

# ASSEMBLY, No. 3213

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 3, 2003

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

**Assemblyman Tucker**

**SYNOPSIS**

Changes certain documentation required for certification as minority or woman's business for certain State programs.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/5/2003)**

A3213 CHIVUKULA

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1 AN ACT concerning documentation required from business seeking  
2 certification as minority or women's business for certain State  
3 programs and amending and supplementing P.L.1986, c.195  
4 (C.52:27H-21.17 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

9 1. Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is amended to  
10 read as follows:

11 2. As used in this act:

12 a. "Control" means authority over the affairs of a business,  
13 including, but not limited to, capital investment, property acquisition,  
14 employee hiring, contract negotiations, legal matters, officer and  
15 director selection, operating responsibility, financial transactions and  
16 the rights of other shareholders or joint partners; except that control  
17 shall not include absentee ownership, nor shall it be deemed to exist  
18 where an owner or employee who is not a minority, in the case of a  
19 minority business; or a male owner or employee, in the case of a  
20 women's business, is disproportionately responsible for the operation  
21 of the business or for policy and contractual decisions.

22 b. "Commissioner" means the Commissioner of the Department of  
23 Commerce and Economic Development, or any successor public  
24 agency.

25 c. "Director" means the Director of the Division of Development  
26 for Small Businesses and Women's and Minority Businesses in the  
27 Department of Commerce and Economic Development, created  
28 pursuant to [P.L. , c. (C. ), (now pending before the  
29 Legislature as Senate Bill No. 1709 of 1986)] P.L.1987, c.55  
30 (C.52:27H-21.7 et seq.), or any successor public agency.

31 d. "Division" means the Division of Development for Small  
32 Businesses and Women's and Minority Businesses in the Department  
33 of Commerce and Economic Development, created pursuant to  
34 [P.L. , c. (C. ), (now pending before the Legislature as  
35 Senate Bill No. 1709 of 1986)] P.L.1987, c.55 (C.52:27H-21.7 et  
36 seq.), or any successor public agency.

37 e. "Minority" means a person who is:

38 (1) Black, which is a person having origins in any of the black  
39 racial groups in Africa; or

40 (2) Hispanic, which is a person of Spanish or Portuguese culture,  
41 with origins in Mexico, South or Central America, or the Caribbean  
42 Islands, regardless of race; or

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

A3213 CHIVUKULA

1 (3) Asian-American, which is a person having origins in any of the  
2 original peoples of the Far East, Southeast Asia, Indian subcontinent,  
3 Hawaii, or the Pacific Islands; or

4 (4) American Indian or Alaskan native, which is a person having  
5 origins in any of the original peoples of North America.

6 f. "Minority business" means a business which is:

7 (1) A sole proprietorship owned and controlled by a minority;

8 (2) A partnership or joint venture owned and controlled by  
9 minorities in which at least 51% of the ownership interest is held by  
10 minorities and the management and daily business operations of which  
11 are controlled by one or more of the minorities who own it; or

12 (3) A corporation or other entity whose management and daily  
13 business operations are controlled by one or more minorities who own  
14 it, and which is at least 51% owned by one or more minorities, or, if  
15 stock is issued, at least 51% of the stock is owned by one or more  
16 minorities.

17 g. "Public agency" means the State or any department, division,  
18 agency, authority, board, commission or committee thereof.

19 h. "Woman" or "women" means a female or females, regardless of  
20 race.

21 i. "Women's business" means a business which is:

22 (1) A sole proprietorship owned and controlled by a woman; or

23 (2) A partnership or joint venture owned and controlled by women  
24 in which at least 51% of the ownership is held by women and the  
25 management and daily business operations of which are controlled by  
26 one or more women who own it; or

27 (3) A corporation or other entity whose management and daily  
28 business operations are controlled by one or more women who own it,  
29 and which is at least 51% owned by women, or, if stock is issued, at  
30 least 51% of the stock is owned by one or more women.

31 j. "Applicant" means an individual or individuals, a sole proprietor,  
32 partnership, joint venture or corporation that applies for certification  
33 as a minority business or women's business, in accordance with the  
34 provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).

