

[Second Reprint]

SENATE, No. 1889

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED FEBRUARY 28, 2022

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

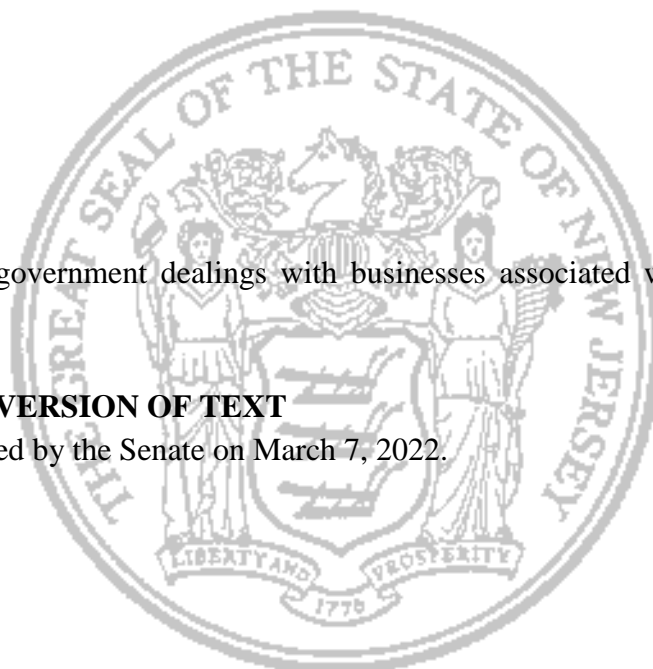
Senators Madden, Gill, Greenstein, Stanfield, Zwicker, Codey, Beach, Johnson, Assemblywomen N.Munoz, Matsikoudis, Assemblyman Danielsen, Assemblywoman Sumter, Assemblymen Calabrese, Torrissi, Conaway, Caputo, Assemblywomen Jasey, Tucker and Assemblyman McKeon

SYNOPSIS

Prohibits government dealings with businesses associated with Belarus or Russia.

CURRENT VERSION OF TEXT

As amended by the Senate on March 7, 2022.



(Sponsorship Updated As Of: 3/8/2022)

1 AN ACT prohibiting government dealings with businesses associated
 2 with Belarus or Russia, supplementing Title 52 of the New
 3 Jersey Statutes.

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

7
 8 1. a. A person that is identified on a list created pursuant to
 9 subsection b. of this section as a person that has been determined to
 10 engage in ²**[investment]** prohibited² activities in Russia or Belarus
 11 shall be ineligible to and shall not:

12 (1) ²**[bid on, submit a proposal for,]**² enter into ²**[,]**² or renew a
 13 contract with a State agency for the provision of goods or services
 14 ¹or the purchase of bonds or other obligations¹;

15 (2) file or renew a Public Works Contractor Registration with
 16 the Department of Labor and Workforce Development;

17 (3) ²be approved for or continue to² receive an economic
 18 development subsidy from the Economic Development Authority in
 19 but not of the Department of the Treasury, be awarded a municipal
 20 property tax abatement, or make or enter into a payment in-lieu of
 21 property tax agreement;

22 (4) apply for or receive a tax clearance certificate from the
 23 Director of the Division of Taxation in the Department of the
 24 Treasury;

25 (5) be certified by the Department of Community Affairs as an
 26 urban renewal entity for purposes of the "Long Term Tax
 27 Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.); and

28 (6) be designated as a redeveloper by a public agency for the
 29 purpose of planning, replanning, construction, or undertaking of any
 30 project or redevelopment work in accordance with the "Local
 31 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
 32 seq.).

33 b. ²**[Within 30 days of]** Immediately upon² the effective date
 34 of this section, the Department of the Treasury shall, using credible
 35 information available to the public, ²**[develop]** begin developing² a
 36 list of persons it determines engage in ²**[investment]** prohibited²
 37 activities in Russia or Belarus. ²The department is authorized to
 38 consult an independent research firm that specializes in global
 39 security risk for portfolio determinations, as selected by the State
 40 Treasurer, to develop the list.² The department shall update the list
 41 ²on a rolling basis. Beginning after the 91st day next following the
 42 date of enactment of this section, the department shall be required
 43 to update the list at least² every ¹[60 days] six months¹ ²[after the
 44 publication of an initial list]². Before including a person or entity

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 SBA committee amendments adopted February 28, 2022.

