

SENATE, No. 925

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1996

By Senator LIPMAN

1 AN ACT rectifying the effects of certain discriminatory practices,  
2 creating an Office of Public Contract Oversight and a Public  
3 Contract Oversight Advisory Committee, supplementing Title 52 of  
4 the Revised Statutes and revising various parts of the statutory law.

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

8  
9 1. (New section) As used in sections 1 through 13 of P.L. , c.  
10 (C. )(now pending before the Legislature as this bill):

11 "committee" means the Public Contract Oversight Advisory  
12 Committee;

13 "contracting agency" means the State or any board, commission,  
14 committee, authority or agency of the State;

15 "director" means the Director of the Office of Public Contract  
16 Oversight;

17 "minority" means a person who is:

18 (1) African-American, which is a person having origins in any of  
19 the Black racial groups in Africa; or

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

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

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

29 "office" means the Office of Public Contract Oversight;

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

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

34 "women's business" means a business which has its principal place

**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 of business in this State, is independently owned and operated and at  
2 least 51% of which is owned and controlled by women.

3  
4 2. (New section) There is established an Office of Public Contract  
5 Oversight. For the purpose of complying with the provisions of  
6 Article V, Section IV, paragraph 1 of the New Jersey Constitution, the  
7 office shall be allocated to the Department of the Treasury but,  
8 notwithstanding that allocation, the office shall be independent of any  
9 supervision or control of the department or any board or officer  
10 thereof. It shall be the mission of the office to implement the  
11 provisions of P.L. , c. (C. )(now pending before the  
12 Legislature as this bill) for the purpose of eliminating discrimination  
13 against minorities and women in the awarding of public contracts and  
14 in the receipt of certain benefits, loans and insurance policies.

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

24  
25 4. (New section) The director shall:  
26 a. administer and cause the work of the office to be performed in  
27 such manner and pursuant to such program as may be required or  
28 appropriate;  
29 b. organize and reorganize the office and establish such sections as  
30 may be required or appropriate;  
31 c. appoint, pursuant to the provisions of Title 11A of the New  
32 Jersey Statutes, such personnel as may be required for the conduct of  
33 the office; and  
34 d. assign and reassign personnel to employment within the office.

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

38 a. be responsible for the implementation of policies intended to  
39 eliminate discrimination based upon race or gender in the awarding of  
40 State contracts;  
41 b. ensure that contracting agencies and parties to State contracts  
42 comply with the set-aside policies and programs established by law for  
43 the purpose of rectifying the effects of discrimination against  
44 minorities and women;  
45 c. establish a method, in cooperation with the Division of  
46 Development for Small Businesses and Women's and Minority

- 1 Businesses, established pursuant to P.L.1987, c.55 (C.52:27A-21.7),  
2 for determining the availability of minority businesses or women's  
3 businesses to provide specific types of goods and services under  
4 set-aside contracts;
- 5 d. set goals for the participation of minority businesses and  
6 women's businesses in State contracts based upon the availability of  
7 these businesses;
- 8 e. review, monitor and approve the purchasing plans and set-aside  
9 goals adopted by each contracting agency for the purpose of meeting  
10 the agency's set-aside obligations;
- 11 f. continue development and expansion of the Selective Assistance  
12 Vendor Information database (SAVI II) and circulate the SAVI II  
13 register to contracting agencies;
- 14 g. develop and monitor, for the purpose of evaluating the  
15 utilization of minority businesses and women's businesses, a uniform  
16 reporting system applicable to each contracting agency which requires  
17 the agency to report to the office the race, gender and ethnicity of all  
18 parties to contracts awarded by the agency and any subcontracts  
19 thereto;
- 20 h. determine, on the basis of documented discrimination, which  
21 minority groups are eligible for inclusion in the State's set-aside  
22 programs and make recommendations to the Legislature for changes  
23 in the law to include these groups;
- 24 i. develop and monitor a uniform reporting system for the purpose  
25 of evaluating the compliance of State contractors, sureties and  
26 financial institutions, grant programs, benefit programs and  
27 State-assisted programs with set-aside and equal opportunity  
28 requirements;
- 29 j. develop and implement procedures to certify to contracting  
30 agencies bidders' compliance with set-aside programs, equal  
31 opportunity requirements and the "Law Against Discrimination,"  
32 P.L.1945, c.169 (C.10:5-1 et seq.);
- 33 k. review the qualifications of firms which have identified  
34 themselves as minority businesses or women's businesses;
- 35 l. serve as a resource to units of local government in the  
36 development and implementation of set-aside programs for minority  
37 businesses and women's businesses;
- 38 m. oversee and provide technical assistance to State programs for  
39 minority businesses and women's businesses;
- 40 n. coordinate, monitor and be ultimately responsible for the  
41 implementation and enforcement of any program for which the office,  
42 by law, shares responsibility with any other State agency;
- 43 o. review, and make recommendations on, laws or procurement  
44 processes which directly or indirectly continue discrimination or  
45 exclusion on the basis of race or gender;
- 46 p. based upon the available data, identify specific racial and ethnic

