

App. A: 9-79 to App. A: 9-85

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 101

NJSA: App. A: 9-79 to App. A: 9-85 (Requires independent contractors to submit to background checks to work within certain industries)

BILL NO: S462 (Substituted for A1902)

SPONSOR(S) Sweeney and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:**

SENATE: Law and Public Safety and Veterans' Affairs

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 14, 2006

SENATE: December 11, 2006

DATE OF APPROVAL: December 19, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Senate Committee Substitute for S462 and S1289 1st reprint enacted)

S462/S1289

[S462 SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

[S1289 SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

A1902

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

[VETO MESSAGE:](#) [Yes](#)

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 3/14/08

P.L. 2006, CHAPTER 101, *approved December 19, 2006*
Senate Committee Substitute (*First Reprint*) for
Senate, Nos. 462 and 1289

1 AN ACT concerning criminal history record background checks and
2 supplementing P.L.2001, c.246 (C.App.A:9-64 et seq.).
3

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

7 1. As used in this act:

8 "Applicant" means a person 18 years of age or older who is
9 'employed or is' being considered for employment by an
10 independent contractor to work in a critical position within a
11 designated facility;

12 "Critical position" means a position with duties or
13 responsibilities which may affect the public safety or national
14 security as determined by the Attorney General, in consultation
15 with 'the Director of the Office of Homeland Security and
16 Preparedness, the Commissioner of Environmental Protection, and'
17 industry representatives, pursuant to section 3 of this act;

18 "Designated facility" means "facility" as defined in section 3 of
19 P.L.1985, c.403 (C.13:1K-21) , the owner or operator of which is
20 required to submit a registration form pursuant to section 4 of
21 P.L.1985, c.403 (C.13:1K-22);

22 "Independent contractor" means a person, firm, company or
23 organization which enters into a contract to work within, supply or
24 deliver materials to a designated facility and whose employees have
25 physical access to a designated facility; and

26 "Industry representatives" means a group of individuals, chosen
27 by the Attorney General, 'in consultation with the Director of the
28 Office of Homeland Security and Preparedness and the
29 Commissioner of Environmental Protection' with expertise in
30 identifying critical positions which may affect public safety and
31 national security at designated facilities.
32

33 2. The Department of Law and Public Safety **'[**or a private
34 vendor approved by the department **']'** shall perform criminal history
35 record background checks on applicants 'employed by or' to be
36 employed by independent contractors in a critical position at a
37 designated facility. The department, or a private vendor approved

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:

¹Senate amendments adopted in accordance with Governor's recommendations
December 4, 2006.

1 by the department, also shall perform a thorough identity
2 verification check on these applicants, to include, at a minimum, a
3 credit investigation, a Social Security number verification to detect
4 informational inconsistencies, and a cross-referencing of all
5 applicants against appropriate law enforcement advisories and terror
6 watch lists ¹[. Upon application by an independent contractor, the
7 Attorney General may authorize the use of an approved private
8 vendor to conduct checks conducted by the department] ; provided,
9 however, that in no instance shall information obtained from the
10 Violent Gang and Terrorist Organization File (VGTOF) be
11 disseminated to a non-criminal justice agency or an applicant unless
12 that dissemination is authorized by the Federal Bureau of
13 Investigation and is consistent with federal laws, rules and
14 regulations¹. An independent contractor shall not ¹employ or¹ hire
15 an applicant for employment in a critical position at a designated
16 facility unless ¹[it is determined] the Attorney General determines¹
17 that no criminal record information exists on file in the Federal
18 Bureau of Investigation, Identification Division, or in the State
19 Bureau of Identification in the Division of State Police which would
20 disqualify the individual from being employed, and that the
21 applicant is not otherwise disqualified as a result of required
22 identity verification checks, performed pursuant to the provisions of
23 this act. ¹Any person who is employed on the date of enactment of
24 this act by an independent contractor and who works within a
25 designated facility in a position determined by the Attorney General
26 to be a critical position shall be permitted to serve in that capacity
27 unless and until it is determined that the applicant is disqualified
28 pursuant to this section, provided that within 30 days of the
29 Attorney General's determination that the person will be serving in
30 a critical position, an application has been submitted to the
31 Department of Law and Public Safety with the required fees for that
32 person to qualify for employment in a critical position, and the
33 person has consented to and cooperates with the securing of a
34 criminal history record background check and identity verification
35 check conducted in accordance with section 4 of this act.¹ The
36 Attorney General, in consultation with¹the Director of the Office of
37 Homeland Security and Preparedness, the Commissioner of
38 Environmental Protection, and¹industry representatives, shall
39 develop the criteria for qualification of all applicants. Criminal
40 history record background checks and all identity verification
41 checks shall be repeated for previously qualified employees at least
42 once every five years, for as long as they are employed by an
43 independent contractor in a critical position at a designated facility.

44
45 3. The Attorney General, in consultation with ¹the Director of
46 the Office of Homeland Security and Preparedness, the

1 Commissioner of Environmental Protection, and¹ industry
2 representatives, shall determine the titles and positions which shall
3 be designated as critical positions. These positions shall include
4 any title or position in which the duties or responsibilities may
5 potentially affect the public safety or national security or in which
6 the applicant may have access to information which may potentially
7 affect the public safety or national security. These positions may
8 include, but are not limited to, positions involving information
9 management, preserving and ensuring the public safety, or
10 contractors' access to information or facilities which could be
11 utilized to compromise the public safety and national security.
12 ¹【The Domestic Security Preparedness Task Force established
13 pursuant to section 4 of P.L.2001, c.246 (C.App.A:9-67) shall
14 review the determination of the Attorney General concerning the
15 designation of critical positions.】¹

16
17 4. An applicant subject to the provisions of section 2 of this act
18 shall submit to being fingerprinted in accordance with applicable
19 State and federal laws, rules and regulations. An applicant who
20 refuses to consent to, or cooperate in, the securing of a criminal
21 history record background check or identity verification checks,
22 shall not be 'retained or' considered for employment in a critical
23 position at a designated facility. The Department of Law and
24 Public Safety ¹【or an approved private vendor】¹ is authorized to
25 exchange fingerprint data with and receive criminal history record
26 information from the Federal Bureau of Investigation, Identification
27 Section and the Division of State Police, Bureau of Identification
28 for use in making the determinations provided for in section 2 of
29 this act. No criminal history record background check or identity
30 verification checks shall be performed pursuant to this act unless
31 the applicant shall have furnished written consent to such checks.
32 The independent contractor shall bear the cost for the applicant's
33 criminal history record check and identity verification checks.