²Senate floor amendments adopted March 7, 2022.

1 on the initial list or an updated list, the department shall:

2 (1) provide notice of its intent to include the person on the list.
3 The notice shall inform the person that inclusion on the list would
4 make the person ineligible to engage in any of the enumerated
5 activities specified by subsection a. of this section; and

6 (2) provide a person with an opportunity to comment in writing
7 that the person is not engaged in ²**[investment]** prohibited²
8 activities in Russia or Belarus. If the person demonstrates to the
9 department that the person is not engaged in ²**[investment]**
10 prohibited² activities in Russia or Belarus, the person or entity shall
11 not be included on the list.

12 c. A State agency ²or local unit, as applicable² shall require a
13 person seeking to engage in any of the enumerated activities
14 specified by subsection a. of this section to certify ¹, before the
15 contract is awarded, renewed, ²amended, ²or extended, ^{1 2}, or before
16 applying for certification as an urban renewal entity or designation
17 as a redeveloper² that the person is not identified on a list created
18 pursuant to this section as a person engaging in ²**[investment]**
19 prohibited² activities in Russia or Belarus. The certification
20 required shall be executed on behalf of the applicable person by an
21 authorized officer or representative of the person. If a person is
22 unable to make the certification required because the person or one
23 of the person's parents, subsidiaries, or affiliates has engaged in
24 ²**[investment]** prohibited² activity in Russia or Belarus, the person
25 shall provide to the State agency or local unit of government
26 concerned, prior to the deadline for delivery of such certification, a
27 detailed and precise description of such activities, such description
28 to be provided under penalty of perjury. The certifications provided
29 under this section and disclosures provided under this section shall
30 be disclosed to the public.

31 d. (1) If the department determines, using credible information
32 available to the public and after providing notice and an opportunity
33 to comment in writing for the person to demonstrate that it is not
34 engaged in ²**[investment]** prohibited² activities in Russia or
35 Belarus, that the person or entity has submitted a false certification
36 pursuant to this section, and the person fails to demonstrate to the
37 department that the person has ceased its engagement in the
38 ²**[investment]** prohibited² activities in Russia or Belarus within 90
39 days after the determination of a false certification, the following
40 shall apply:

41 (a) pursuant to an action under paragraph (2) of this subsection,
42 a civil penalty in an amount that is equal to the greater of
43 \$1,000,000 or twice the amount of the bid or application listed in
44 subsection a. of this section for which the false certification was
45 made.

46 (b) termination of an existing contract, registration, economic
47 development subsidy, tax abatement, payment in-lieu of property

1 tax agreement, certification, or designation as deemed appropriate
2 by the issuing agency ¹or the application process for any of the
3 foregoing¹.

4 (c) ineligibility to engage in any of the enumerated activities
5 specified by subsection a. of this section for a period of three years
6 from the date of the determination that the person submitted the
7 false certification ², provided that the person has ceased its
8 engagement in the prohibited activities in Russia or Belarus².

9 (2) The department shall report to the Attorney General the
10 name of the person that the State agency determines has submitted
11 a false certification under this section, together with its information
12 as to the false certification, and the Attorney General shall
13 determine whether to bring a civil action against the person to
14 collect the penalty described in this subsection. Only one civil
15 action against the person to collect the penalty described in this
16 subsection may be brought for a false certification on a bid or
17 application listed in subsection a. of this section. A civil action to
18 collect such penalty shall commence within three years from the
19 date the certification is made.

20 e. For purposes of this section:

21 "Economic development subsidy" means the provision of an
22 amount of funds to a recipient with a value of greater than \$25,000
23 for the purpose of stimulating economic development in New
24 Jersey, including, but not limited to, any ²investment,² bond, grant,
25 loan, loan guarantee, matching fund, tax credit, or other tax
26 expenditure.

