

ASSEMBLY, No. 377

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen T. SMITH and BROWN

1 AN ACT creating a Public Contract Oversight Office, supplementing  
2 Title 52 of the Revised Statutes and revising various parts of the  
3 statutory law.

4

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

7

8 1. (New section) As used in sections 1 through 6 of P.L. , c.  
9 (C. )(now pending before the Legislature as this bill):

10 "contracting agency" means the State or any board, commission,  
11 committee, authority or agency of the State;

12 "director" means the Director of the Public Contract Oversight  
13 Office;

14 "minority" means a person who is:

15 a. African-American, which is a person having origins in any of the  
16 Black racial groups in Africa; or

17 b. Hispanic, which is a person of Spanish or Portuguese culture,  
18 with origins in Mexico, South or Central America, or the Caribbean  
19 Islands, regardless of race; or

20 c. Asian-American, which is a person having origins in any of the  
21 original peoples of the Far East, Southeast Asia, and Indian  
22 Subcontinent, Hawaii or the Pacific Islands;

23 "minority business" means a business which has its principal place  
24 of business in this State, is independently owned and operated and at  
25 least 51% of which is owned and controlled by minorities;

26 "office" means the Public Contract Oversight Office;

27 "State contract" means any purchase, contract or agreement the  
28 cost or contract price of which is to be paid, in whole or in part, out  
29 of State funds;

30 "women" means a woman, regardless of race;

31 "women's business" means a business which has its principal place  
32 of business in this State, is independently owned and operated and at

**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.**

1 least 51% of which is owned and controlled by women.

2

3 2. (New section) There is established the public Contract  
4 Oversight Office. For the purpose of complying with the provisions  
5 of Article V, Section IV, paragraph 1 of the New Jersey Constitution,  
6 the office shall be allocated to the Department of State Commerce and  
7 Economic Development but, notwithstanding that allocation, the office  
8 shall be independent of any supervision or control of the department  
9 or any board or officer thereof. It shall be the mission of the office to  
10 implement measures intended to eliminate discrimination against  
11 minorities and women in the awarding of public contracts and to  
12 include minority businesses and women's businesses in the economic  
13 life of the State.

14

15 3. (New section) The office shall be under the immediate  
16 supervision of a director who shall administer and enforce the  
17 provisions of P.L. c. (C. )(now pending before the Legislature  
18 as this bill), subject to the supervision and control of the Governor.  
19 The director shall be appointed by the Governor and shall serve at the  
20 pleasure of the Governor. The director shall be in the unclassified  
21 service, shall devote full-time to the duties of the office and shall  
22 receive a salary as shall be provided by law.

23

24 4. (New section) The director shall:

25 a. administer and cause the work of the office to be performed in  
26 such manner and pursuant to such program as may be required or  
27 appropriate;

28 b. organize and reorganize the office and establish such sections as  
29 may be required or appropriate;

30 c. appoint, pursuant to the provisions of Title 11A of the New  
31 Jersey Statutes, such personnel as may be required for the conduct of  
32 the office; and

33 d. assign and reassign personnel to employment within the office.

34

35 5. (New section) Notwithstanding the provisions of any other law  
36 to the contrary, the office shall:

37 a. be responsible for monitoring and ensuring compliance with the  
38 State's set-aside laws by contracting agencies and parties to State  
39 contracts;

40 b. determine the availability of minority businesses or women's  
41 businesses to provide specific types of goods and services under  
42 set-aside contracts;

43 c. set goals for the participation of minority businesses and  
44 women's businesses in State contracts based upon the availability of  
45 these businesses;

46 d. review, monitor and approve the purchasing plans and set-aside

- 1 goals adopted by each contracting agency for the purpose of meeting  
2 the agency's set-aside obligations;
- 3 e. develop and monitor, for the purpose of evaluating the  
4 utilization of minority businesses and women's businesses, a uniform  
5 reporting system applicable to each contracting agency which requires  
6 the agency to report to the office the race, gender and ethnicity of all  
7 parties to contracts awarded by the agency and any subcontracts  
8 thereto;
- 9 f. determine, on the basis of documented discrimination, which  
10 minority groups are eligible for inclusion in the State's set-aside  
11 programs and make recommendations to the Legislature for changes  
12 in the law to include these groups;
- 13 g. serve as a resource to units of local government in the  
14 development and implementation of set-aside programs for minority  
15 businesses and women's businesses;
- 16 h. based upon the available data, identify specific racial and ethnic  
17 groups participating in set-aside programs and modify the programs as  
18 necessary and consistent with the data and relevant laws; and
- 19 i. determine how and when set-aside programs shall be modified or  
20 discontinued.

