

P.L. 2003, CHAPTER 189, *approved October 3, 2003*
Senate, No. 75 (*Third Reprint*)

1 **AN ACT** concerning documentation required from business seeking
2 certification as minority or ¹[woman's] women's¹ business for
3 certain State programs and ²amending P.L.1987, c.55 and²
4 amending ¹and supplementing¹ P.L.1986, c.195 ¹(C.52:27H-21.17
5 et seq.)¹.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 ²1. Section 5 of P.L.1987, c.55 (C.52:27H-21.11) is amended to
11 read as follows:

12 5. The division shall have the power to:

13 a. Establish a loan referral program and loan packaging program
14 for eligible businesses, using criteria for eligibility which meet the
15 standards established by the authority or which meet the standards
16 established by private sources or by other State or federal programs;

17 b. Compile lists of qualified professionals, including women and
18 minorities in specific areas of expertise, to be disseminated to eligible
19 businesses and to be used in making referrals;

20 c. Use available resources within the State, including, but not
21 limited to, small business development centers, business organizations,
22 academic institutions with business programs, and minority business
23 development offices, to coordinate managerial and technical
24 assistance;

25 d. Establish, in cooperation with institutions of higher education,
26 an internship program for candidates for undergraduate and graduate
27 degrees in business administration and related fields for the purpose of
28 providing assistance to the division, the authority and to businesses
29 which are eligible to receive assistance under this act;

30 e. Provide, consistent with the provisions of this act and in
31 conjunction with, or at the request of, the authority, assistance to
32 eligible businesses, including, but not limited to:

33 (1) Assistance in researching markets or in market analysis;

34 (2) Advice in advertising and marketing;

35 (3) Advice in selecting sales or other distribution channels;

36 (4) Providing information and training with respect to bidding on
37 government contracts;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted September 19, 2002.

² Assembly ACE committee amendments adopted February 3, 2003.

³ Assembly floor amendments adopted March 13, 2003.

- 1 (5) Serving as liaison with the Department of the Treasury and
2 other departments and agencies of State, federal and local government
3 to promote the procurement of contracts for eligible businesses;
- 4 (6) Assistance in obtaining legal counsel;
- 5 (7) Providing financial analysis and accounting assistance;
- 6 (8) Assistance in obtaining appropriate insurance, including benefit
7 packages for employees;
- 8 (9) Assistance in arranging contracts with franchisers;
- 9 (10) Assistance in arranging commercial loans made by a State or
10 federally chartered bank, savings bank, or savings and loan
11 association, if, with respect to loans made by State chartered
12 institutions, the loans are made in accordance with the powers
13 conferred on those institutions pursuant to Title 17 of the Revised
14 Statutes, including bridge loans and cash flow loans;
- 15 (11) Assistance in negotiating license agreements;
- 16 (12) Assistance in procuring bonding or substitutes therefor;
- 17 (13) Making referrals to private consultants, institutions, and other
18 providers of services, according to the specific needs of an eligible
19 business;
- 20 (14) Assistance in finding sources of financing from federal, State,
21 and local sources;
- 22 (15) Assistance in gaining information about employee training and
23 development programs; and
- 24 f. Provide a central resource for eligible businesses in their dealing
25 with federal, State, and local governments, including information
26 regarding government regulations or laws which affect eligible
27 businesses;
- 28 g. Initiate and encourage education programs for eligible
29 businesses;
- 30 h. Notwithstanding any other provision of law, exercise exclusive
31 authority within the State to establish a uniform procedure for
32 departments, agencies and authorities of the State and of its political
33 subdivisions to certify the eligibility of a business to bid on contracts,
34 or otherwise represent itself as a minority or women's business [under
35 any program of the State or of its political subdivisions for which that
36 certification is required]. The division shall be the certifying authority
37 for departments, agencies and authorities of the State, except that
38 when the division's procedure for certification of a business as a
39 minority business or women's business conflicts with a federal
40 certification procedure that affects a State project in which the federal
41 government participates, the federal certification procedure shall take
42 precedence. Public agencies shall identify those projects and shall
43 notify the division. A political subdivision shall have the responsibility
44 of certifying the eligibility of a women's business or minority business
45 to bid on contracts or otherwise represent itself as a women's business
46 or minority business within the political subdivision, except that, if the