27 ²["Engaged in investment activities in Russia or Belarus"
28 means investing directly in companies owned or controlled by the
29 government of Russia or Belarus or an instrumentality of the
30 government of Russia or Belarus or engaged in business in or with
31 either of those governments or its instrumentalities.] "Engaged in
32 prohibited activities in Russia or Belarus" means (1) companies in
33 which the Government of Russia or Belarus has any direct equity
34 share; (2) having any business operations commencing after the
35 effective date of this act that involve contracts with or the provision
36 of goods or services to the Government of Russia or Belarus; (3)
37 being headquartered in Russia or having its principal place of
38 business in Russia or Belarus, or (4) supporting, assisting or
39 facilitating the Government of Russia or Belarus in their campaigns
40 to invade the sovereign country of Ukraine, either through in-kind
41 support or for profit.²

42 "Person or entity" means any of the following:

43 (1) A natural person, corporation, company, limited partnership,
44 limited liability partnership, limited liability company, business
45 association, sole proprietorship, joint venture, partnership, society,
46 trust, or any other nongovernmental entity, organization, or group;

1 (2) Any governmental entity or instrumentality of a government,
 2 including a multilateral development institution, as defined in
 3 Section 1701(c)(3) of the International Financial Institutions Act,
 4 22 U.S.C. 262r(c)(3); or

5 (3) Any parent, successor, subunit, direct or indirect subsidiary,
 6 or any entity under common ownership or control with, any entity
 7 described in paragraph (1) or (2).¹

8 “Russia” and “Belarus” mean, respectively, the governments of
 9 Russia and Belarus, and include the territories of those nations and
 10 any other territory or marine area ²**],** including the exclusive
 11 economic zone and continental shelf, over which either government
 12 claims sovereignty, sovereign rights, or jurisdiction, provided that
 13 the government exercises partial or total control over the area or
 14 derives a benefit from economic activity in the area pursuant to
 15 international arrangements**]** that are recognized by the United
 16 States as part of either country².

17 “State agency” means any of the principal departments in the
 18 Executive Branch of the State government, and any division, board,
 19 bureau, office, commission or other instrumentality within or
 20 created by such department; the Legislature of the State and any
 21 office, board, bureau or commission within or created by the
 22 Legislative Branch; and any independent State authority,
 23 commission, instrumentality or agency that is authorized by law to
 24 award public contracts. “State agency” shall also include a public
 25 research university that is not a State college subject to the
 26 provisions of the "State College Contracts Law," P.L.1986, c.43
 27 (C.18A:64-52 et seq.).

28
 29 2. a. A local contracting unit as defined in and subject to the
 30 provisions of the “Local Public Contracts Law,” P.L.1971, c.198
 31 (C.40A:11-1 et seq.), shall implement and comply with the
 32 provisions of P.L. , c. (C.) (pending before the Legislature
 33 as this bill), except that the contracting unit shall rely on the list
 34 developed by the Department of the Treasury pursuant to subsection
 35 b. of section 1 of P.L. , c. (C.) (pending before the
 36 Legislature as this bill).

37 b. If the local contracting unit determines that a person has
 38 submitted a false certification concerning its engagement in
 39 ²**][investment] prohibited²** activities in Russia or Belarus pursuant
 40 to section 1 of P.L. , c. (C.) (pending before the Legislature
 41 as this bill), the local contracting unit shall report to the New Jersey
 42 Attorney General the name of that person or entity, and the
 43 Attorney General shall determine whether to bring a civil action
 44 against the person to collect the penalty prescribed in subsection c.
 45 of section 1 of P.L. , c. (C.) (pending before the
 46 Legislature as this bill).

1 c. The local contracting unit may also report to the municipal
2 attorney or county counsel, as appropriate, the name of that person,
3 together with its information as to the false certification, and the
4 municipal attorney or county counsel, as appropriate, may
5 determine to bring such civil action against the person to collect
6 such penalty.

7
8 3. a. A board of education as defined in and subject to the
9 provisions of the "Public School Contracts Law," P.L.1977, c.114
10 (N.J.S.18A:18A-1 et seq.), shall implement and comply with the
11 provisions of P.L. , c. (C.) (pending before the Legislature
12 as this bill), except that the board shall rely on the list developed by
13 the Department of the Treasury pursuant to subsection b. of section
14 1 of P.L. , c. (C.) (pending before the Legislature as this
15 bill).