34
35 5. a. Upon receipt of an applicant's criminal history record
36 information and identity verification information, the department
37 ¹【or the approved private vendor】¹ shall notify the ¹【applicant, in
38 writing,】 independent contractor who employs the applicant or is
39 considering the applicant for employment¹ as to whether the
40 applicant is qualified or disqualified for employment pursuant to
41 this act. ¹【The Attorney General, in consultation with industry
42 representatives, shall determine the basis for disqualification for a
43 title or position.】 The independent contractor shall notify the
44 applicant in writing of his qualification for or disqualification from
45 employment pursuant to this act.¹ If the applicant is disqualified for
46 employment, the reasons which constitute the basis for the

1 disqualification shall be identified in the written notice.

2 b. An applicant shall have 20 days from the date of written
3 notice of disqualification to file an appeal with the department for a
4 review of the criminal history record information or identity
5 verification information to, establish rehabilitation or to dispute the
6 accuracy of such information pursuant to regulations adopted by the
7 Attorney General.

8 c. ~~['~~Approved private vendors shall submit a list of qualified
9 applicants, with acceptable proof of identification for each listed
10 applicant, to the Attorney General. The Attorney General shall
11 determine acceptable proofs of identification.

12 d. The department or the approved private vendor shall not
13 maintain an An¹ applicant's criminal history record information or
14 identity verification information submitted under this act 'shall not
15 be maintained¹ for more than six months from the date of the final
16 disposition of the applicant's disqualification.

17
18 6. a. The Attorney General ¹, in conjunction with the
19 Commissioner of Environmental Protection,¹ shall develop a system
20 to certify applicants who have been subject to a criminal history
21 record background check and identity verification checks, and who
22 have qualified for employment in a critical position at a designated
23 facility pursuant to the provisions of this act. The Attorney General
24 shall ~~['~~issue cause to be issued¹ credentials for each such qualified
25 applicant.

26 b. An independent contractor shall provide written
27 documentation to a designated facility that all employees placed in
28 critical positions have been certified, pursuant to this section.

29 ¹c. In addition to the fees imposed to cover the cost of criminal
30 history background checks and identity verification checks
31 authorized by section 4 of P.L. , c. (C.) (pending before
32 the Legislature as this bill), the Attorney General may impose a
33 reasonable fee, to be borne by the independent contractor, for each
34 applicant to cover the costs incurred by the department associated
35 with the qualification or disqualification of applicants and the
36 development, creation, and issuance of credentials for qualified
37 applicants authorized pursuant to this act.¹

38
39 7. The Attorney General shall adopt rules and regulations
40 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
41 (C.52:14B-1 et seq.) to implement the provisions of this act,
42 including rules and regulations concerning access to and
43 dissemination of information obtained as a result of conducting a
44 criminal history background check and identity verification checks.

45
46 8. This act shall take effect ~~['~~immediately on the 270th day

1 following enactment, except that the Attorney General, Director of
2 the Office of Homeland Security and Preparedness, and
3 Commissioner of Environmental Protection may, prior to the
4 effective date, take such anticipatory action as shall be necessary
5 for the implementation of this act.¹

6

7

8

9

10 Requires independent contractors to submit to background
11 checks to work within certain industries.

SENATE, No. 462

STATE OF NEW JERSEY
212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

Senators Coniglio and T.Kean

SYNOPSIS

Requires independent contractors to submit to background checks to work within certain industries.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning criminal history record background checks and
2 supplementing P.L.2001, c.246 (C.App.A:9-64 et seq.).

3

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

6

7 1. As used in this act:

8 "Applicant" means a person 18 years of age or older who is
9 being considered for employment by an independent contractor to
10 work in a critical position within a designated facility;

11 "Critical position" means a position with duties or
12 responsibilities which may affect the public safety or national
13 security as determined by the Attorney General pursuant to section
14 3 of this act;

15 "Designated facility" means "facility" as defined in section 3 of
16 P.L.1985, c.403 (C.13:1K-21), except that, as used in this act,
17 "designated facility" shall also include a research and development
18 laboratory, which means a specially designated area used primarily
19 for research, development, and testing activity, and not primarily
20 involved in the production of goods for commercial sale, in which
21 extraordinarily hazardous substances are used by or under the
22 supervision of a technically qualified person; and

23 "Independent contractor" means a person, firm, company or
24 organization which enters into a contract to work within, supply or
25 deliver materials to a designated facility.

26

27 2. The Department of Law and Public Safety shall perform
28 criminal history record background checks on applicants to be
29 employed by independent contractors. An independent contractor
30 shall not hire an applicant unless it is determined that no criminal
31 record information exists on file in the Federal Bureau of
32 Investigation, Identification Division, or in the State Bureau of
33 Identification in the Division of State Police which would
34 disqualify the individual from being employed pursuant to the
35 provisions of this act.

36

37 3. The Attorney General shall determine the titles and positions
38 which shall be designated as critical positions. These positions
39 shall include any title or position in which the duties or
40 responsibilities may potentially affect the public safety or national
41 security or in which the applicant may have access to information
42 which may potentially affect the public safety or national security.
43 These positions may include, but are not limited to, positions
44 involving information management, preserving and ensuring the
45 public safety, or contractors' access to information or facilities
46 which could be utilized to compromise the public safety and
47 national security. The Domestic Security Preparedness Task Force
48 established pursuant to section 4 of P.L.2001, c.246 (C.App.A:9-67)

1 shall review the determination of the Attorney General concerning
2 the designation of critical positions.