1 groups participating in set-aside programs and modify the programs as  
2 necessary and consistent with the data and relevant laws;

3 q. determine how and when set-aside programs shall be modified  
4 or discontinued;

5 r. establish target goals for the participation of minority businesses  
6 and women's businesses in State-sponsored private enterprise  
7 programs;

8 s. develop and implement, in conjunction with the appropriate  
9 State agencies, innovative methods of reducing bonding requirements  
10 for minority businesses and women's businesses and providing  
11 low-cost methods of meeting bonding requirements for these  
12 businesses;

13 t. develop and implement, in conjunction with the appropriate State  
14 agencies, innovative methods of assuring the prompt payment of  
15 parties to State contracts, including subcontractors, and methods of  
16 resolving disputes, on an expedited basis, between prime contractors  
17 and subcontractors;

18 u. deposit penalties and fees collected pursuant to this act in a  
19 training fund for minorities and women established in the Department  
20 of the Treasury for appropriation by the Legislature to fund training  
21 and apprenticeship programs for women and minorities;

22 v. receive, and analyze and make recommendations based upon,  
23 reports from State agencies, financial institutions and insurance  
24 companies concerning the race, gender and ethnicity of persons  
25 applying for or receiving benefits, loans and insurance policies; and

26 w. develop guidelines, procedures, regulations and sanctions which  
27 may be necessary to implement and enforce the provisions of P.L. ,  
28 c. (C. )(now pending before the Legislature as this bill).

29  
30 6. (New section) There is established a Public Contract Oversight  
31 Advisory Committee. The committee shall consist of the nine  
32 members of the Minority Business Advisory Council and the nine  
33 members of the Women's Advisory Council established by section 4 of  
34 P.L.1987, c.55 (C.52:27H-21.10). A member of the committee shall  
35 serve for a term which is conterminous with the member's term on the  
36 appropriate advisory council. A member shall serve without  
37 compensation but shall be reimbursed for necessary expenses incurred  
38 in the performance of the member's duties. The Governor shall  
39 annually designate one of the members to serve as chairperson. The  
40 committee shall meet at least four times each year.

41 It shall be the duty of the committee to monitor the performance of  
42 the office and to make recommendations to the director concerning the  
43 establishment and implementation of set-aside goals and programs. In  
44 particular, the committee shall analyze and make recommendations as  
45 to how State procurement from minority businesses and women's  
46 businesses can best be made to correspond to the availability of these

- 1 groups in relevant geographic markets.  
2
- 3 7. (New section) Each contracting agency shall:
- 4 a. cooperate fully with the office in the establishment and  
5 implementation of public contract set-aside goals;
- 6 b. provide the office with such information and data as it shall  
7 request and as shall be necessary to enable the office to fulfill its  
8 mission;
- 9 c. record and report to the office the race, gender and ethnicity of  
10 any person awarded a contract by the agency or performing under a  
11 subcontract thereto;
- 12 d. develop, under the supervision of the office, an annual  
13 purchasing plan which includes the setting aside of an appropriate  
14 number of contracts for minority businesses and women's businesses;
- 15 e. comply with any regulations promulgated by the office;
- 16 f. where possible, sever portions of proposed contracts to be set  
17 aside as prime contracts for minority businesses and women's  
18 businesses;
- 19 g. assist prime contractors in locating qualified minority businesses  
20 and women's businesses to act as subcontractors;
- 21 h. make efforts to use minority businesses and women's businesses  
22 in contracts awarded under exceptions to the public bidding laws;
- 23 i. where possible, establish set-aside goals in State-funded  
24 programs which meet or exceed set-aside requirements or federal  
25 projects;
- 26 j. require a party to a State contract to submit the names of all  
27 subcontractors to be used in performing the contract and to, in fact,  
28 use those subcontractors unless the party demonstrates to the  
29 satisfaction of the agency why the named subcontractors could not be  
30 used;
- 31 k. monitor and verify that subcontractors named by party to a State  
32 contract when making a bid are, in fact, used in performing the  
33 contract;
- 34 l. require parties to contracts awarded by the agency to certify that  
35 they are in compliance with all nondiscrimination laws;
- 36 m. include in any contract awarded by the agency the cost or  
37 contract price of which exceeds \$1 million, a provision requiring all  
38 parties to the contract and any subcontracts thereof to meet the goals  
39 for participation by minorities and women in apprenticeship programs  
40 established by the office and providing that failure to meet those goals  
41 will result in the assessment of fees to be collected by the office for  
42 deposit in a training fund for minorities and women; and
- 43 n. provide that the annual performance evaluation of any employee  
44 with procurement responsibilities include an analysis of the employee's

1 compliance with minority and women business set-aside goals.

