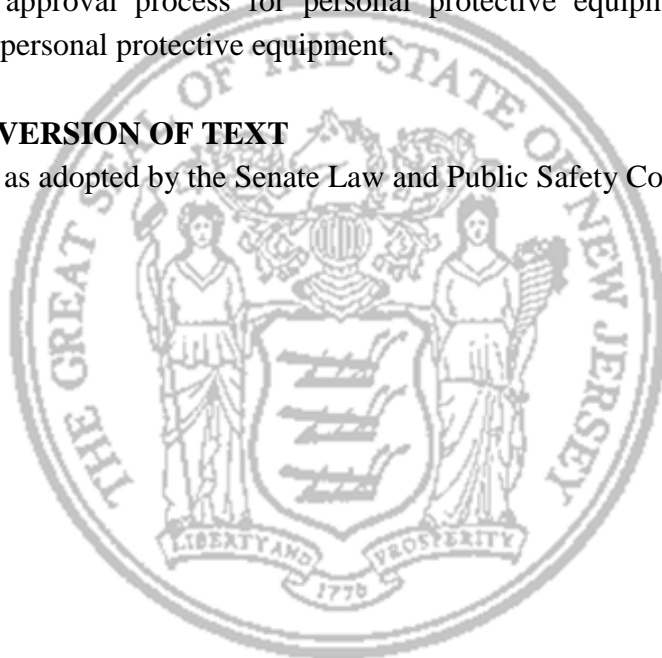
Senators Testa, Gopal, Cryan, Thompson, Cardinale and A.M.Bucco

SYNOPSIS

Concerns approval process for personal protective equipment and State stockpiles of personal protective equipment.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Law and Public Safety Committee.



1 AN ACT concerning the approval process for personal protective
2 equipment and State stockpiles of personal protective equipment,
3 supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).
4

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

8 1. a. The New Jersey Office of Emergency Management, in
9 consultation with the New Jersey Economic Development Authority
10 and the Department of Health, shall establish a process to evaluate,
11 provide feedback on, and approve personal protective equipment for
12 use during public health emergencies. The process shall help
13 businesses, not otherwise in the business of producing personal
14 protective equipment and not approved by federal agencies, safely
15 produce and supply personal protective equipment. The New Jersey
16 Economic Development Authority shall help the New Jersey Office
17 of Emergency Management review businesses, including to ensure
18 the businesses are legitimate and do not have health complaints or
19 unresolved safety or health citations. The New Jersey Office of
20 Emergency Management shall prioritize New Jersey-based
21 manufacturers of personal protective equipment when evaluating,
22 providing feedback on, and approving personal protective
23 equipment for use during public health emergencies.

24 b. The New Jersey Office of Emergency Management shall
25 employ a person or persons experienced with the federal agency
26 approval process of personal protective equipment. The person or
27 persons shall be allowed to work remotely as necessary and shall be
28 considered essential employees. The person or persons shall have
29 no personal interest or connection to any businesses submitting
30 personal protective equipment for approval.

31 c. No public or private entity or person shall be liable for
32 injury or death alleged to have been caused by the entity's or
33 person's use of personal protective equipment approved through the
34 process established pursuant to this section, in lieu of similar
35 equipment approved by federal agencies, as long as the public or
36 private entity or person used the personal protective equipment for
37 approved purposes. The liability protection granted pursuant to this
38 subsection shall not apply to acts or omissions constituting a crime,
39 actual fraud, actual malice, gross negligence, recklessness, or
40 willful misconduct.

41 d. The New Jersey Office of Emergency Management, in
42 consultation with the New Jersey Economic Development Authority
43 and the Department of Health, may adopt rules and regulations,
44 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
45 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
46 of this section. The rules and regulations shall be guided by
47 standards established by, among other sources, the National

1 Institute for Occupational Safety and Health and other federal
2 agencies.

3
4 2. a. Six months following the end of the public health
5 emergency first declared in Executive Order No. 103 of 2020, or
6 one year following enactment of P.L. , c. (C.) (pending
7 before the Legislature as this bill), whichever is later, the Director
8 of the Division of Purchase and Property in the Department of the
9 Treasury, in consultation with the New Jersey Office of Emergency
10 Management, New Jersey Economic Development Authority, and
11 Department of Health, shall award a contract or contracts, in
12 accordance with the provisions of chapter 34 of Title 52 of the
13 Revised Statutes, for the procurement of personal protective
14 equipment for the creation of two stockpiles pursuant to this
15 section. The director may make awards to multiple bidders in
16 accordance with section 1 of P.L.1986, c.26 (C.52:34-12.1). To the
17 extent feasible, money to purchase personal protective equipment
18 for each stockpile shall come from federal public health emergency
19 relief funds.