3
4 4. An applicant subject to the provisions of section 2 of this act
5 shall submit to being fingerprinted in accordance with applicable
6 State and federal laws, rules and regulations. An applicant who
7 refuses to consent to, or cooperate in, the securing of a criminal
8 history record background check shall not be considered for
9 employment. The Department of Law and Public Safety is
10 authorized to request and receive criminal history record
11 information from the Federal Bureau of Investigation, Identification
12 Section and the Division of State Police, Bureau of Identification
13 for use in making the determinations provided for in section 2 of
14 this act. No criminal history record background check shall be
15 performed pursuant to this act unless the applicant shall have
16 furnished written consent to such check. The independent
17 contractor shall bear the cost for the applicant's criminal history
18 record check.

19
20 5. a. Upon receipt of an applicant's criminal history record
21 information, the department shall notify the applicant, in writing, as
22 to whether the applicant is qualified or disqualified for employment
23 pursuant to this act. The Attorney General shall determine the basis
24 for disqualification for a title or position. If the applicant is
25 disqualified for employment, the conviction or convictions which
26 constitute the basis for the disqualification shall be identified in the
27 written notice.

28 b. An applicant shall have 20 days from the date of written
29 notice of disqualification to file an appeal for a review on the
30 accuracy of the criminal history record information or to establish
31 rehabilitation pursuant to regulations promulgated by the Attorney
32 General.

33 c. The department shall not maintain an applicant's criminal
34 history record information submitted under this act for more than
35 six months from the date of the final disposition of the applicant's
36 disqualification.

37
38 6. All identification credentials for an employee who was
39 subject to a criminal history record background check pursuant to
40 the provisions of this act shall indicate that a criminal history record
41 background check has been performed for the employee.

42
43 7. The Attorney General may promulgate regulations pursuant to
44 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.) to effectuate the provisions of this act.

46
47 8. This act shall take effect immediately.

STATEMENT

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This bill requires applicants for employment with an independent contractor, for work in critical positions within a designated facility to undergo criminal history background checks. In accordance with the provisions of this bill, designated facility means a "facility" as defined under the "Toxic Catastrophe Prevention Act" (TCPA), but also includes research and development laboratories. Critical positions within these facilities would be determined by the Attorney General, and would include any title or position in which the duties or responsibilities may potentially affect the public safety or national security, or in which the applicant may have access to information which may potentially affect the public safety or national security. Under the bill's provisions, an independent contractor may not hire an applicant unless it is determined that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed pursuant to the bill's provisions. The Department of Law and Public Safety would perform the background checks.

Under the bill's provisions, the Attorney General would determine the titles and positions for which a background check is to be required. The Domestic Security Preparedness Task Force would review these determinations.

The bill requires an applicant to submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. An applicant who refuses to consent to, or cooperate in, the securing of a criminal history record background check may not be considered for employment. The department is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation, Identification Section and the Division of State Police, Bureau of Identification. The applicant must consent to the background check. The bill requires independent contractors to bear the cost of the background check for the applicants.

Upon receipt of an applicant's criminal history record information, the department will notify the applicant, in writing, as to whether the individual is qualified or disqualified for employment. The Attorney General is required to determine the basis for disqualification for a title or position. If the applicant is disqualified for employment, the conviction or convictions which constitute the basis for the disqualification would be identified in the written notice.

An applicant would have 20 days from the date of written notice of disqualification to file an appeal for a review on the accuracy of the criminal history record information or to establish rehabilitation pursuant to regulations promulgated by the Attorney General. The

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1 bill provides that the Department of Law and Public Safety may not
2 maintain an applicant's criminal history record information
3 submitted under this bill for more than six months from the date of
4 the final disposition of the applicant's disqualification.

SENATE, No. 1289

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED

Sponsored by:
Senator BARBARA BUONO
District 18 (Middlesex)

SYNOPSIS

Requires independent contractors to submit to background checks to work within certain industries.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning criminal history record background checks and
2 supplementing P.L.2001, c.246 (C.App.A:9-64 et seq.).

3

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

6

7 1. As used in this act:

8 "Applicant" means a person 18 years of age or older who is
9 being considered for employment by an independent contractor to
10 work in a critical position within a designated facility;

11 "Critical position" means a position with duties or
12 responsibilities which may affect the public safety or national
13 security as determined by the Attorney General, in consultation
14 with industry representatives, pursuant to section 3 of this act;

15 "Designated facility" means "facility" as defined in section 3 of
16 P.L.1985, c.403 (C.13:1K-21) , the owner or operator of which is
17 required to submit a registration form pursuant to section 4 of
18 P.L.1985, c.403 (C.13:1K-22);

19 "Independent contractor" means a person, firm, company or
20 organization which enters into a contract to work within, supply or
21 deliver materials to a designated facility and whose employees have
22 physical access to a designated facility; and

23 "Industry representatives" means a group of individuals, chosen
24 by the Attorney General, with expertise in identifying critical
25 positions which may affect public safety and national security at
26 designated facilities.

27

28 2. The Department of Law and Public Safety or a private vendor
29 approved by the department shall perform criminal history record
30 background checks on applicants to be employed by independent
31 contractors in a critical position at a designated facility. The
32 department, or a private vendor approved by the department, also
33 shall perform a thorough identity verification check on these
34 applicants, to include, at a minimum, a credit investigation, a Social
35 Security number verification to detect informational
36 inconsistencies, and a cross-referencing of all applicants against
37 appropriate law enforcement advisories and terror watch lists.
38 Upon application by an independent contractor, the Attorney
39 General may authorize the use of an approved private vendor to
40 conduct checks conducted by the department. An independent
41 contractor shall not hire an applicant for employment in a critical
42 position at a designated facility unless it is determined that no
43 criminal record information exists on file in the Federal Bureau of
44 Investigation, Identification Division, or in the State Bureau of
45 Identification in the Division of State Police which would
46 disqualify the individual from being employed, and that the

1 applicant is not otherwise disqualified as a result of required
2 identity verification checks, performed pursuant to the provisions of
3 this act. The Attorney General, in consultation with industry
4 representatives, shall develop the criteria for qualification of all
5 applicants. Criminal history record background checks and all
6 identity verification checks shall be repeated for previously
7 qualified employees at least once every five years, for as long as
8 they are employed by an independent contractor in a critical
9 position at a designated facility.