2

3 8. (New section) a. The office and contracting agencies shall use  
4 whatever means are provided by statute, regulation or contract,  
5 including suspension, debarment and termination of a contract, to  
6 ensure that a party to a State contract complies with applicable  
7 set-aside goals. Failure on the part of a party to meet set-aside goals,  
8 or to demonstrate good faith efforts to do so, shall be grounds for  
9 imposition of any of the aforesaid penalties or for the rejection of  
10 subsequent bids made by that party. If the office or a contracting  
11 agency determines that a party to a State contract has agreed to  
12 subcontract portions of that contract to certain minority businesses or  
13 women's businesses and, without good cause, fails to utilize the  
14 services of a minority business or women's business so designated, the  
15 office or contracting agency may impose a penalty on the party in a  
16 amount equal to the value of the subcontract.

17 b. Whenever the office or a contracting agency, upon the initiative  
18 of either body or upon the complaint of any member of the public,  
19 determines that a party to a State contract has failed to comply with  
20 the set-aside requirements applicable to it, the office or agency shall  
21 require the party to demonstrate that it has made good faith efforts to  
22 meet the requirements. Good faith efforts shall include, but not be  
23 limited to, such factors as whether the party used the registry of  
24 minority businesses and women's businesses to locate qualified  
25 subcontractors, notified available minority businesses and women's  
26 businesses of subcontracting opportunities in a timely manner and  
27 provided minority businesses and women's businesses with adequate  
28 information, specifications and requirements concerning the contract.

29

30 9. (New section) The Division of Development for Small  
31 Businesses and Women's and Minority Businesses in the Department  
32 of Commerce and Economic Development established pursuant to  
33 P.L.1987, c.55 (C.52:27H-21.7 et seq.), in addition to having  
34 exclusive authority to certify to public agencies the eligibility of a  
35 business to bid on contracts as a minority business or women's  
36 business pursuant to section 5 of P.L.1987, c.55 (C.52:27H-21.11),  
37 shall also have authority, in appropriate circumstances, to enter into  
38 reciprocal agreements for the certification of businesses with other  
39 jurisdictions, including the federal government, notwithstanding that  
40 minor variations may exist between the criteria for certification in  
41 another jurisdiction and the criteria applicable in this State.

42

43 10. (New section) A State agency with responsibility for  
44 administering a State program which confers an economic benefit on  
45 any person in the form of a loan, grant, loan guarantee, business  
46 assistance, training, employment assistance or any other form of direct

1 or indirect assistance shall record the race, gender and ethnicity of any  
2 person applying for or receiving a benefit under the program and shall  
3 report this information to the Office of Public Contract Oversight in  
4 such form and at such intervals as the office shall require. Whenever  
5 a person applying for or receiving a benefit is other than an individual,  
6 the agency shall record and report this information for such principals  
7 as the office shall require.

8  
9 11. (New section) Any financial institution subject to regulation  
10 by the Department of Banking shall record the race, gender and  
11 ethnicity of any person applying for or receiving a loan of any type  
12 from the institution and shall report this information to the Office of  
13 Public Contract Oversight in such form and at such intervals as the  
14 office shall require. Whenever a person applying for or receiving a  
15 loan is an entity other than an individual, the institution shall record  
16 and report this information for such principals as the office shall  
17 require.

18  
19 12. (New section) Any insurance company, including sureties,  
20 subject to regulation by the Department of Insurance shall record the  
21 race, gender and ethnicity of any person applying for or receiving a  
22 policy of insurance of any type and shall report this information to the  
23 Office of Public Contract Oversight in such form and at such intervals  
24 as the office shall require. Whenever a person applying for or  
25 receiving a policy is other than an individual, the company shall record  
26 and report this information for such principals as the office shall  
27 require.

28  
29 13. (New section) The amount of any bond required under a State  
30 contract may be established at any percentage, not exceeding 100%,  
31 of the amount bid, based upon the contracting agency's assessment of  
32 the risk presented to the State by the type of contract, past experience  
33 with the party to the contract and other relevant factors, except that  
34 no bond shall be required of any party if the contract is for a sum not  
35 exceeding \$200,000.