16 b. If the board determines that a person or entity has submitted
17 a false certification concerning its engagement in ²**[investment]**
18 prohibited² activities in Russia or Belarus pursuant to section 1 of
19 P.L. , c. (C.) (pending before the Legislature as this bill), the
20 board shall report to the New Jersey Attorney General the name of
21 that person, and the Attorney General shall determine whether to
22 bring a civil action against the person to collect the penalty
23 prescribed in subsection c. of section 1 of P.L. , c. (C.)
24 (pending before the Legislature as this bill).

25 c. The board may also report to the board's attorney the name of
26 that person, together with its information as to the false
27 certification, and the board's attorney may determine to bring such
28 civil action against the person to collect such penalty.

29
30 4. a. A State college as defined in and subject to the provisions
31 of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52
32 et seq.), shall implement and comply with the provisions of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 except that the State college shall rely on the list developed by the
35 Department of the Treasury pursuant to subsection b. of section 1 of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37 b. If the State college determines that a person has submitted a
38 false certification concerning its engagement in ²**[investment]**
39 prohibited² activities in Russia or Belarus pursuant to section 1 of
40 P.L. , c. (C.) (pending before the Legislature as this bill), the
41 State college shall report to the New Jersey Attorney General the
42 name of that person, and the Attorney General shall determine
43 whether to bring a civil action against the person to collect the
44 penalty prescribed in subsection c. of section 1 of
45 P.L. , c. (C.) (pending before the Legislature as this bill).

46 c. The State college may also report to the State college
47 attorney the name of that person, together with its information as to

1 the false certification, and the State college attorney may determine
2 to bring such civil action against the person to collect such penalty.

3
4 5. a. A county college as defined in and subject to the
5 provisions of the "County College Contracts Law," P.L.1982, c.189
6 (C.18A:64A-25.1 et seq.), shall implement and comply with the
7 provisions of P.L. , c. (C.) (pending before the Legislature
8 as this bill), except that the county college shall rely on the list
9 developed by the Department of the Treasury pursuant to subsection
10 b. of section 1 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 b. If the county college determines that a person has submitted a
13 false certification concerning its engagement in ²**[investment]**
14 prohibited² activities in Russia or Belarus pursuant to section 1 of
15 P.L. , c. (C.) (pending before the Legislature as this bill), the
16 county college shall report to the New Jersey Attorney General the
17 name of that person, and the Attorney General shall determine
18 whether to bring a civil action against the person or entity to collect
19 the penalty prescribed in subsection c. of section 1 of
20 P.L. , c. (C.) (pending before the Legislature as this bill).

21 c. The county college may also report to the county college
22 attorney the name of that person, together with its information as to
23 the false certification, and the county college attorney may
24 determine to bring such civil action against the person to collect
25 such penalty.

26
27 6. a. Notwithstanding any provision of law to the contrary,
28 ¹except section 11 of P.L.1950 c.270 (C.52:18A-89), as amended,¹
29 no assets of any pension or annuity fund under the jurisdiction of
30 the Division of Investment in the Department of the Treasury, or its
31 successor, shall be invested ¹directly¹ in a company ²**[**¹**[with an**
32 **equity tie to]** owned or controlled by¹ the government of Russia or
33 Belarus, or an instrumentality of the government of Russia or
34 Belarus, ¹**[and]** or¹ is engaged in business in or with either of those
35 governments or its instrumentalities. This prohibition shall not
36 apply to the activities of a company providing humanitarian aid to
37 the Russian or Belarusian people through a governmental or non-
38 governmental organization.] included in the Department of the
39 Treasury's list created pursuant to subsection b. of section 1 of
40 P.L. , c. (C.) (pending before the Legislature as this bill) for
41 engaging in prohibited activities in Russia or Belarus.²

42 b. The State Investment Council and the Director of the
43 Division of Investment ²**[**, after reviewing the recommendations of
44 and consulting with an independent research firm that specializes in
45 global security risk for portfolio determinations ¹**[**selected by the
46 State Treasurer¹,² shall take appropriate action to sell, redeem,
47 divest, or withdraw any investment held in violation of subsection