1 business is certified by the division to represent itself as being a
2 minority or women's business under State programs, the political
3 subdivision may accept that certification for eligibility of the business
4 under programs of the political subdivision. A political subdivision
5 shall utilize the uniform certification procedure formulated by the
6 division;

7 i. Submit to the Governor and the Legislature an annual report
8 regarding its activities and setting forth recommendations of methods
9 which might be utilized to more efficiently and effectively carry out the
10 purposes of this act, and submit to the commissioner periodic reports
11 on the condition of small businesses, and women's and minority
12 businesses in the State; and

13 j. Provide any other services which it deems necessary or which
14 may be requested by the authority.²

15 (cf: P.L.1987, c.55, s.5)

16

17 ²[¹1.] 2.² Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is
18 amended to read as follows:

19 2. As used in this act:

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

30 b. "Commissioner" means the ²[Commissioner of the Department
31 of Commerce and Economic Development, or any successor public
32 agency] Secretary and Chief Executive Officer of the New Jersey
33 Commerce and Economic Growth Commission created pursuant to
34 section 3 of P.L.1998, c.44 (C.52:27C-63)².

35 c. "Director" means the Director of the Division of Development
36 for Small Businesses and Women's and Minority Businesses in the
37 ²[Department of Commerce and Economic Development, created
38 pursuant to]² [P.L. , c. (C.), (now pending before the
39 Legislature as Senate Bill No. 1709 of 1986)] ²[P.L.1987, c.55
40 (C.52:27H-21.7 et seq.), or any successor public agency] New Jersey
41 Commerce and Economic Growth Commission created pursuant to
42 section 3 of P.L.1998, c.44 (C.52:27C-63)².

43 d. "Division" means the Division of Development for Small
44 Businesses and Women's and Minority Businesses in the ²[Department
45 of Commerce and Economic Development, created pursuant to]²

1 [P.L. , c. (C.), (now pending before the Legislature as Senate
2 Bill No. 1709 of 1986)] ²[P.L.1987, c.55 (C.52:27H-21.7 et seq.), or
3 any successor public agency] New Jersey Commerce and Economic
4 Growth Commission created pursuant to section 3 of P.L.1998, c.44
5 (C.52:27C-63)².

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

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

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

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

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

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

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

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

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

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

30 h. "Woman" or "women" means a female or females, regardless of
31 race.

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

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

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

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

42 j. "Applicant" means an individual or individuals, a sole proprietor,
43 partnership, joint venture or corporation that applies for certification
44 as a minority business or women's business, in accordance with the
45 provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).¹

1 ¹[1.] ²[2.¹] ³.² Section 6 of P.L.1986, c.195 (C.52:27H-21.22)
2 is amended to read as follows:

3 6. ¹[The director may require of an applicant for certification as a
4 minority business or women's business [any information or documents
5 he deems] only the minimal documentation that is necessary to
6 determine the applicant's eligibility for certification[, including, but not
7 limited to:

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

10 b. Names and addresses of members of the board of directors, in
11 the case of corporations;

12 c. Names and addresses of the officers of the business;

13 d. Names and addresses of capital investors;

14 e. Number of shares of stock issued and outstanding, in the case of
15 a corporation;

16 f. Articles of incorporation, bylaws, partnership agreements, or
17 joint venture agreements, as applicable;

18 g. The capacity of the business to be bonded;

19 h. The affiliation of the business or any of its owners, officers or
20 directors with any other business entity;

21 i. A representative list of prior and current clients;

22 j. Major real and personal property holdings of the business;

23 k. Financial statements and balance sheets;

24 l. Banking institutions with which the business is affiliated; and

25 m. Any other information he deems necessary to effectuate the
26 purposes of this act]. Such documentation may include, but need not
27 be limited to, an applicant's certificate of birth and motor vehicle
28 driver's license, but shall not include that applicant's personal or
29 corporate federal or State income tax returns.]

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

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

36 b. Names and addresses of members of the board of directors, in
37 the case of corporations;

38 c. Names and addresses of the officers of the business;

39 d. Number of shares of stock issued and outstanding, in the case
40 of a corporation;

41 e. Articles of incorporation, bylaws, partnership agreements, or
42 joint venture agreements, as applicable;

43 f. Organizational charts;

44 g. An applicant's certificate of birth and motor vehicle driver's
45 license; and

46 h. An affidavit certifying that the applicant is a minority business

1 or women's business, as defined pursuant to section 2 of P.L.1986,
2 c.195 (C.52:27H-21.18).

