

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3213

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 3213.

Assembly Bill No. 3213, as amended, establishes applicant status procedures and the respective documentation requirements for businesses who wish to be certified as a minority or women's business in order to qualify for certain State programs.

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

The bill, as amended, allows a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. In addition to the documentation provided by a first-time applicant, additional documentation necessary to determine the applicant's eligibility for recertification may include, but not be limited to: 1) the names and addresses of capital investors; 2) the capacity of the business to be bonded; 3) the affiliation of the business or any of its owners, officers or directors with any other business entity; 4) a representative list of prior and current clients; 5) major real and personal property holdings

of the business; 6) financial statements and balance sheets; 7) banking institutions with which the business is affiliated; 8) personal or corporate federal or State income tax returns; and 9) any other information deemed necessary to effectuate the purposes of the bill.

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

The bill, as amended, establishes that if any applicant knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled in the absence of that false information, that applicant shall, upon conviction, be guilty of a crime of the fourth degree.

COMMITTEE AMENDMENTS

Under current law, the Division of Development for Small Businesses and Women's and Minority Businesses is granted the power to exercise exclusive authority to establish a uniform procedure for State departments, agencies and authorities to certify the eligibility of minority or women's businesses to bid on contracts under any program of the State for which that certification is required. The committee amended the bill to delete the language limiting this power to any program of the State for which that certification is required.

The committee amendments remove the reference in the underlying law to the Commissioner of Commerce and Economic Development and to the former department in order to conform the law to changes enacted under P.L.1998, c.44 which established the New Jersey Commerce and Economic Growth Commission.

The committee amendments authorize the Director of the Division of Development for Small Businesses and Women's and Minority Businesses to require an applicant to provide personal federal or State income tax returns as part of the original application for designation as a women's or minority business. As introduced, the bill forbade the director from requiring an applicant to produce this information.

The committee amendments make it a crime of the fourth degree for an applicant to knowingly supply false information or be awarded a contract to which the business would not otherwise have been entitled in the absence of that false information. As originally introduced, the bill provided that where it is determined that a business has been certified as a minority business or women's business on the basis of false information knowingly supplied by the business and has been awarded a contract to which the business would not otherwise have been entitled under the State certification program, the State would have been required to: 1) assess the business any difference between the contract amount and what the State's cost would have

been if the contract had not been awarded in accordance with the provisions of the bill; 2) in addition to the amount due to the State, assess the business a penalty in an amount of not more than 10% of the amount of the contract involved; 3) order the business ineligible to transact any business with the State for a period of not less than 24 months; and 4) prior to any final determination, assessment or order under the certification program, afford the business an opportunity for a contested case hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bill would have further required that all payments to the State would have to be deposited in the fund out of which the contract involved was awarded and that all payments to the State pursuant to the bill would have to be deposited in the General Fund.

With the committee amendments, Assembly Bill 3213 is identical to Senate Bill 75 (1R) with committee amendments, also reported by this committee on February 3, 2003.