21

22 6. (New section) Each contracting agency shall:

- 23 a. cooperate fully with the office in the establishment and  
24 implementation of public contract set-aside goals;
- 25 b. provide the office with such information and data as it shall  
26 request and as shall be necessary to enable the office to fulfill its  
27 mission;
- 28 c. record and report to the office the race, gender and ethnicity of  
29 any person awarded a contract by the agency or performing under a  
30 subcontract thereto; and
- 31 d. develop, under the supervision of the office, an annual  
32 purchasing plan which includes the setting aside of an appropriate  
33 number of contracts for minority businesses and women's businesses.

34

35 7. Section 2 of P.L.1985, c.539 (C.5:12-185) is amended to read  
36 as follows:

37 2. As used in this act:

38 a. "Casino licensee" means any entity which holds or is an applicant  
39 for a casino license pursuant to section 87 of P.L.1977, c. 110 (C.  
40 5:12-87).

41 b. "Minority business enterprise" means a business that is:

- 42 (1) A sole proprietorship, owned and controlled by a minority;
- 43 (2) A partnership or joint venture owned and controlled by  
44 minorities in which at least 51% of the ownership interest is held by  
45 minorities and the management and daily business operations of which  
46 are controlled by one or more of the minorities who own it; or

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

6 c. "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 d. "Women's business enterprise" means a business that is:

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

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

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

27 (cf: P.L.1987, c.137, s.1)

28

29 8. Section 2 of P.L.1985, c.386 (C.34:1B-48) is amended to read  
30 as follows:

31 2. For the purposes of this act:

32 a. "Authority" means the New Jersey Development Authority for  
33 Small Businesses, Minorities and Women's Enterprises established  
34 pursuant to the provisions of this act;

35 b. "Board" means the board of directors of the New Jersey  
36 Development Authority for Small Businesses, Minorities and Women's  
37 Enterprises established pursuant to the provisions of this act;

38 c. "Eligible business" means a small business or a minority or  
39 women's business determined to be eligible to receive assistance and  
40 participate in programs according to the standards established  
41 pursuant to this act;

42 d. "Minority" means a person who is:

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

45 (2) Hispanic, which is a person of Spanish or Portuguese culture,  
46 with origins in Mexico, South or Central America, or the Caribbean

1 islands, regardless of race; or

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

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

7 e. "Minority business" means a business in which at least 51% of  
8 the beneficial ownership of the business is held by minorities, and in  
9 which the majority of the management are minorities;

10 f. "Small business" means a business in which at least 51% of the  
11 beneficial ownership of the business is held by persons other than  
12 minorities or women and the majority of the management of which is  
13 other than minorities or women, and which business is of a type and  
14 size defined by the Commissioner of the Department of Commerce and  
15 Economic Development as a small business, which definition shall be  
16 similar to that of the federal Small Business Administration;

17 g. "Women" means a woman, regardless of race;

18 h. "Women's business" means a business in which at least 51% of  
19 the beneficial ownership of the business is held by women, and in  
20 which the majority of the management are women.