10

11 3. The Attorney General, in consultation with industry
12 representatives, shall determine the titles and positions which shall
13 be designated as critical positions. These positions shall include
14 any title or position in which the duties or responsibilities may
15 potentially affect the public safety or national security or in which
16 the applicant may have access to information which may potentially
17 affect the public safety or national security. These positions may
18 include, but are not limited to, positions involving information
19 management, preserving and ensuring the public safety, or
20 contractors' access to information or facilities which could be
21 utilized to compromise the public safety and national security. The
22 Domestic Security Preparedness Task Force established pursuant to
23 section 4 of P.L.2001, c.246 (C.App.A:9-67) shall review the
24 determination of the Attorney General concerning the designation
25 of critical positions.

26

27 4. An applicant subject to the provisions of section 2 of this act
28 shall submit to being fingerprinted in accordance with applicable
29 State and federal laws, rules and regulations. An applicant who
30 refuses to consent to, or cooperate in, the securing of a criminal
31 history record background check or identity verification checks,
32 shall not be considered for employment in a critical position at a
33 designated facility. The Department of Law and Public Safety or an
34 approved private vendor is authorized to exchange fingerprint data
35 with and receive criminal history record information from the
36 Federal Bureau of Investigation, Identification Section and the
37 Division of State Police, Bureau of Identification for use in making
38 the determinations provided for in section 2 of this act. No criminal
39 history record background check or identity verification checks
40 shall be performed pursuant to this act unless the applicant shall
41 have furnished written consent to such checks. The independent
42 contractor shall bear the cost for the applicant's criminal history
43 record check and identity verification checks.

44

45 5. a. Upon receipt of an applicant's criminal history record
46 information and identity verification information, the department or
47 the approved private vendor shall notify the applicant, in writing, as
48 to whether the applicant is qualified or disqualified for employment

1 pursuant to this act. The Attorney General, in consultation with
2 industry representatives, shall determine the basis for
3 disqualification for a title or position. If the applicant is
4 disqualified for employment, the reasons which constitute the basis
5 for the disqualification shall be identified in the written notice.

6 b. An applicant shall have 20 days from the date of written
7 notice of disqualification to file an appeal with the department for a
8 review of the criminal history record information or identity
9 verification information to, establish rehabilitation or to dispute the
10 accuracy of such information pursuant to regulations adopted by the
11 Attorney General.

12 c. Approved private vendors shall submit a list of qualified
13 applicants, with acceptable proof of identification for each listed
14 applicant, to the Attorney General. The Attorney General shall
15 determine acceptable proofs of identification.

16 d. The department or the approved private vendor shall not
17 maintain an applicant's criminal history record information or
18 identity verification information submitted under this act for more
19 than six months from the date of the final disposition of the
20 applicant's disqualification.

21

22 6. a. The Attorney General shall develop a system to certify
23 applicants who have been subject to a criminal history record
24 background check and identity verification checks, and who have
25 qualified for employment in a critical position at a designated
26 facility pursuant to the provisions of this act. The Attorney General
27 shall issue credentials for each such qualified applicant.

28 b. An independent contractor shall provide written
29 documentation to a designated facility that all employees placed in
30 critical positions have been certified, pursuant to this section.

31

32 7. The Attorney General shall adopt rules and regulations
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.) to implement the provisions of this act,
35 including rules and regulations concerning access to and
36 dissemination of information obtained as a result of conducting a
37 criminal history background check and identity verification checks.

38

39 8. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill requires criminal history background checks and
45 identity verification checks on certain applicants to be employed by
46 independent contractors within designated facilities, such as
47 chemical plants and other industrial sites. Only those applicants to
48 be employed in "critical positions," as determined by the Attorney

1 General in consultation with industry representatives, would be
2 required to submit to the security checks. A "designated facility"
3 means those facilities whose owners or operators are required to
4 submit a registration form in accordance with the "Toxic
5 Catastrophe Prevention Act" (TCPA), N.J.S.A. 13:1K-19 et seq.
6 This registration form is required of owners or operators of
7 facilities which generate, store, or handle certain amounts of
8 extraordinarily hazardous substances as designated in the TCPA.

9 Under the bill's provisions, an independent contractor may not
10 hire an applicant for a critical position at a designated facility
11 unless it is determined that no criminal record information exists on
12 file in the Federal Bureau of Investigation, Identification Division,
13 or in the State Bureau of Identification in the Division of State
14 Police which would disqualify the individual from being employed.
15 The applicant would also be subject to certain identity verification
16 checks, such as a credit investigation and Social Security number
17 check.

18 The criteria for the qualification of all applicants would be
19 developed by the Attorney General in consultation with industry
20 representatives. These criteria would be reviewed by the Domestic
21 Security Preparedness Task Force, which through its Infrastructure
22 Advisory Committee continues to work with various industries in
23 developing domestic security policy.

24 The Department of Law and Public Safety or a private vendor
25 approved by the department would perform the background checks
26 and identity verification checks. These checks, paid for by the
27 independent contractors, would be required for each new applicant,
28 and would be repeated for previously qualified applicants at least
29 once every five years for as long as these individuals remain
30 employed by the independent contractors in critical positions.

31 Upon receipt of criminal history record information and identity
32 verification information, the department or private vendor would
33 notify the applicant, in writing, as to whether the individual is
34 qualified or disqualified for employment. In the event of a
35 disqualification, the applicant would have 20 days from the date of
36 the written notice to file an appeal for a review of the accuracy of
37 the information, or to establish rehabilitation for the cited
38 disqualifiers pursuant to regulations adopted by the Attorney
39 General. Also, the department or private vendor would not
40 maintain the criminal history record information or identity
41 verification information obtained under this bill for more than six
42 months from the date of the final disposition of the applicant's
43 disqualification proceeding.

44 Applicants who are qualified for employment would be certified
45 by the Attorney General to work in critical positions within
46 designated facilities and issued appropriate credentials.
47 Independent contractors, as a final security check, would also
48 provide written documentation to designated facilities that all of the

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- 1 independent contractor's employees placed in critical positions are
- 2 certified.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 462 and 1289

STATE OF NEW JERSEY

DATED: MARCH 2, 2006

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 462 and 1289.