35 (cf: P.L.1986, c.195, s.2)

36

37 2. Section 6 of P.L.1986, c.195 (C.52:27H-21.22) is amended to  
38 read as follows:

39 6. [The director may require of an applicant for certification as a  
40 minority business or women's business any information or documents  
41 he deems necessary to determine the applicant's eligibility for  
42 certification, including, but not limited to:

43 a. Names and addresses of the owner, partners or shareholders, as  
44 applicable, and their representative shares of ownership;

45 b. Names and addresses of members of the board of directors, in  
46 the case of corporations;

A3213 CHIVUKULA

- 1 c. Names and addresses of the officers of the business;
- 2 d. Names and addresses of capital investors;
- 3 e. Number of shares of stock issued and outstanding, in the case of
- 4 a corporation;
- 5 f. Articles of incorporation, bylaws, partnership agreements, or
- 6 joint venture agreements, as applicable;
- 7 g. The capacity of the business to be bonded;
- 8 h. The affiliation of the business or any of its owners, officers or
- 9 directors with any other business entity;
- 10 i. A representative list of prior and current clients;
- 11 j. Major real and personal property holdings of the business;
- 12 k. Financial statements and balance sheets;
- 13 l. Banking institutions with which the business is affiliated; and
- 14 m. Any other information he deems necessary to effectuate the
- 15 purposes of this act]

16 The director may require of a first-time applicant for certification  
17 as a minority business or women's business the documentation that is  
18 necessary to determine the applicant's eligibility for certification. Such  
19 documentation may include, but not be limited to:

- 20 a. Names and addresses of the owner, partners or shareholders, as
- 21 applicable, and their representative shares of ownership;
- 22 b. Names and addresses of members of the board of directors, in
- 23 the case of corporations;
- 24 c. Names and addresses of the officers of the business;
- 25 d. Number of shares of stock issued and outstanding, in the case
- 26 of a corporation;
- 27 e. Articles of incorporation, bylaws, partnership agreements, or
- 28 joint venture agreements, as applicable;
- 29 f. Organizational charts;
- 30 g. An applicant's certificate of birth and motor vehicle driver's
- 31 license; and
- 32 h. An affidavit certifying that the applicant is a minority business
- 33 or women's business, as defined pursuant to section 2 of P.L.1986,
- 34 c.195 (C.52:27H-21.18).

35 The director shall not require an applicant to provide any personal  
36 federal or personal State income tax returns.

37 (cf: P.L.1986, c.195, s.6)

38

39 3. (New section) The director shall require a first-time applicant  
40 to apply for recertification as a minority business or women's business  
41 one year after the original certification was issued. The director may  
42 require of the applicant the documentation that is necessary to  
43 determine the applicant's eligibility for recertification, including but not  
44 limited to:

- 45 a. Names and addresses of the owner, partners or shareholders, as
- 46 applicable, and their representative shares of ownership;

- 1       b. Names and addresses of members of the board of directors, in
- 2 the case of corporations;
- 3       c. Names and addresses of the officers of the business;
- 4       d. Names and addresses of capital investors;
- 5       e. Number of shares of stock issued and outstanding, in the case of
- 6 a corporation;
- 7       f. Articles of incorporation, bylaws, partnership agreements, or
- 8 joint venture agreements, as applicable;
- 9       g. The capacity of the business to be bonded;
- 10      h. The affiliation of the business or any of its owners, officers or
- 11 directors with any other business entity;
- 12      i. A representative list of prior and current clients;
- 13      j. Major real and personal property holdings of the business;
- 14      k. Financial statements and balance sheets;
- 15      l. Banking institutions with which the business is affiliated; and
- 16      m. Organizational charts;
- 17      n. An applicant's certificate of birth and motor vehicle driver's
- 18 license;
- 19      o. Personal or corporate federal or State income tax returns;
- 20      p. An affidavit certifying that the applicant is a minority business
- 21 or women's business, as defined in section 2 of P.L.1986, c.195
- 22 (C.52:27H-21.18); and
- 23      q. Any other information the director deems necessary to effectuate
- 24 the purposes of this act.
- 25
- 26      4. (New section) After a minority business or women's business
- 27 has been recertified after first receiving initial certification, the director
- 28 shall require the certified minority business or certified women's
- 29 business to apply for recertification every five years. The director may
- 30 require of the applicant the documentation that is necessary to
- 31 determine the applicant's eligibility for recertification, including but not
- 32 limited to:
- 33      a. Names and addresses of the owner, partners or shareholders, as
- 34 applicable, and their representative shares of ownership;
- 35      b. Names and addresses of members of the board of directors, in
- 36 the case of corporations;
- 37      c. Names and addresses of the officers of the business;
- 38      d. Names and addresses of capital investors;
- 39      e. Number of shares of stock issued and outstanding, in the case of
- 40 a corporation;
- 41      f. Articles of incorporation, bylaws, partnership agreements, or
- 42 joint venture agreements, as applicable;
- 43      g. The capacity of the business to be bonded;
- 44      h. The affiliation of the business or any of its owners, officers or
- 45 directors with any other business entity;

- 1 i. A representative list of prior and current clients;
- 2 j. Major real and personal property holdings of the business;
- 3 k. Financial statements and balance sheets;
- 4 l. Banking institutions with which the business is affiliated; and
- 5 m. Organizational charts;
- 6 n. An applicant's certificate of birth and motor vehicle driver's
- 7 license;
- 8 o. Personal or corporate federal or State income tax returns;
- 9 p. An affidavit certifying that the applicant is a minority business
- 10 or women's business, as defined in section 2 of P.L.1986, c.195
- 11 (C.52:27H-21.18); and
- 12 q. Any other information the director deems necessary to effectuate
- 13 the purposes of this act.