20 b. One stockpile shall consist of personal protective equipment
21 approved by federal agencies and the other stockpile shall consist of
22 personal protective equipment approved by the New Jersey Office
23 of Emergency Management pursuant to section 1 of
24 P.L. , c. (C.) (pending before the Legislature as this bill).
25 Each stockpile shall be gradually filled to a capacity, as determined
26 by the New Jersey Office of Emergency Management, New Jersey
27 Economic Development Authority, and the Department of Health.
28 In filling the stockpiles to capacity, at least one third of the capacity
29 shall be filled each year until capacity is met. If personal protective
30 equipment from a stockpile is used, the stockpile shall be refilled in
31 a manner similar to how the initial stockpile was filled.

32 c. To the extent feasible, at least 50 percent of each stockpile
33 shall consist of personal protective equipment made in New Jersey,
34 but in no case shall less than 25 percent of the New Jersey Office of
35 Emergency Management-approved stockpile be made in New
36 Jersey. At least 66 percent of each stockpile shall consist of
37 personal protective equipment made in the United States, including
38 personal protective equipment made in New Jersey.

39 d. During public health emergencies, the New Jersey Office of
40 Emergency Management shall make the personal protective
41 equipment in the stockpiles available to the State and its political
42 subdivisions, to public New Jersey schools, New Jersey-based non-
43 profit private schools, New Jersey-based non-profit charter schools,
44 State hospitals, and State nursing homes without charging a fee.
45 During public health emergencies, the Director of the Division of
46 Purchase and Property in the Department of the Treasury, in
47 consultation with the New Jersey Office of Emergency
48 Management, New Jersey Economic Development Authority, and

1 Department of Health, shall make the remainder of the stockpiles
2 available for purchase by other or private entities at market price or
3 cost price, whichever is higher. New Jersey-based non-profits shall
4 be allowed to purchase personal protective equipment in the
5 stockpiles at 75 percent of market price or cost price, whichever is
6 higher, during public health emergencies. The “Sales and Use Tax
7 Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), shall not apply to
8 purchases made pursuant to this subsection. The New Jersey Office
9 of Emergency Management, New Jersey Economic Development
10 Authority, and the Department of Health, shall have discretion to
11 establish orders of priority for which entities may gain first access
12 to the stockpiles.

13 e. When personal protective equipment in the stockpiles is
14 within one year of expiration, the personal protective equipment
15 shall be made available for sale to the following entities, in order of
16 priority: 1) New Jersey-based Federally Qualified Health Centers;
17 2) State hospitals; 3) non-profit hospitals within the State; 4) New
18 Jersey public school districts, New Jersey-based non-profit private
19 schools, New Jersey-based non-profit charter schools; and 5) for-
20 profit New Jersey-based hospitals. To the extent feasible, any
21 personal protective equipment in the stockpiles that expire shall be
22 disposed in an environmentally sound manner or donated to a
23 charity in the State.

24 f. The New Jersey Office of Emergency Management, in
25 consultation with the New Jersey Economic Development Authority
26 and the Department of Health, may adopt rules and regulations,
27 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
28 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes
29 of this section.

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31 3. The New Jersey Office of Emergency Management shall
32 annually submit a report, compiled in consultation with the New
33 Jersey Economic Development Authority and the Department of
34 Health, to the Governor and to the Legislature, in accordance with
35 section 2 of P.L.1991, c.164 (C.52:14-19.1), on the status of the
36 stockpiles required pursuant to section 2 of P.L. , c. (C.)
37 (pending before the Legislature as this bill). The report shall include
38 data on the price paid by the State for personal protective
39 equipment and data on any personal protective equipment sold by
40 the State. The reports shall be made available to the public on the
41 Office of Emergency Management’s website.

42
43 4. This act shall take effect immediately.