This committee substitute requires criminal history background checks and identity verification checks on certain applicants to be employed by independent contractors within designated facilities, such as chemical plants and other industrial sites. Only those applicants to be employed in "critical positions," as determined by the Attorney General in consultation with industry representatives, would be required to submit to the security checks. A "designated facility" means those facilities whose owners or operators are required to submit a registration form in accordance with the "Toxic Catastrophe Prevention Act" (T.C.P.A.), N.J.S.A. 13:1K-19 et seq. This registration form is required of owners or operators of facilities which generate, store, or handle certain amounts of extraordinarily hazardous substances as designated in the T.C.P.A.

Under the substitute's provisions, an independent contractor may not hire an applicant for a critical position at a designated facility unless it is determined that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed. The applicant would also be subject to certain identity verification checks, such as a credit investigation and Social Security number check.

The criteria for the qualification of all applicants would be developed by the Attorney General in consultation with industry representatives. These criteria would be reviewed by the Domestic Security Preparedness Task Force, which through its Infrastructure Advisory Committee continues to work with various industries in developing domestic security policy.

The Department of Law and Public Safety or a private vendor approved by the department would perform the background checks and identity verification checks. These checks, paid for by the independent contractors, would be required for each new applicant,

and would be repeated for previously qualified applicants at least once every five years for as long as these individuals remain employed by the independent contractors in critical positions.

Upon receipt of criminal history record information and identity verification information, the department or private vendor would notify the applicant, in writing, as to whether the individual is qualified or disqualified for employment. In the event of a disqualification, the applicant would have 20 days from the date of the written notice to file an appeal for a review of the accuracy of the information, or to establish rehabilitation for the cited disqualifiers pursuant to regulations adopted by the Attorney General. Also, the department or private vendor would not maintain the criminal history record information or identity verification information obtained under this substitute for more than six months from the date of the final disposition of the applicant's disqualification proceeding.

Applicants who are qualified for employment would be certified by the Attorney General to work in critical positions within designated facilities and issued appropriate credentials. Independent contractors, as a final security check, would also provide written documentation to designated facilities that all of the independent contractor's employees placed in critical positions are certified.

As reported by the committee, this committee substitute is identical to Assembly Bill No. 1902.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 462 and 1289
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: MAY 30, 2006

- Synopsis:** Requires independent contractors to submit to background checks to work within certain industries.
- Type of Impact:** Minimal expenditure increase offset by fees paid by contractors.
- Agencies Affected:** Department of Environmental Protection; Department of Law and Public Safety; Office of the Attorney General; Division of State Police; Domestic Security Preparedness Task Force.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
State Cost	Minimal Expenditure Offset by Fees.		

- The Office of Legislative Services (OLS) determined that fees paid for the background checks will offset State expenditures. It is unknown how many contractors will need background checks. If there are more than 10,000 contractors needing background checks, however, OLS concurs with the Executives' prior cost estimate regarding necessity for additional staffing.
- Establishes criminal history background check requirement for independent contractor employees who work in critical positions. Provides that an independent contractor may not hire an applicant for a critical position unless it is determined that no criminal record information exists on file.
- Imposes the cost of the background check on the independent contractor.
- Provides a method of appeal in case of denial of employment based on background check results.
- The basic criminal history background check fee is \$54. The Federal Bureau of Investigation collects \$24 and the Division of State Police collects \$30, which includes the cost of fingerprinting. If the company requests a flag placed on the employees, there would be an additional \$10 flagging fee. An additional venter fee of \$14 is charged, when fingerprints are electronically submitted. The maximum fee is \$78.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 462 and 1289 of 2006 requires criminal history background checks and identity verification checks on applicants to be employed by independent contractors within designated facilities, such as chemical plants and other industrial sites.

The bill notes that only applicants to be employed in "critical positions," as determined by the Attorney General in consultation with industry representatives, would be required to submit to the security checks.

Under the bill's provisions, an independent contractor may not hire an applicant for a critical position unless it is determined that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed. Additionally, the bill requires certain identity verification checks, such as a credit investigation and Social Security number check.

The criteria for the qualification of all applicants would be developed by the Attorney General in consultation with industry representatives. These criteria would be reviewed by the Domestic Security Preparedness Task Force, which through its Infrastructure Advisory Committee continues to work with various industries in developing domestic security policy. The Department of Law and Public Safety or a private vendor approved by the department would perform the background checks and identity verification checks.

These checks, paid for by the independent contractors, would be required for each new applicant, and would be repeated for previously qualified applicants at least once every five years for as long as these individuals remain employed by the independent contractors in critical positions. Upon receipt of criminal history record information and identity verification information, the department or private vendor would notify the applicant, in writing, as to whether the individual is qualified or disqualified for employment. In the event of a disqualification, the applicant would have 20 days from the date of the written notice to file an appeal for a review of the accuracy of the information, or to establish rehabilitation for the cited disqualifiers pursuant to regulations adopted by the Attorney General.

FISCAL ANALYSIS

EXECUTIVE BRANCH

In a prior bill regarding imposing criminal background checks, the Division of State Police in the Department of Law and Public Safety estimated that for every 10,000 background checks conducted, it would cost \$85,900 in the first year. This figure includes the salary of a Paralegal Technician at \$39,200, a Clerk Typist at \$24,300, and fringe benefits at \$20,800. After adjustment for salaries and other recurring costs, the average cost of this bill would be \$90,200 and \$94,700, in the second and third years, respectively.

OFFICE OF LEGISLATIVE SERVICES

The OLS determined that fees paid for the background checks will offset State expenditures. It is unknown how many employees would need background checks. If there are more than 10,000 contractor employees needing background checks, OLS concurs with the Executives' prior cost estimate regarding additional staffing.

The basic fee paid by the employer is \$54, which includes \$24 for the Federal Bureau of Investigation background check and \$30 for the State background check. This fee includes the cost of fingerprinting. If the contracting company requests a flag placed on an employee's record, there would be an additional \$10 flagging fee. An additional vendor fee of \$14 is charged when fingerprints are electronically submitted. The maximum fee is \$78.

Section: Law and Public Safety

*Analyst: Kristin A. Brunner
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 1902

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Requires independent contractors to submit to background checks to work within certain industries.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning criminal history record background checks and
2 supplementing P.L.2001, c.246 (C.App.A:9-64 et seq.).

