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Beach, Van Drew, Allen, Greenstein, Stack, Vitale, Addiego, Gordon,
Norcross and Whelan

SYNOPSIS
Creates State contract set-aside program for businesses owned and operated
by veterans.

CURRENT VERSION OF TEXT
As amended by the Senate on January 6, 2011.
AN ACT concerning the designation of certain State purchase and
collection contracts as set-asides for businesses owned and
operated by veterans, and supplementing Title 52 of the Revised
Statutes.

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

1. This act shall be known and may be cited as the "Set-Aside
Act for Veteran-Owned Businesses."

2. As used in this act:
"Authority" means the New Jersey Economic Development
Authority.
"Contracting agency" means the State or any board, commission,
authority or agency of the State.
"Veteran" means any citizen and resident of this State now or
hereafter honorably discharged or released under honorable
circumstances who served in any branch of the Armed Forces of the
United States or a Reserve component thereof for at least 90 days
and shall include disabled veterans.
"Veteran-owned business" means a business that has its principal
place of business in the State, is independently owned and operated
and at least 51% of the business is owned and controlled by persons
who are veterans.
"Veteran-owned business set-aside contract" means a contract for
goods, equipment, construction, or services that is designated, or a
portion of which is designated, as a contract with respect to which
bids are invited and accepted only from veteran-owned businesses.

3. The New Jersey Economic Development Authority shall
administer a veteran-owned business set-aside program which shall
be in addition to any other set-aside program established by law.

4. a. Notwithstanding the provisions of any State bidding or
public contracts laws to the contrary, but subject to any supervening
federal statutes or rules, contracting agencies, in consultation with
the authority, may designate a contract, or a portion thereof, for
goods, equipment, construction, or services to be awarded by a
contracting agency as a veteran-owned business set-aside contract
pursuant to the goals and procedures established in this act,
whenever there is a reasonable expectation that bids may be
obtained from at least three qualified veteran-owned businesses
capable of furnishing the desired goods, equipment, construction, or

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:
°Assembly floor amendments adopted November 22, 2010.
°Senate floor amendments adopted January 6, 2011.
services at a fair and reasonable price. The designation shall be made prior to the advertisement for bids.

b. When application of the goals and procedures established under this act would jeopardize the State's participation in a program from which the State receives federal funds or other benefits, the contracting agency may, in consultation with the authority, withdraw the affected contracts from consideration or calculation.

5. a. There are established the goals that contracting agencies award at least 3% of their contracts to veteran-owned businesses. These goals may, when appropriate, be attained by the direct designation of prime contracts for these businesses or, in the case of a prime contract not directly so designated, by requiring that a portion of such prime contract be subcontracted to a veteran-owned business. Each contracting agency shall make a good faith effort to attain the goals established in this subsection.

b. For the purpose of attaining this goal, contracting agencies shall, when necessary, specifically set aside contracts or portions of contracts for which only these businesses may bid.

6. If the authority and the contracting agency disagree as to whether a set-aside is appropriate for a contract or a portion of a contract, the dispute shall, within seven days, be submitted to the State Treasurer, or the Treasurer’s designee, for final determination.

7. The advertisement for bids on a veteran-owned business set-aside contract shall indicate the invitation to bid as a set-aside. The advertisement shall be in such newspaper, or newspapers by electronic means, as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding among the businesses for which the contract is being set aside. The newspaper or newspapers in which the advertisement shall appear shall be selected by the contracting agency in consultation with the authority. The advertisement shall designate the time and place at which sealed proposals shall be received and publicly opened and read, the amount of the cash or certified check, if any, which shall accompany each bid and such other items as the contracting agency may deem proper. The advertisement shall be made by that contracting agency pursuant to the procedure set forth in the law governing State contracts, when this act is inconsistent with that law.

8. a. The authority shall establish reasonable regulations appropriate for controlling the designation of prospective veteran-owned business bidders and shall maintain lists of designated businesses. The regulations shall require for designation the
submission of proof of veteran status by the contractor or vendor  

by submission in the form of a copy of a federal DD214, as well as proof of ownership in the veteran-owned business.

b. The authority shall establish a procedure whereby businesses may request inclusion on appropriate lists for veteran-owned businesses.

c. The authority shall establish a procedure for annually reviewing the lists and determining whether the businesses on the lists shall continue to be designated as veteran-owned businesses.

d. The authority shall establish a procedure whereby the designation of a business as a veteran-owned business may be challenged by a third party.

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

9. When a contract or portion thereof has been designated as a veteran-owned business set-aside, invitations for bids shall be confined to businesses designated by the authority as appropriate for the set-aside and bids from other bidders shall be rejected. The purchase, contract or expenditure of funds shall be awarded among the businesses, considering conformity with specifications and terms, in accordance with the statutes and rules governing purchases by the contracting agency. The award shall be made with reasonable promptness by the contracting agency with written notice to the authority.

10. If the contracting agency determines that the acceptance of the lowest responsible bid on a veterans business set-aside contract will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing purchases by that agency, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract. Bidders shall be notified of the set-aside cancellation, the reasons for the rejection and the State's intent to resolicit bids on an unrestricted basis. The canceled solicitation shall not be counted as a set-aside for the purpose of attaining established set-aside goals. Except in cases of emergency, prior to the final award of the contract, the contracting agency shall provide an opportunity for a hearing on the reasons for the rejection of the set-aside designation. This hearing shall not be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

11. Each contracting agency shall submit an annual report to the
authority according to a schedule announced by the authority. This report shall include the following information:

a. the total dollar value and number of contracts awarded to veteran-owned businesses, including a separate accounting of any set-aside contracts, and the percentage of the total State procurements by the contracting agency that the figure of total dollar value and the number of set-asides reflect;

b. the types and sizes of businesses receiving set-aside awards and the nature of the purchases and contracts; and

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

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

12. Each contracting agency shall annually develop, in consultation with the authority, a plan for achieving its veteran-owned business set-aside goals.

13. The authority shall consult regularly with representatives of the contracting industry for the purpose of implementing the provisions of this act. These consultations shall take place no less than once every six months.

14. When the authority determines that a business has been classified as a veteran-owned business on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the authority shall:

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

b. in addition to the amount due under subsection a., assess the business a penalty in an amount of not more than 10% of the amount of the contract involved;

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

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

All payments to the State pursuant to subsection a. of this section shall be deposited in the fund out of which the contract involved was awarded. All payments to the State pursuant to subsection b. of this section shall be deposited in the General Fund.
15. This act shall take effect immediately.