1 a. of this section. ²【This section shall not be construed to require
2 the premature or otherwise imprudent sale, redemption, divestment,
3 or withdrawal of an investment, but such sale, redemption,
4 divestment, or withdrawal shall be completed not later than ¹【one
5 year】 two years¹ following the ¹【effective date of P.L. , c.
6 (C.) (pending before the Legislature as this bill)】 date that such
7 investment is identified as being in violation of subsection a. of this
8 section¹】 Any appropriate action to sell, redeem, divest, or
9 withdraw any investment shall be completed not later than one year
10 following the date that such investment is identified as being in
11 violation of subsection a. of this section, provided that if such sale,
12 redemption, divestment, or withdrawal within such one-year period
13 would be premature or otherwise imprudent and inconsistent with
14 the requirements of section 11 of P.L.1950 c.270 (C.52:18A-89), as
15 amended, such sale, redemption, divestment, or withdrawal shall be
16 completed as soon thereafter as such requirements are met².

17 c. Within ¹【60】 90¹ days after the effective date of P.L. , c.
18 (C.) (pending before the Legislature as this bill), the Director of
19 the Division of Investment shall file with the Legislature, pursuant
20 to section 2 of P.L.1991, c.164 (C.52:14-19.1), a report of all
21 investments held as of the effective date that are in violation of
22 subsection a. of this section. ¹【Every year thereafter, the director
23 shall report on all investments sold, redeemed, divested, or
24 withdrawn in compliance with subsection b. of this section.

25 Each report after the initial report shall provide a description of
26 the progress that the division has made since the previous report
27 and since the enactment of P.L. , c. (C.) (pending before
28 the Legislature as this bill) in implementing subsection b. of this
29 section.】¹

30 d. State Investment Council members, jointly and individually,
31 and State officers and employees involved therewith, shall be
32 indemnified and held harmless by the State of New Jersey from all
33 claims, demands, suits, actions, damages, judgments, costs, charges,
34 and expenses, including court costs and attorney's fees, and against
35 all liability, losses, and damages of any nature whatsoever that these
36 State Investment Council members, and State officers and
37 employees, shall or may at any time sustain by reason of any
38 decision to restrict, reduce, or eliminate investments pursuant to this
39 act.

40 ²【e. For purposes of this section:

41 ¹【“Equity tie” means manufacturing or mining plants, employees
42 or advisors, facilities, or an investment, fiduciary, monetary or
43 physical presence of any kind, including an ownership stake in one
44 or more subsidiary or joint venture with one or more companies in
45 the country.】¹

1 "Humanitarian aid" means the provision of goods and services
2 intended to relieve human suffering or to promote general welfare
3 and health.]²

4
5 7. A State agency, local contracting unit, board of education,
6 State college, or county college shall not bank with, have or hold
7 stock, debt, or other equity investments of, or maintain insurance
8 coverage through a policy issued by a financial institution that
9 ²[has an equity tie to the government of Russia or Belarus, or an
10 instrumentality of the government of Russia or Belarus, and is
11 engaged in business in or with either of those governments or its
12 instrumentalities] is included in the Department of the Treasury's
13 list created pursuant to subsection b. of section 1 of P.L. , c.
14 (C.) (pending before the Legislature as this bill) for engaging in
15 prohibited activities in Russia or Belarus².

16
17 8. Notwithstanding the provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
19 contrary, the State Treasurer may adopt immediately upon filing
20 with the Office of Administrative Law such rules and regulations as
21 the State Treasurer determines to be necessary to effectuate the
22 purposes of P.L. , c. (C.) (pending before the Legislature as
23 this bill), which rules and regulation shall be effective for a period
24 not exceeding 360 days following the effective date of
25 P.L. , c. (C.) (pending before the Legislature as this bill) and
26 may thereafter be amended, adopted, or readopted by the State
27 Treasurer in accordance with the requirements of P.L.1968, c.410
28 (C.52:14B-1 et seq.).

29
30 ¹9. The provisions of sections 1 through 8 of P.L. , c.
31 (C.) (pending before the Legislature as this bill) shall not apply
32 in circumstances when their application would violate federal law
33 or regulation or be inconsistent with the terms and conditions of
34 federal funding.¹

35
36 ¹[9] 10¹. This act shall take effect immediately ¹and shall
37 expire ²[four years thereafter¹] upon the revocation of federal
38 sanctions contained in Executive Order 14024².