3

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

6

7 1. As used in this act:

8 "Applicant" means a person 18 years of age or older who is
9 being considered for employment by an independent contractor to
10 work in a critical position within a designated facility;

11 "Critical position" means a position with duties or
12 responsibilities which may affect the public safety or national
13 security as determined by the Attorney General, in consultation
14 with industry representatives, pursuant to section 3 of this act;

15 "Designated facility" means "facility" as defined in section 3 of
16 P.L.1985, c.403 (C.13:1K-21) , the owner or operator of which is
17 required to submit a registration form pursuant to section 4 of
18 P.L.1985, c.403 (C.13:1K-22);

19 "Independent contractor" means a person, firm, company or
20 organization which enters into a contract to work within, supply or
21 deliver materials to a designated facility and whose employees have
22 physical access to a designated facility; and

23 "Industry representatives" means a group of individuals, chosen
24 by the Attorney General, with expertise in identifying critical
25 positions which may affect public safety and national security at
26 designated facilities.

27

28 2. The Department of Law and Public Safety or a private vendor
29 approved by the department shall perform criminal history record
30 background checks on applicants to be employed by independent
31 contractors in a critical position at a designated facility. The
32 department, or a private vendor approved by the department, also
33 shall perform a thorough identity verification check on these
34 applicants, to include, at a minimum, a credit investigation, a Social
35 Security number verification to detect informational
36 inconsistencies, and a cross-referencing of all applicants against
37 appropriate law enforcement advisories and terror watch lists.
38 Upon application by an independent contractor, the Attorney
39 General may authorize the use of an approved private vendor to
40 conduct checks conducted by the department. An independent
41 contractor shall not hire an applicant for employment in a critical
42 position at a designated facility unless it is determined that no
43 criminal record information exists on file in the Federal Bureau of
44 Investigation, Identification Division, or in the State Bureau of
45 Identification in the Division of State Police which would
46 disqualify the individual from being employed ,and that the
47 applicant is not otherwise disqualified as a result of required
48 identity verification checks, performed pursuant to the provisions of

1 this act. The Attorney General , in consultation with industry
2 representatives, shall develop the criteria for qualification of all
3 applicants. Criminal history record background checks and all
4 identity verification checks shall be repeated for previously
5 qualified employees at least once every five years, for as long as
6 they are employed by an independent contractor in a critical
7 position at a designated facility.

8
9 3. The Attorney General, in consultation with industry
10 representatives, shall determine the titles and positions which shall
11 be designated as critical positions. These positions shall include
12 any title or position in which the duties or responsibilities may
13 potentially affect the public safety or national security or in which
14 the applicant may have access to information which may potentially
15 affect the public safety or national security. These positions may
16 include, but are not limited to, positions involving information
17 management, preserving and ensuring the public safety, or
18 contractors' access to information or facilities which could be
19 utilized to compromise the public safety and national security. The
20 Domestic Security Preparedness Task Force established pursuant to
21 section 4 of P.L.2001, c.246 (C.App.A:9-67) shall review the
22 determination of the Attorney General concerning the designation
23 of critical positions.

24
25 4. An applicant subject to the provisions of section 2 of this act
26 shall submit to being fingerprinted in accordance with applicable
27 State and federal laws, rules and regulations. An applicant who
28 refuses to consent to, or cooperate in, the securing of a criminal
29 history record background check or identity verification checks,
30 shall not be considered for employment in a critical position at a
31 designated facility. The Department of Law and Public Safety or an
32 approved private vendor is authorized to exchange fingerprint data
33 with and receive criminal history record information from the
34 Federal Bureau of Investigation, Identification Section and the
35 Division of State Police, Bureau of Identification for use in making
36 the determinations provided for in section 2 of this act. No criminal
37 history record background check or identity verification checks
38 shall be performed pursuant to this act unless the applicant shall
39 have furnished written consent to such checks. The independent
40 contractor shall bear the cost for the applicant's criminal history
41 record check and identity verification checks.

42
43 5. a. Upon receipt of an applicant's criminal history record
44 information and identity verification information, the department or
45 the approved private vendor shall notify the applicant, in writing, as
46 to whether the applicant is qualified or disqualified for employment
47 pursuant to this act. The Attorney General, in consultation with
48 industry representatives, shall determine the basis for

1 disqualification for a title or position. If the applicant is
2 disqualified for employment, the reasons which constitute the basis
3 for the disqualification shall be identified in the written notice.

4 b. An applicant shall have 20 days from the date of written
5 notice of disqualification to file an appeal with the department for a
6 review of the criminal history record information or identity
7 verification information to, establish rehabilitation or to dispute the
8 accuracy of such information pursuant to regulations adopted by the
9 Attorney General.

10 c. Approved private vendors shall submit a list of qualified
11 applicants, with acceptable proof of identification for each listed
12 applicant, to the Attorney General. The Attorney General shall
13 determine acceptable proofs of identification.

14 d. The department or the approved private vendor shall not
15 maintain an applicant's criminal history record information or
16 identity verification information submitted under this act for more
17 than six months from the date of the final disposition of the
18 applicant's disqualification.

19

20 6. a. The Attorney General shall develop a system to certify
21 applicants who have been subject to a criminal history record
22 background check and identity verification checks, and who have
23 qualified for employment in a critical position at a designated
24 facility pursuant to the provisions of this act. The Attorney General
25 shall issue credentials for each such qualified applicant.

26 b. An independent contractor shall provide written
27 documentation to a designated facility that all employees placed in
28 critical positions have been certified, pursuant to this section.

29

30 7. The Attorney General shall adopt rules and regulations
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.) to implement the provisions of this act
33 ,including rules and regulations concerning access to and
34 dissemination of information obtained as a result of conducting a
35 criminal history background check and identity verification checks.

36

37 8. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill requires criminal history background checks and
43 identity verification checks on certain applicants to be employed by
44 independent contractors within designated facilities, such as
45 chemical plants and other industrial sites. Only those applicants to
46 be employed in "critical positions," as determined by the Attorney
47 General in consultation with industry representatives, would be
48 required to submit to the security checks. A "designated facility"

1 means those facilities whose owners or operators are required to
2 submit a registration form in accordance with the "Toxic
3 Catastrophe Prevention Act" (TCPA), N.J.S.A. 13:1K-19 et seq.
4 This registration form is required of owners or operators of
5 facilities which generate, store, or handle certain amounts of
6 extraordinarily hazardous substances as designated in the TCPA.

