

VETO MESSAGE:

Yes

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

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No

LAW/KR

P.L.2011, CHAPTER 147, *approved December 20, 2011*
Assembly, No. 3308 (*Third Reprint*)

1 AN ACT concerning ³[the designation of certain State purchase and
2 construction contracts as set-asides for]³ businesses owned and
3 operated by veterans, 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. This act shall be known and may be cited as the "³[Set-
10 Aside] Veteran-Owned Business Assistance³ Act ³[for Veteran-
11 Owned Businesses]³."

12
13 2. As used in this act:
14 "Authority" means the New Jersey Economic Development
15 Authority.

16 "Contracting agency" means the State or any board, commission,
17 authority or agency of the State.

18 ³"Department" means the New Jersey Department of the
19 Treasury.³

20 "Veteran" means any citizen and resident of this State now or
21 hereafter honorably discharged or released under honorable
22 circumstances who served in any branch of the Armed Forces of the
23 United States or a Reserve component thereof for at least 90 days
24 and shall include disabled veterans.

25 "Veteran-owned business" means a business that has its principal
26 place of business in the State, is independently owned and operated
27 and at least 51% of the business is owned and controlled by persons
28 who are veterans.

29 ³["Veteran-owned business set-aside contract" means a contract
30 for goods, equipment, construction, or services that is designated, or
31 a portion of which is designated, as a contract with respect to which
32 bids are invited and accepted only from veteran-owned
33 businesses.]³

34
35 3. The New Jersey ³[Economic Development Authority]
36 Department of the Treasury³ shall ³[administer a] encourage³

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:

¹Assembly floor amendments adopted November 22, 2010.

²Senate floor amendments adopted January 6, 2011.

³Assembly amendments adopted in accordance with Governor's recommendations December 1, 2011.

1 veteran-owned ³[business set-aside program which shall be in
2 addition to any other set-aside program established by law]
3 businesses to participate in State procurement and contracting³.
4

5 ³[4. a. Notwithstanding the provisions of any State bidding or
6 public contracts laws to the contrary, but subject to any supervening
7 federal statutes or rules, contracting agencies, in consultation with
8 the authority, may designate a contract, or a portion thereof, for
9 goods, equipment, construction, or services to be awarded by a
10 contracting agency as a veteran-owned business set-aside contract
11 pursuant to the goals and procedures established in this act,
12 whenever there is a reasonable expectation that bids may be
13 obtained from at least three qualified veteran-owned businesses
14 capable of furnishing the desired goods, equipment, construction, or
15 services at a fair and reasonable price. The designation shall be
16 made prior to the advertisement for bids.

17 b. When application of the goals and procedures established
18 under this act would jeopardize the State's participation in a
19 program from which the State receives federal funds or other
20 benefits, the contracting agency may, in consultation with the
21 authority, withdraw the affected contracts from consideration or
22 calculation.]³
23

24 ³[5. a] 4³. There ³[are] is³ established the ~~[goals]~~ goal³ that
25 contracting agencies ³[award at least 3% of their contracts to
26 veteran-owned businesses] give due consideration to veteran-
27 owned businesses in awarding contracts³. ³[These goals] This
28 goal³ may ³[, when appropriate,]³ be attained by the ³[direct
29 designation of prime contracts for these businesses or, in the case of
30 a prime contract not directly so designated, by requiring that a
31 portion of such prime contract be subcontracted to a veteran-owned
32 business. Each contracting agency shall make a good faith effort to
33 attain the goals established in this subsection.