14

15 5. (New section) Where the director determines that a business has  
16 been certified as a minority business or women's business on the basis  
17 of false information knowingly supplied by the business and has been  
18 awarded a contract to which the business would not otherwise have  
19 been entitled under this act, the director shall:

- 20 a. Assess the business any difference between the contract amount
- 21 and what the State's cost would have been if the contract had not been
- 22 awarded in accordance with the provisions of this act;
- 23 b. In addition to the amount due under subsection a., assess the
- 24 business a penalty in an amount of not more than 10 percent of the
- 25 amount of the contract involved;
- 26 c. Order the business ineligible to transact any business with the
- 27 State for a period of not less than 24 months; and
- 28 d. Prior to any final determination, assessment or order under this
- 29 section, afford the business an opportunity for a contested case hearing
- 30 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
- 31 (C.52:14B-1 et seq.).

32 All payments to the State pursuant to subsection a. of this section  
33 shall be deposited in the fund out of which the contract involved was  
34 awarded. All payments to the State pursuant to subsection b. of this  
35 section shall be deposited in the General Fund.

36

37 6. This act shall take effect immediately.

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#### STATEMENT

41

42 This bill establishes applicant status procedures and the respective  
43 documentation requirements for businesses who wish to be certified as  
44 a minority or women's business in order to qualify for certain State  
45 programs. Specifically, the bill sets forth the documentation necessary  
46 to determine a first-time applicant's eligibility for certification as a

1 minority or women's business. Such documentation may include, but  
2 not be limited to: 1) the names and addresses of the owner, partners  
3 or shareholders, as applicable, and their representative shares of  
4 ownership; 2) the names and addresses of members of the board of  
5 directors, in the case of corporations; 3) the names and addresses of  
6 the officers of the business; 4) the number of shares of stock issued  
7 and outstanding, in the case of a corporation; 5) the articles of  
8 incorporation, bylaws, partnership agreements, or joint venture  
9 agreements, as applicable; 6) organizational charts; 7) an applicant's  
10 certificate of birth and motor vehicle driver's license; and 8) an  
11 affidavit certifying that the applicant is a minority business or women's  
12 business, as defined pursuant to section 2 of P.L.1986, c.195  
13 (C.52:27H-21.18). A first-time applicant is not required to provide  
14 any personal federal or personal State income tax returns.

15 The bill allows a first-time applicant to apply for recertification as  
16 a minority business or women's business one year after the original  
17 certification was issued. In addition to the documentation provided by  
18 a first-time applicant, additional documentation necessary to determine  
19 the applicant's eligibility for recertification may include, but not be  
20 limited to: 1) the names and addresses of capital investors; 2) the  
21 capacity of the business to be bonded; 3) the affiliation of the business  
22 or any of its owners, officers or directors with any other business  
23 entity; 4) a representative list of prior and current clients; 5) major real  
24 and personal property holdings of the business; 6) financial statements  
25 and balance sheets; 7) banking institutions with which the business is  
26 affiliated; 8) personal or corporate federal or State income tax returns;  
27 and 9) any other information deemed necessary to effectuate the  
28 purposes of the bill.

29 The bill requires that after a minority business or women's business  
30 has been recertified after first receiving initial certification, the  
31 certified minority business or certified women's business shall apply for  
32 recertification every five years and shall submit the same  
33 documentation required of first-time applicants who apply for  
34 recertification as a minority business or women's business one year  
35 after the original certification was issued.

36 The bill provides that where it is determined that a business has  
37 been certified as a minority business or women's business on the basis  
38 of false information knowingly supplied by the business and has been  
39 awarded a contract to which the business would not otherwise have  
40 been entitled under the State certification program, the State shall: 1)  
41 assess the business any difference between the contract amount and  
42 what the State's cost would have been if the contract had not been  
43 awarded in accordance with the provisions of the bill; 2) in addition to  
44 the amount due to the State, assess the business a penalty in an amount  
45 of not more than 10% of the amount of the contract involved; 3) order  
46 the business ineligible to transact any business with the State for a

**A3213 CHIVUKULA**

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1 period of not less than 24 months; and 4) prior to any final  
2 determination, assessment or order under the certification program,  
3 afford the business an opportunity for a contested case hearing  
4 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
5 (C.52:14B-1 et seq.). The bill further requires that all payments to the  
6 State required pursuant to this bill shall be deposited in the fund out  
7 of which the contract involved was awarded and that all payments to  
8 the State pursuant to the bill shall be deposited in the General Fund.