7 Under the bill's provisions, an independent contractor may not
8 hire an applicant for a critical position at a designated facility
9 unless it is determined that no criminal record information exists on
10 file in the Federal Bureau of Investigation, Identification Division,
11 or in the State Bureau of Identification in the Division of State
12 Police which would disqualify the individual from being employed.
13 The applicant would also be subject to certain identity verification
14 checks, such as a credit investigation and Social Security number
15 check.

16 The criteria for the qualification of all applicants would be
17 developed by the Attorney General in consultation with industry
18 representatives. These criteria would be reviewed by the Domestic
19 Security Preparedness Task Force, which through its Infrastructure
20 Advisory Committee continues to work with various industries in
21 developing domestic security policy.

22 The Department of Law and Public Safety or a private vendor
23 approved by the department would perform the background checks
24 and identity verification checks. These checks, paid for by the
25 independent contractors, would be required for each new applicant,
26 and would be repeated for previously qualified applicants at least
27 once every five years for as long as these individuals remain
28 employed by the independent contractors in critical positions.

29 Upon receipt of criminal history record information and identity
30 verification information, the department or private vendor would
31 notify the applicant, in writing, as to whether the individual is
32 qualified or disqualified for employment. In the event of a
33 disqualification, the applicant would have 20 days from the date of
34 the written notice to file an appeal for a review of the accuracy of
35 the information, or to establish rehabilitation for the cited
36 disqualifiers pursuant to regulations adopted by the Attorney
37 General. Also, the department or private vendor would not
38 maintain the criminal history record information or identity
39 verification information obtained under this bill for more than six
40 months from the date of the final disposition of the applicant's
41 disqualification proceeding.

42 Applicants who are qualified for employment would be certified
43 by the Attorney General to work in critical positions within
44 designated facilities and issued appropriate credentials.
45 Independent contractors, as a final security check, would also
46 provide written documentation to designated facilities that all of the
47 independent contractor's employees placed in critical positions are
48 certified.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 462 and 1289

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 462 and 1289 (2006) with my recommendations for reconsideration.

A. Summary of Bill

This bill would require criminal and credit history and identity verification checks on persons seeking employment with independent contractors working at certain vulnerable facilities, such as chemical plants and other industrial facilities whose owners or operators are required to submit a registration form in accordance with the "Toxic Catastrophe Prevention Act." These background checks would be required for those applicants who are being considered for employment in "critical positions," as determined by the Attorney General in consultation with industry representatives. The criteria for determining these critical positions would be reviewed by the Domestic Security Preparedness Task Force which is now part of the recently created Office of Homeland Security and Preparedness. Applicants who are deemed to be qualified after a background check would be able to commence employment in a "critical position" and would be issued official credentials.

B. Recommended Action

I commend the sponsors of this bill for their efforts to enhance security at chemical plants and other vulnerable facilities. This legislation represents an important incremental step toward safeguarding these facilities from terrorist infiltration.

Despite my recognition of the importance of the sponsors' sincere efforts to protect critical facilities from terrorist attack, I cannot approve this bill without proposing amendments that will make certain that our shared intent is more fully realized. In its current form, the bill does not comport with applicable federal requirements that must be satisfied in order to access the criminal history information on file with the Federal Bureau of Investigation, which includes fingerprint-verified criminal history and Violent Gang and Terrorist Organization File (VGTOF) checks. The Federal Bureau of Investigation, which oversees the national system for conducting background checks, suggested that the bill be amended to comport with federal requirements in order to enable New Jersey to take full advantage of the FBI's information resources.

The bill requires independent contractors to document that all employees placed in critical positions have been certified in accordance with the act. However, the bill provides that security clearance checks are required for each "applicant," which is defined as a person who is being considered for employment by an independent contractor to work in a critical position within a designated facility. It is unclear from this language whether security clearance checks are required for persons who are already employed by an independent contractor. In order to advance the goal of safeguarding vulnerable facilities, the law should make clear that all employees of independent contractors who work in designated critical positions are subject to background checks, and, once qualified, will be issued appropriate credentials. To avoid disruption to the industry and to permit appropriate processing time to accommodate the volume of applications for current employees, the bill should also be amended to provide a grace period for

those employees to continue in their positions during the pendency of the background checks required by the bill.

In addition, the bill should be amended to clarify the role of the Director of the Office of Homeland Security and Preparedness, who now coordinates all homeland security issues. The bill should also be amended to codify the role of the Department of Environmental Protection in implementing this legislation, given that department's oversight responsibility of these designated facilities under the Toxic Catastrophe Prevention Act.

It is my recommendation that the bill be further amended to provide the Attorney General with the clear authority to impose reasonable fees to cover the reasonable costs that the Department of Law and Public Safety will incur associated with the qualification or disqualification of applicants and the development, creation and issuance of the required credentials. None of these costs should be borne by taxpayers, and the regular fee structure for criminal history background checks does not account for the additional administrative responsibilities and other tasks that would be assigned to the Department of Law and Public Safety to implement this bill.

Finally, the bill should be amended to provide sufficient lead time in order to establish the administrative procedures necessary to implement the required background checks and to issue secure credentials to employees of independent contractors.