34 b. For the purpose of attaining this goal, contracting agencies
35 shall, when necessary, specifically set aside contracts or portions of
36 contracts for which only these businesses may bid] department's
37 monitoring of policies, practices, and programs in consultation with
38 the authority and the New Jersey Department of Military and
39 Veterans Affairs that will further the State's efforts in encouraging
40 opportunities for veteran-owned businesses in State purchasing and
41 procurement processes. In addition, the department, in consultation
42 with the authority and the New Jersey Department of Military and
43 Veterans Affairs shall identify strategies to expand the number of
44 veteran-owned businesses interested in and eligible to benefit from
45 State procurement activity.³
46

47 ³[6. If the authority and the contracting agency disagree as to

1 whether a set-aside is appropriate for a contract or a portion of a
2 contract, the dispute shall, within seven days, be submitted to the
3 State Treasurer, or the Treasurer's designee, for final
4 determination.】³

5
6 ³[7. The advertisement for bids on a veteran-owned business
7 set-aside contract shall indicate the invitation to bid as a set-aside.
8 The advertisement shall be in such newspaper, or newspapers by
9 electronic means, as will best give notice thereof to appropriate
10 bidders and shall be sufficiently in advance of the purchase or
11 contract to promote competitive bidding among the businesses for
12 which the contract is being set aside. The newspaper or newspapers
13 in which the advertisement shall appear shall be selected by the
14 contracting agency in consultation with the authority. The
15 advertisement shall designate the time and place at which sealed
16 proposals shall be received and publicly opened and read, the
17 amount of the cash or certified check, if any, which shall
18 accompany each bid and such other items as the contracting agency
19 may deem proper. The advertisement shall be made by that
20 contracting agency pursuant to the procedure set forth in the law
21 governing State contracts, when this act is inconsistent with that
22 law.】³

23
24 ³[8. a. The authority shall establish reasonable regulations
25 appropriate for controlling the designation of prospective veteran-
26 owned business bidders and shall maintain lists of designated
27 businesses. ¹The regulations shall require for designation the
28 submission of proof of veteran status by the contractor or vendor
29 ²[by submission] in the form² of a copy of a federal DD214, as
30 well as proof of ownership in the veteran-owned business.¹

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

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

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

40 e. Any procedures established pursuant to subsections b., c.,
41 and d. of this section shall include notice to the business whose
42 designation is at issue and an opportunity for a hearing at the
43 authority. The hearing shall not be considered a contested case
44 under the "Administrative Procedure Act," P.L.1968, c.410
45 (C.52:14B-1 et seq.).】³

46
47 ³[9. When a contract or portion thereof has been designated as a

1 veteran-owned business set-aside, invitations for bids shall be
2 confined to businesses designated by the authority as appropriate
3 for the set-aside and bids from other bidders shall be rejected. The
4 purchase, contract or expenditure of funds shall be awarded among
5 the businesses, considering conformity with specifications and
6 terms, in accordance with the statutes and rules governing
7 purchases by the contracting agency. The award shall be made with
8 reasonable promptness by the contracting agency with written
9 notice to the authority.]³

10
11 ³[10. If the contracting agency determines that the acceptance of
12 the lowest responsible bid on a veterans business set-aside contract
13 will result either in the payment of an unreasonable price or in a
14 contract otherwise unacceptable pursuant to the statutes and rules
15 governing purchases by that agency, the contracting agency shall
16 reject all bids and withdraw the designation of the set-aside
17 contract. Bidders shall be notified of the set-aside cancellation, the
18 reasons for the rejection and the State's intent to resolicit bids on an
19 unrestricted basis. The canceled solicitation shall not be counted as
20 a set-aside for the purpose of attaining established set-aside goals.
21 Except in cases of emergency, prior to the final award of the
22 contract, the contracting agency shall provide an opportunity for a
23 hearing on the reasons for the rejection of the set-aside designation.
24 This hearing shall not be considered a contested case under the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.).]³

27
28 ³[11] 5³. Each contracting agency shall submit an annual
29 report to the ³[authority] department³ according to a schedule
30 announced by the ³[authority] department³. This report shall
31 include the following information:

32 a. the total dollar value and number of contracts awarded to
33 veteran-owned businesses ³[, including a separate accounting of
34 any set-aside contracts, and the percentage of the total State
35 procurements by the contracting agency that the figure of total
36 dollar value and the number of set-asides reflect]³;

37 b. the types and sizes of businesses receiving ³[set-aside]³
38 awards and the nature of the purchases and contracts; and

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

40 The ³[authority] department³ shall receive and analyze the
41 reports submitted by the contracting agencies and, utilizing these
42 data, submit an annual report to the Governor, and the Legislature
43 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), showing
44 the progress being made toward the objectives and goals of this act
45 during the preceding fiscal year.