21 (cf: P.L.1985, c.386, s.2)

22

23 9. Section 2 of P.L.1987, c.55 (C.52:27H-21.8) is amended to read  
24 as follows:

25 2. For the purposes of this act:

26 a. "Authority" means the New Jersey Development Authority for  
27 Small Businesses, Minorities and Women's Enterprises established  
28 pursuant to the provisions of P.L.1985, c.386 (C.34:1B-47 et seq.);

29 b. "Commissioner" means the Commissioner of the Department of  
30 Commerce and Economic Development;

31 c. "Division" means the Division of Development for Small  
32 Businesses and Women's and Minority Businesses;

33 d. "Eligible business" means a small business or a minority or  
34 women's business certified by the division and determined to be  
35 eligible to receive assistance and to participate in programs according  
36 to the standards established pursuant to this act;

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;

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;

43 (3) Asian American, which is a person having origins in any of the  
44 original people of the Far East, Southeast Asia, the Indian  
45 Subcontinent, Hawaii, or the Pacific Islands; or

46 (4) American Indian or Alaskan native, which is a person having

1 origins in any of the original peoples of North America;

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

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

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

8 (3) A corporation or other entity the management and daily  
9 business operations of which are controlled by one or more minorities  
10 who own it, and which is at least 51% owned by one or more  
11 minorities, or, if stock is issued, at least 51% of the stock of which is  
12 owned by one or more minorities;

13 g. "Small business" means a sole proprietorship, partnership or  
14 corporation which is a size and type defined by the commissioner;

15 h. "Women's business" means a business which is:

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

17 (2) A partnership or joint venture owned and controlled by women  
18 in which at least 51% of the ownership is held by women; or

19 (3) A corporation or other entity the management and daily  
20 business operations of which are controlled by one or more women  
21 who own it, and which is at least 51% owned by women, or, if stock  
22 is issued, at least 51% of the stock of which is owned by one or more  
23 women.

24 (cf: P.L.1987, c.55, s.2)

25

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

28 2. As used in this act:

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

39 b. "Commissioner" means the Commissioner of the Department of  
40 Commerce and Economic Development.

41 c. "Director" means the Director of the Division of Development  
42 for Small Businesses and Women's and Minority Businesses in the  
43 Department of Commerce and Economic Development, created  
44 pursuant to P.L.1987, c.55 (C.52:27H-21.7 et seq.) , (now pending  
45 before the Legislature as Senate Bill No. 1709 of 1986).

46 d. "Division" means the Division of Development for Small

1 Businesses and Women's and Minority Businesses in the Department  
2 of Commerce and Economic Development, created pursuant to  
3 P.L.1987, c.55 (C.52:27H-21.7 et seq.) , (now pending before the  
4 Legislature as Senate Bill No. 1709 of 1986).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42

43 11. Section 2 of P.L.1987, c.56 (C.52:27H-21.26) is amended to  
44 read as follows:

45 2. As used in this act:

46 a. "Commissioner" means the Commissioner of the Department of

1 Commerce and Economic Development or his designated  
2 representative, which may be the New Jersey Economic Development  
3 Authority.

4 b. "Minority" means a person who is:

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

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

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

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

15 c. "Minority business" means a business which is:

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

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

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

26 d. "Small business" means a business which is of a size and type  
27 defined by the commissioner.

28 e. "Women's business" means a business which is:

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

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

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

38 f. "Grantee" means a county or municipality who has received a  
39 grant under this act.

40 g. "Technical assistance" means aiding the establishment,  
41 development and promotion of small, minority and women's businesses  
42 operating within the grantee's jurisdiction by means that will be defined  
43 by the commissioner under the provisions of the act.

44 h. "Certification assistance" means aiding minority and women's  
45 businesses within the grantee's jurisdiction in becoming certified, under  
46 State regulations, to be eligible to bid on public contracts or otherwise

1 represent themselves as a "minority business" or "women's business"  
2 under any program conducted by public agencies for which such  
3 certification is so required. Certification assistance also covers the  
4 cost to the grantee of integrating and standardizing existing local  
5 government certification procedures with State certification standards  
6 and procedures.

7 (cf: P.L.1987, c.56, s.2)

8

9 12. Section 3 of P.L.1983, c.482 (C.52:32-19) is amended to read  
10 as follows:

11 3. As used in this act:

12 a. "Contracting agency" means the State or any board, commission,  
13 committee, authority or agency of the State.

14 b. "Chief" means the Chief of the Office of Small Business  
15 Assistance when used in conjunction with the small business and  
16 female business set-aside programs, or the Chief of the Office of  
17 Minority Business Enterprise when used in conjunction with the  
18 minority business set-aside program.

19 c. "Department" means the Department of Commerce and  
20 Economic Development.