As a result of these considerations, I herewith return Senate Committee Substitute for Senate Bill Nos. 462 and 1289 and recommend that it be amended as follows:

Page 2, Section 1, Line 8:

After "is" insert "employed
or is"

Page 2, Section 1, Line 14:

After "with" insert "the Director of the Office of Homeland Security and Preparedness, the Commissioner of the Department of Environmental Protection and"

Page 2, Section 1, Line 24:

After "General," insert "in consultation with the Director of the Office of Homeland Security and Preparedness and the Commissioner of the Department of Environmental Protection"

Page 2, Section 2, Lines 28-29:

After "Safety" delete "or a private vendor approved by the department"

Page 2, Section 2, Line 30:

After "applicants" insert "employed by or"

Page 2, Section 2, Lines 37-40:

After "lists" delete ". Upon application by an independent contractor, the Attorney General may authorize the use of an approved private vendor to conduct checks conducted by the department" and insert ";provided, however, that in no instance shall information obtained from the Violent Gang and Terrorist Organization File (VGTOF) be disseminated to a non-criminal justice agency or an applicant unless that dissemination is authorized by the Federal Bureau of Investigation and is consistent with federal laws, rules and regulations"

Page 2, Section 2, Line 41:

After "not" insert "employ or"

Page 2, Section 2, Line 42:

After "unless" delete "it is determined" and insert "the Attorney General determines"

Page 3, Section 2, Line 1:

After "act." insert "Any person who is employed on the date of enactment of this act by an independent contractor and who works within a designated facility in a position determined by the Attorney General to be a critical position shall be

permitted to serve in that capacity unless and until it is determined that the applicant is disqualified pursuant to this section, provided that within 30 days of the Attorney General's determination that the person will be serving in a critical position, an application has been submitted to the Department of Law and Public Safety with the required fees for that person to qualify for employment in a critical position, and the person has consented to and cooperates with the securing of a criminal history record background check and identity verification check conducted in accordance with section 4 of this act."

Page 3, Section 2, Line 1:

After "with" insert "the Director of the Office of Homeland Security and Preparedness, the Commissioner of the Department of Environmental Protection and"

Page 3, Section 3, Line 9:

After "with" insert "the Director of the Office of Homeland Security and Preparedness, the Commissioner of the Department of Environmental Protection and"

Page 3, Section 3, Lines 19-23:

After "security." delete "The Domestic Security Preparedness Task Force established pursuant to section 4 of P.L.2001, c.246 (C.App.A:9-67) shall review the determination of the Attorney General concerning the designation of critical positions."

Page 3, Section 4, Line 30:

After "be" insert "retained or"

Page 3, Section 4, Lines 31-32:

After "Safety" delete "or an approved private vendor"

Page 3, Section 5, Lines 44-45:

After "department" delete "or the approved private vendor"

Page 3, Section 5, Line 45:

After "notify the" delete "applicant, in writing," and insert "independent contractor who employs the applicant or is considering the applicant for employment"

Page 3, Section 5, Line 47
to Page 4, Section 5, Line 1:

After "act." delete "The Attorney General, in consultation with industry representatives, shall determine the basis for disqualification for a title or position" and insert "The independent contractor shall notify the applicant in writing of his or her qualification for or disqualification from employment pursuant to this act"

Page 4, Section 5, Lines 10-14:

After "c." delete "Approved private vendors shall submit a list of qualified applicants, with acceptable proof of identification for each listed applicant, to the Attorney General. The Attorney General shall determine acceptable proofs of identification. d."

Page 4, Section 5, Lines 14-15:

After "d." delete "The department or the approved private vendor shall not maintain an" and insert "An"

Page 4, Section 5, Line 16:

After "act" insert "shall not be maintained"

Page 4, Section 6, Line 20:

After "General" insert ", in conjunction with the Commissioner of the Department of Environmental Protection,"

Page 4, Section 6, Line 25:

After "shall" delete "issue" and insert "cause to be issued"

Page 4, Section 6, Line 29:

Insert "c. In addition to the fees imposed to cover the cost of criminal history background check and identity verification checks authorized by section 4 of P.L., c. (C.), the Attorney General may impose a reasonable fee, to be borne

by the independent contractor, for each applicant to cover the costs incurred by the department associated with the qualification or disqualification of applicants and the development, creation and issuance of credentials for qualified applicants authorized pursuant to this act."

Page 4, Section 8, Line 37:

After "effect" delete "immediately" and insert "on the 270th day following enactment, except that the Attorney General, Director of the Office of Homeland Security and Preparedness and Commissioner of the Department of Environmental Protection may, prior to the effective date, take such anticipatory action as shall be necessary for the implementation of this act"

Respectfully,

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ Stuart Rabner

Chief Counsel to the Governor

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1902

STATE OF NEW JERSEY

DATED: JANUARY 26, 2006

This bill requires criminal history background checks and identity verification checks on certain applicants to be employed by independent contractors within designated facilities, such as chemical plants and other industrial sites. Only those applicants to be employed in "critical positions," as determined by the Attorney General in consultation with industry representatives, would be required to submit to the security checks. A "designated facility" means those facilities whose owners or operators are required to submit a registration form in accordance with the "Toxic Catastrophe Prevention Act" (T.C.P.A.), N.J.S.A. 13:1K-19 et seq. This registration form is required of owners or operators of facilities which generate, store, or handle certain amounts of extraordinarily hazardous substances as designated in the T.C.P.A.

Under the bill's provisions, an independent contractor may not hire an applicant for a critical position at a designated facility unless it is determined that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed. The applicant would also be subject to certain identity verification checks, such as a credit investigation and Social Security number check.

The criteria for the qualification of all applicants would be developed by the Attorney General in consultation with industry representatives. These criteria would be reviewed by the Domestic Security Preparedness Task Force, which through its Infrastructure Advisory Committee continues to work with various industries in developing domestic security policy.

The Department of Law and Public Safety or a private vendor approved by the department would perform the background checks and identity verification checks. These checks, paid for by the independent contractors, would be required for each new applicant, and would be repeated for previously qualified applicants at least once every five years for as long as these individuals remain employed by the independent contractors in critical positions.

Upon receipt of criminal history record information and identity verification information, the department or private vendor would notify the applicant, in writing, as to whether the individual is qualified or disqualified for employment. In the event of a disqualification, the applicant would have 20 days from the date of the written notice to file an appeal for a review of the accuracy of the information, or to establish rehabilitation for the cited disqualifiers pursuant to regulations adopted by the Attorney General. Also, the department or private vendor would not maintain the criminal history record information or identity verification information obtained under this bill for more than six months from the date of the final disposition of the applicant's disqualification proceeding.

Applicants who are qualified for employment would be certified by the Attorney General to work in critical positions within designated facilities and issued appropriate credentials. Independent contractors, as a final security check, would also provide written documentation to designated facilities that all of the independent contractor's employees placed in critical positions are certified.

This bill was prefiled for introduction in the 2006 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.