46
47 ³[12. Each contracting agency shall annually develop, in

1 consultation with the authority, a plan for achieving its veteran-
2 owned business set-aside goals.]³

3

4 ³[13] 6³. The ³[authority] department³ shall consult regularly
5 with representatives of the ³[contracting industry] vendor
6 community³ for the purpose of implementing the provisions of this
7 act. These consultations shall take place no less than once every six
8 months.

9

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

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

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

21 c. order the business ineligible to transact any business with the
22 State for a period of not less than three months and not more than
23 24 months; and

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

28 All payments to the State pursuant to subsection a. of this section
29 shall be deposited in the fund out of which the contract involved
30 was awarded. All payments to the State pursuant to subsection b. of
31 this section shall be deposited in the General Fund.]³

32

33 ³[15] 7³. This act shall take effect immediately.

34

35

36

37

38 _____
Concerns businesses owned and operated by veterans.

ASSEMBLY, No. 3308

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 7, 2010

Sponsored by:

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/9/2010)

1 AN ACT concerning the designation of certain State purchase and
2 construction contracts as set-asides for businesses owned and
3 operated by veterans, 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. This act shall be known and may be cited as the "Set-Aside
10 Act for Veteran-Owned Businesses."

11
12 2. As used in this act:

13 "Authority" means the New Jersey Economic Development
14 Authority.

15 "Contracting agency" means the State or any board, commission,
16 authority or agency of the State.

17 "Veteran" means any citizen and resident of this State now or
18 hereafter honorably discharged or released under honorable
19 circumstances who served in any branch of the Armed Forces of the
20 United States or a Reserve component thereof for at least 90 days
21 and shall include disabled veterans.

22 "Veteran-owned business" means a business that has its principal
23 place of business in the State, is independently owned and operated
24 and at least 51% of the business is owned and controlled by persons
25 who are veterans.

26 "Veteran-owned business set-aside contract" means a contract for
27 goods, equipment, construction, or services that is designated, or a
28 portion of which is designated, as a contract with respect to which
29 bids are invited and accepted only from veteran-owned businesses.

30
31 3. The New Jersey Economic Development Authority shall
32 administer a veteran-owned business set-aside program which shall
33 be in addition to any other set-aside program established by law.

34
35 4. a. Notwithstanding the provisions of any State bidding or
36 public contracts laws to the contrary, but subject to any supervening
37 federal statutes or rules, contracting agencies, in consultation with
38 the authority, may designate a contract, or a portion thereof, for
39 goods, equipment, construction, or services to be awarded by a
40 contracting agency as a veteran-owned business set-aside contract
41 pursuant to the goals and procedures established in this act,
42 whenever there is a reasonable expectation that bids may be
43 obtained from at least three qualified veteran-owned businesses
44 capable of furnishing the desired goods, equipment, construction, or
45 services at a fair and reasonable price. The designation shall be
46 made prior to the advertisement for bids.

47 b. When application of the goals and procedures established
48 under this act would jeopardize the State's participation in a

1 program from which the State receives federal funds or other
2 benefits, the contracting agency may, in consultation with the
3 authority, withdraw the affected contracts from consideration or
4 calculation.

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

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

17
18 6. If the authority and the contracting agency disagree as to
19 whether a set-aside is appropriate for a contract or a portion of a
20 contract, the dispute shall, within seven days, be submitted to the
21 State Treasurer, or the Treasurer's designee, for final determination.