21 d. "Office" means the Office of Small Business Assistance in the  
22 Department of Commerce and Economic Development when used in  
23 conjunction with the small business and female business set-aside  
24 programs, or the Office of Minority Business Enterprise when used in  
25 conjunction with the minority business set-aside program.

26 e. "Small business" means a business which has its principal place  
27 of business in the State, is independently owned and operated and  
28 meets all other qualifications as may be established in accordance with  
29 P.L.1981, c.283 (C.52:27H-21.1 et seq.).

30 f. "Small business set-aside contract" means (1) a contract for  
31 goods, equipment, construction or services which is designated as a  
32 contract with respect to which bids are invited and accepted only from  
33 small businesses, or (2) a portion of a contract when that portion has  
34 been so designated.

35 g. "Minority business" means a business which has its principal  
36 place of business in the State, is independently owned and operated  
37 and at least 51% of which is owned and controlled by persons who are  
38 black, Hispanic, including Portuguese, or Asian-American, American  
39 Indian or Alaskan natives.

40 h. "Minority business set-aside contract" means (1) a contract for  
41 goods, equipment, construction or services which is designated as a  
42 contract with respect to which bids are invited and accepted only from  
43 minority businesses; or (2) a portion of a contract when that portion  
44 is so designated.

45 i. "Female business" means a business which has its principal place  
46 of business in the State, is independently owned and operated and at

1 least 51% of which is owned and controlled by women.

2 j. "Female business set-aside contract" means (1) a contract for  
3 goods, equipment, construction or services which is designated as a  
4 contract with respect to which bids are invited and accepted only from  
5 female businesses; or (2) a portion of a contract when that portion is  
6 so designated.

7 (cf: P.L.1985, c.384, s.4)

8

9 13. (New section) The Public Contract Oversight Office shall,  
10 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
11 (C.52:14B-1 et seq.), promulgate such rules and regulations as may  
12 be necessary to effectuate the purposes of this act.

13

14 14. This act shall take effect immediately.

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#### STATEMENT

18

19 In 1989, the United States Supreme Court decided *City of*  
20 *Richmond v. Croson*, 109 S.Ct. 706 (1989) in which it held that  
21 minority business public contract set-aside programs were  
22 unconstitutional unless narrowly tailored to address documented  
23 discrimination against specific racial groups in a particular industry or  
24 a public entity's own spending practices had aggravated a pattern of  
25 discrimination. Following this decision, the State suspended its  
26 minority and women business set-aside programs. Executive Order  
27 No. 213, issued by Governor Kean on August 14, 1989, created the  
28 Governor's Study Commission on Discrimination in Public Works  
29 Procurement and Construction Contracts to investigate the nature and  
30 scope of discriminatory practices in public contracting in New Jersey.  
31 The commission documented discrimination against  
32 African-Americans, Hispanics, Asian-Americans and women and  
33 recommended that the set-aside programs be reimplemented for these  
34 groups. On March 5, 1993, the State's set-aside programs were  
35 reestablished by Executive Order No. 84, issued by Governor Florio,  
36 for the groups against which discrimination had been documented.

37 This bill would implement several of the recommendations  
38 contained in the final report of the commission issued on February 22,  
39 1993. The bill conforms the statutory definition of "minority" to the  
40 findings of the commission. It creates an independent Public Contract  
41 Oversight Office in the Department of Commerce and Economic  
42 Development. It would be the mission of the office to implement  
43 measures intended to eliminate discrimination against minorities and  
44 women in the awarding of public contracts and to include minority  
45 businesses and women's businesses in the economic life of the State.  
46 This bill also establishes a Public Contract Oversight Advisory

1 Committee in the Department of Commerce and Economic  
2 Development to assist the office. The office would be responsible for  
3 collecting data, establishing set-aside goals and monitoring  
4 compliance. The bill imposes certain record-keeping responsibilities  
5 on contracting agencies and requires them to take affirmative actions  
6 to meet set-aside goals.

7

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9

10

11 Creates Public Contract Oversight Office; implements procedures  
12 concerning set-aside contracts in order to remedy certain  
13 discriminatory practices.