3 The director ²[shall not] ³[may²] shall not³ require an applicant to
4 provide any personal federal or personal State income tax returns.¹

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

6
7 ²[¹3.] ^{4.}² (New section) The director shall require a first-time
8 applicant to apply for recertification as a minority business or women's
9 business one year after the original certification was issued. The
10 director may require of the applicant the documentation that is
11 necessary to determine the applicant's eligibility for recertification,
12 including but not limited to:

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

15 b. Names and addresses of members of the board of directors, in
16 the case of corporations;

17 c. Names and addresses of the officers of the business;

18 d. Names and addresses of capital investors;

19 e. Number of shares of stock issued and outstanding, in the case of
20 a corporation;

21 f. Articles of incorporation, bylaws, partnership agreements, or
22 joint venture agreements, as applicable;

23 g. The capacity of the business to be bonded;

24 h. The affiliation of the business or any of its owners, officers or
25 directors with any other business entity;

26 i. A representative list of prior and current clients;

27 j. Major real and personal property holdings of the business;

28 k. Financial statements and balance sheets;

29 l. Banking institutions with which the business is affiliated; and

30 m. Organizational charts;

31 n. An applicant's certificate of birth and motor vehicle driver's
32 license;

33 o. Personal or corporate federal or State income tax returns;

34 p. An affidavit certifying that the applicant is a minority business
35 or women's business, as defined in section 2 of P.L.1986, c.195
36 (C.52:27H-21.18); and

37 q. Any other information the director deems necessary to effectuate
38 the purposes of this act.¹

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40 ²[¹4.] ^{5.}² (New section) After a minority business or women's
41 business has been recertified after first receiving initial certification,
42 the director shall require the certified minority business or certified
43 women's business to apply for recertification every five years. The
44 director may require of the applicant the documentation that is
45 necessary to determine the applicant's eligibility for recertification,
46 including but not limited to:

- 1 a. Names and addresses of the owner, partners or shareholders, as
2 applicable, and their representative shares of ownership;
3 b. Names and addresses of members of the board of directors, in
4 the case of corporations;
5 c. Names and addresses of the officers of the business;
6 d. Names and addresses of capital investors;
7 e. Number of shares of stock issued and outstanding, in the case of
8 a corporation;
9 f. Articles of incorporation, bylaws, partnership agreements, or
10 joint venture agreements, as applicable;
11 g. The capacity of the business to be bonded;
12 h. The affiliation of the business or any of its owners, officers or
13 directors with any other business entity;
14 i. A representative list of prior and current clients;
15 j. Major real and personal property holdings of the business;
16 k. Financial statements and balance sheets;
17 l. Banking institutions with which the business is affiliated; and
18 m. Organizational charts;
19 n. An applicant's certificate of birth and motor vehicle driver's
20 license;
21 o. Personal or corporate federal or State income tax returns;
22 p. An affidavit certifying that the applicant is a minority business
23 or women's business, as defined in section 2 of P.L.1986, c.195
24 (C.52:27H-21.18); and
25 q. Any other information the director deems necessary to effectuate
26 the purposes of this act.¹
27
28 ²[¹⁵. (New section) Where the director determines that a business
29 has been certified as a minority business or women's business on the
30 basis of false information knowingly supplied by the business and has
31 been awarded a contract to which the business would not otherwise
32 have been entitled under this act, the director shall:
33 a. Assess the business any difference between the contract amount
34 and what the State's cost would have been if the contract had not been
35 awarded in accordance with the provisions of this act;
36 b. In addition to the amount due under subsection a., assess the
37 business a penalty in an amount of not more than 10 percent of the
38 amount of the contract involved;
39 c. Order the business ineligible to transact any business with the
40 State for a period of not less than 24 months; and
41 d. Prior to any final determination, assessment or order under this
42 section, afford the business an opportunity for a contested case hearing
43 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
44 (C.52:14B-1 et seq.).
45 All payments to the State pursuant to subsection a. of this section
46 shall be deposited in the fund out of which the contract involved was

1 awarded. All payments to the State pursuant to subsection b. of this
2 section shall be deposited in the General Fund.¹²

3

4 ² 6. (New section) Any applicant who knowingly supplies false
5 information or has been awarded a contract to which the business
6 would not otherwise have been entitled under P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall, upon conviction, be
8 guilty of a crime of the fourth degree.²

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10 ¹[2.] ²[6.1] ^{7.}² This act shall take effect immediately.

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