22
23 7. The advertisement for bids on a veteran-owned business set-
24 aside contract shall indicate the invitation to bid as a set-aside. The
25 advertisement shall be in such newspaper, or newspapers by
26 electronic means, as will best give notice thereof to appropriate
27 bidders and shall be sufficiently in advance of the purchase or
28 contract to promote competitive bidding among the businesses for
29 which the contract is being set aside. The newspaper or newspapers
30 in which the advertisement shall appear shall be selected by the
31 contracting agency in consultation with the authority. The
32 advertisement shall designate the time and place at which sealed
33 proposals shall be received and publicly opened and read, the
34 amount of the cash or certified check, if any, which shall
35 accompany each bid and such other items as the contracting agency
36 may deem proper. The advertisement shall be made by that
37 contracting agency pursuant to the procedure set forth in the law
38 governing State contracts, when this act is inconsistent with that
39 law.

40
41 8. a. The authority shall establish reasonable regulations
42 appropriate for controlling the designation of prospective veteran-
43 owned business bidders and shall maintain lists of designated
44 businesses.

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

48 c. The authority shall establish a procedure for annually

1 reviewing the lists and determining whether the businesses on the
2 lists shall continue to be designated as veteran-owned businesses.

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

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

12

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

23

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

40

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

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

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

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

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

10

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

14

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

19

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

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

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

31 c. order the business ineligible to transact any business with the
32 State for a period of not less than three months and not more than
33 24 months; and

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

38 All payments to the State pursuant to subsection a. of this section
39 shall be deposited in the fund out of which the contract involved
40 was awarded. All payments to the State pursuant to subsection b. of
41 this section shall be deposited in the General Fund.

42

43 15. This act shall take effect immediately.

44

45

46

STATEMENT

47

48 This bill creates a State contract set-aside program for veteran-

A3308 GOVE, RUMPF

6

1 owned businesses to be administered by the New Jersey Economic
2 Development Authority. It establishes a goal that contracting
3 agencies set aside at least 3% of their contracts for veteran-owned
4 businesses. A veteran-owned business is defined as a business
5 which has its principal place of business in New Jersey, is
6 independently owned and operated and at least 51% of the business
7 is owned and controlled by persons who are veterans. The set-aside
8 program would create economic opportunities for veterans and
9 recognize their service and sacrifice.

ASSEMBLY MILITARY AND VETERANS' AFFAIRS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3308

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2010

The Assembly Military and Veterans' Affairs Committee reports favorably Assembly, No. 3308.

This bill creates a State contract set-aside program for veteran-owned businesses to be administered by the New Jersey Economic Development Authority. It establishes a goal that contracting agencies set aside at least 3% of their contracts for veteran-owned businesses. A veteran-owned business is defined as a business which has its principal place of business in New Jersey, is independently owned and operated, and at least 51% of the business is owned and controlled by persons who are veterans. The program would be subject to the same requirements as all other invitations to bid including advertising in a newspaper or advertising in a newspaper via electronic means. The set-aside program would create economic opportunities for veterans and recognize their service and sacrifice.

This bill is identical to Senate, No. 2314 of 2010-2011.

STATEMENT TO
ASSEMBLY, No. 3308

with Assembly Floor Amendments
(Proposed by Assemblywoman Gove)

ADOPTED: NOVEMBER 22, 2010

This bill is amended to require the New Jersey Economic Development Authority, the agency that will administer the State contract set-aside program for veteran-owned businesses, to develop regulations to require veterans to show proof of veteran status by the submission of a copy of a federal DD214, Certificate of Release or Discharge from Active Duty form, as well as to require proof of ownership in the veteran-owned business showing that veterans own and operate at least 51% of the business.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3308

with Senate Floor Amendments
(Proposed by Senator CONNORS)

ADOPTED: JANUARY 6, 2011

This Senate floor amendment is technical in nature; it updates language in the bill to make this bill identical to Senate No. 2314 (1R) of the 2010-2011 session.

ASSEMBLY BILL NO. 3308
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3308 (Second Reprint) with my recommendations for reconsideration.

This legislation would require the New Jersey Economic Development Authority to administer a State contract set-aside program for businesses owned and operated by veterans. Specifically, this legislation would establish a goal for the State and agencies of the State to award at least 3 percent of their contracts to veteran-owned businesses.

I commend the sponsors for their efforts to increase economic opportunities for veterans who have honorably served our State and our Nation. My administration remains committed to ensuring that veterans continue to play a key role in all aspects of New Jersey's growth and expansion, with particular emphasis on adding veterans to New Jersey's economic recovery. While I support the sponsors' intent of expanding some opportunities for veterans, I am concerned that this bill does not sufficiently address the needs of all veteran-owned businesses in New Jersey. Rather than limiting veterans to narrow segments of our economy, the State should encourage robust participation of veteran-owned businesses throughout all aspects of the State's contracting choices.

Therefore, I am returning this legislation with my recommendations that would create a comprehensive system of direct veteran participation in State purchasing and procurement. These recommendations will create a new system of collaboration between veteran-owned businesses, the New Jersey Department of the Treasury, the New Jersey Economic Development

Authority and the New Jersey Department of Military and Veterans Affairs. Together, these Departments and agencies will have responsibility for enhanced outreach initiatives, developing strategies to expand the number of veteran-owned businesses eligible to benefit from State contracting, and a review of policies, practices, and services that will further the State's commitment to our veterans.

Accordingly, I herewith return Assembly Bill No. 3308 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Lines 1-2:</u>	Delete "the designation of certain State purchase and construction contracts as set-asides for"
<u>Page 2, Section 1, Lines 9:</u>	Delete "Set-Aside" and insert "Veteran-Owned Business Assistance"
<u>Page 2, Section 1, Line 10:</u>	Delete "for Veteran-Owned Businesses"
<u>Page 2, Section 2, Line 16:</u>	After "of the State." insert ""Department" means the New Jersey Department of the Treasury."
<u>Page 2, Section 2, Lines 26-29:</u>	Delete in their entirety
<u>Page 2, Section 3, Line 31:</u>	Delete "Economic Development Authority" and insert "Department of the Treasury"
<u>Page 2, Section 3, Line 32:</u>	Delete "administer a" and insert "encourage"
<u>Page 2, Section 3, Lines 32-33:</u>	Delete "business set-aside program which shall be in addition to any other set-aside program established by law" and insert "businesses to participate in State procurement and contracting"
<u>Page 2, Section 4, Lines 35-44:</u>	Delete in their entirety
<u>Page 3, Section 4, Lines 1-8:</u>	Delete in their entirety
<u>Page 3, Section 5, Line 10:</u>	Delete "5. a." and insert "4."
<u>Page 3, Section 5, Line 10:</u>	Delete "are" and insert "is"
<u>Page 3, Section 5, Line 10:</u>	Delete "goals" and insert "goal"
<u>Page 3, Section 5, Line 11:</u>	Delete "award at least 3% of their contracts to veteran-owned businesses" and insert

"give due consideration to veteran-owned businesses in awarding contracts"

- Page 3, Section 5, Line 12: Delete "These" and insert "This"
- Page 3, Section 5, Line 12: Delete "goals" and insert "goal"
- Page 3, Section 5, Line 12: Delete ", when appropriate,"
- Page 3, Section 5, Line 12: Delete "direct"
- Page 3, Section 5, Lines 13-20: Delete in their entirety and insert "department's monitoring of policies, practices, and programs in consultation with the authority and the New Jersey Department of Military and Veterans Affairs that will further the State's efforts in encouraging opportunities for veteran-owned businesses in State purchasing and procurement processes. In addition, the department, in consultation with the authority and the New Jersey Department of Military and Veterans Affairs shall identify strategies to expand the number of veteran-owned businesses interested in and eligible to benefit from State procurement activity."
- Page 3, Section 6, Lines 22-25: Delete in their entirety
- Page 3, Section 7, Lines 27-43: Delete in their entirety
- Page 3, Section 8, Lines 45-48: Delete in their entirety
- Page 4, Section 8, Lines 1-18: Delete in their entirety
- Page 4, Section 9, Lines 20-29: Delete in their entirety
- Page 4, Section 10, Lines 31-46: Delete in their entirety
- Page 4, Section 11, Line 48: Delete "11." and insert "5."
- Page 5, Section 11, Line 1: Before "according" delete "authority" and insert "department"; and after "by the" delete "authority" and insert "department"
- Page 5, Section 11, Lines 4-7: Delete ", 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"
- Page 5, Section 11, Line 8: Delete "set-aside"

Page 5, Section 11, Line 11: Delete "authority" and insert "department"

Page 5, Section 12, Lines 18-20: Delete in their entirety

Page 5, Section 13, Line 22: Delete "13." and insert "6."

Page 5, Section 13, Line 22: Delete "authority" and insert "department"

Page 5, Section 13, Line 23: Delete "contracting industry" and insert "vendor community"

Page 5, Section 14, Lines 27-48: Delete in their entirety

Page 6, Section 15, Line 1: Delete "15." and insert "7."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor

SENATE, No. 2314

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2010

Sponsored by:

Senator CHRISTOPHER J. CONNORS
District 9 (Atlantic, Burlington and Ocean)
Senator JAMES BEACH
District 6 (Camden)

Co-Sponsored by:

Senators Van Drew and Allen

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/23/2010)

S2314 CONNORS, BEACH

2

1 AN ACT concerning the designation of certain State purchase and
2 construction contracts as set-asides for businesses owned and
3 operated by veterans, 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. This act shall be known and may be cited as the "Set-Aside
10 Act for Veteran-Owned Businesses."

11

12 2. As used in this act:

13 "Authority" means the New Jersey Economic Development
14 Authority.

15 "Contracting agency" means the State or any board, commission,
16 authority or agency of the State.

17 "Veteran" means any citizen and resident of this State now or
18 hereafter honorably discharged or released under honorable
19 circumstances who served in any branch of the Armed Forces of the
20 United States or a Reserve component thereof for at least 90 days
21 and shall include disabled veterans.

22 "Veteran-owned business" means a business that has its principal
23 place of business in the State, is independently owned and operated
24 and at least 51% of the business is owned and controlled by persons
25 who are veterans.

26 "Veteran-owned business set-aside contract" means a contract for
27 goods, equipment, construction, or services that is designated, or a
28 portion of which is designated, as a contract with respect to which
29 bids are invited and accepted only from veteran-owned businesses.

30

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

34

35 4. a. Notwithstanding the provisions of any State bidding or
36 public contracts laws to the contrary, but subject to any supervening
37 federal statutes or rules, contracting agencies, in consultation with
38 the authority, may designate a contract, or a portion thereof, for
39 goods, equipment, construction, or services to be awarded by a
40 contracting agency as a veteran-owned business set-aside contract
41 pursuant to the goals and procedures established in this act,
42 whenever there is a reasonable expectation that bids may be
43 obtained from at least three qualified veteran-owned businesses
44 capable of furnishing the desired goods, equipment, construction, or
45 services at a fair and reasonable price. The designation shall be
46 made prior to the advertisement for bids.

47 b. When application of the goals and procedures established
48 under this act would jeopardize the State's participation in a

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1 program from which the State receives federal funds or other
2 benefits, the contracting agency may, in consultation with the
3 authority, withdraw the affected contracts from consideration or
4 calculation.

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

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

17
18 6. If the authority and the contracting agency disagree as to
19 whether a set-aside is appropriate for a contract or a portion of a
20 contract, the dispute shall, within seven days, be submitted to the
21 State Treasurer, or the Treasurer's designee, for final determination.

22
23 7. The advertisement for bids on a veteran-owned business set-
24 aside contract shall indicate the invitation to bid as a set-aside. The
25 advertisement shall be in such newspaper, or newspapers by
26 electronic means, as will best give notice thereof to appropriate
27 bidders and shall be sufficiently in advance of the purchase or
28 contract to promote competitive bidding among the businesses for
29 which the contract is being set aside. The newspaper or newspapers
30 in which the advertisement shall appear shall be selected by the
31 contracting agency in consultation with the authority. The
32 advertisement shall designate the time and place at which sealed
33 proposals shall be received and publicly opened and read, the
34 amount of the cash or certified check, if any, which shall
35 accompany each bid and such other items as the contracting agency
36 may deem proper. The advertisement shall be made by that
37 contracting agency pursuant to the procedure set forth in the law
38 governing State contracts, when this act is inconsistent with that
39 law.

40
41 8. a. The authority shall establish reasonable regulations
42 appropriate for controlling the designation of prospective veteran-
43 owned business bidders and shall maintain lists of designated
44 businesses.

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

48 c. The authority shall establish a procedure for annually

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1 reviewing the lists and determining whether the businesses on the
2 lists shall continue to be designated as veteran-owned businesses.

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

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

12

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

23

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

40

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

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

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

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

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

10

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

14

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

19

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

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

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

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

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

38 All payments to the State pursuant to subsection a. of this section
39 shall be deposited in the fund out of which the contract involved
40 was awarded. All payments to the State pursuant to subsection b. of
41 this section shall be deposited in the General Fund.

42

43 15. This act shall take effect immediately.

44

45

46

STATEMENT

47

48 This bill creates a State contract set-aside program for veteran-

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6

1 owned businesses to be administered by the New Jersey Economic
2 Development Authority. It establishes a goal that contracting
3 agencies set aside at least 3% of their contracts for veteran-owned
4 businesses. A veteran-owned business is defined as a business
5 which has its principal place of business in New Jersey, is
6 independently owned and operated and at least 51% of the business
7 is owned and controlled by persons who are veterans. The set-aside
8 program would create economic opportunities for veterans and
9 recognize their service and sacrifice.

SENATE MILITARY AND VETERANS' AFFAIRS
COMMITTEE

STATEMENT TO

SENATE, No. 2314

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 22, 2010

The Senate Military and Veterans' Affairs Committee reports favorably and with committee amendments Senate, No. 2314.

As amended, this bill creates a State contract set-aside program for veteran-owned businesses to be administered by the New Jersey Economic Development Authority. It establishes a goal that contracting agencies set aside at least 3% of their contracts for veteran-owned businesses. A veteran-owned business is defined as a business which has its principal place of business in New Jersey, is independently owned and operated, and at least 51% of the business is owned and controlled by persons who are veterans. The program would be subject to the same requirements as all other invitations to bid including advertising in a newspaper or advertising in a newspaper via electronic means. The set-aside program would create economic opportunities for veterans and recognize their service and sacrifice.

COMMITTEE AMENDMENTS

The committee amended the bill to require that the regulations of the New Jersey Economic Development Authority, the agency that will administer the State contract set-aside program for veteran-owned businesses, require veterans to show proof of veteran status by the submission of a copy of a federal DD214, Certificate of Release or Discharge from Active Duty form, as well as proof of ownership in the veteran-owned business showing that veterans own and operate at least 51% of the business.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2314

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2010

The Senate Budget and Appropriations committee reports favorably Senate Bill No. 2314 (1R).

The bill creates a State contract set-aside program for veteran-owned businesses to be administered by the New Jersey Economic Development Authority (NJEDA). It establishes a goal that contracting agencies set aside at least 3% of their contracts for veteran-owned businesses. A veteran-owned business is defined as a business which has its principal place of business in New Jersey, is independently owned and operated, and at least 51% of the business is owned and controlled by persons who are veterans. The program would be subject to the same requirements as all other invitations to bid including advertising in a newspaper or advertising in a newspaper via electronic means. The set-aside program would create economic opportunities for veterans and recognize their service and sacrifice.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.