36  
37 14. N.J.S.2A:44-143 is amended to read as follows:

38 2A:44-143. a. (1) When public buildings or other public works or  
39 improvements are about to be constructed, erected, altered or repaired  
40 under contract, at the expense of the State or any contracting unit, as  
41 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school  
42 district, the board, officer or agent contracting on behalf of the State,  
43 contracting unit or school district, shall require the payment and  
44 performance bond, as provided for by law, with an obligation for the  
45 payment by the contractor, and by all subcontractors, for all labor  
46 performed or materials, provisions, provender or other supplies,

1 teams, fuels, oils, implements or machinery used or consumed in,  
2 upon, for or about the construction, erection, alteration or repair of  
3 such buildings, works or improvements and shall require that all  
4 payment and performance bonds be issued by a surety which meets the  
5 following standards:

6 (a) The surety shall have the minimum surplus and capital stock or  
7 net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is  
8 appropriate, at the time the invitation to bid is issued; and

9 (b) With respect to all payment and performance bonds in the  
10 amount of \$850,000 or more, (i) if the amount of the bond is at least  
11 \$850,000 but not more than \$3.5 million, the surety shall hold a  
12 current certificate of authority, issued by the United States Secretary  
13 of the Treasury pursuant to 31 U.S.C.9305, that is valid in the State  
14 of New Jersey as listed annually in the United States Treasury Circular  
15 570, except that if the surety has been operational for a period in  
16 excess of five years, the surety shall be deemed to meet the  
17 requirements of this subsubparagraph if it is rated in one of the three  
18 highest categories by an independent, nationally recognized United  
19 States rating company that determines the financial stability of  
20 insurance companies, which rating company or companies shall be  
21 determined pursuant to standards promulgated by the Commissioner  
22 of Insurance by regulation adopted pursuant to the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the  
24 amount of the bond is more than \$3.5 million, then the surety shall  
25 hold a current certificate of authority, issued by the United States  
26 Secretary of the Treasury pursuant to 31 U.S.C.9305, that is valid in  
27 the State of New Jersey as listed annually in the United States  
28 Treasury Circular 570 and, if the surety has been operational for a  
29 period in excess of five years, shall be rated in one of the three highest  
30 categories by an independent, nationally recognized United States  
31 rating company that determines the financial stability of insurance  
32 companies, which rating company or companies shall be determined  
33 pursuant to standards promulgated by the Commissioner of Insurance  
34 by regulation adopted pursuant to the "Administrative Procedure Act,"  
35 P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the  
36 provisions of subsubparagraph (ii) of this subparagraph which does not  
37 hold a certificate of authority issued by the United States Secretary of  
38 the Treasury shall be exempt from the requirement to hold such a  
39 certificate if the surety meets an equivalent set of standards developed  
40 by the Commissioner of Insurance through regulation which at least  
41 equal, and may exceed, the general criteria required for issuance of a  
42 certificate of authority by the United States Secretary of the Treasury  
43 pursuant to 31 U.S.C.9305. A surety company seeking such an  
44 exemption shall, not later than the 180th day following the effective  
45 date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the  
46 appropriate contracting unit that it meets that equivalent set of

1 standards set forth by the commissioner as promulgated.

2 (2) When such contract is to be performed at the expense of the  
3 State and is entered into by the Director of the Division of Building  
4 and Construction or State departments designated by the Director of  
5 the Division of Building and Construction, the director or the State  
6 departments may[: (a)] establish for that contract the amount of the  
7 bond at any percentage, not exceeding 100%, of the amount bid, based  
8 upon the director's or department's assessment of the risk presented to  
9 the State by the type of contract and other relevant factors, and [(b)]  
10 shall waive the bond requirement of this section entirely if the contract  
11 is for a sum not exceeding \$200,000.

12 (3) When such a contract is to be performed at the expense of a  
13 contracting unit or school district, the board, officer or agent  
14 contracting on behalf of the contracting unit or school district may:  
15 (a) establish for that contract the amount of the bond at any  
16 percentage, not exceeding 100%, of the amount bid, based upon the  
17 board's, officer's or agent's assessment of the risk presented to the  
18 contracting unit or school district by the type of contract and other  
19 relevant factors, and (b) waive the bond requirement of this section  
20 entirely if the contract is for a sum not exceeding \$100,000.

21 b. A surety's obligation shall not extend to any claim for damages  
22 based upon alleged negligence that resulted in personal injury,  
23 wrongful death, or damage to real or personal property, and no bond  
24 shall in any way be construed as a liability insurance policy. Nothing  
25 herein shall relieve the surety's obligation to guarantee the contractor's  
26 performance of all conditions of the contract, including the  
27 maintenance of liability insurance if and as required by the contract.  
28 Only the obligee named on the bond, and any subcontractor  
29 performing labor or any subcontractor or materialman providing  
30 materials for the construction, erection, alteration or repair of the  
31 public building, work or improvement for which the bond is required  
32 pursuant to this section, shall have any claim against the surety under  
33 the bond.

34 c. A board, officer or agent contracting on behalf of the State,  
35 contracting unit or school district shall not accept more than one  
36 payment and performance bond to cover a single construction  
37 contract. The board, officer or agent may accept a single bond  
38 executed by more than one surety to cover a single construction  
39 contract only if the combined underwriting limitations of all the named  
40 sureties, as set forth in the most current annual revision of United  
41 States Treasury Circular 570, or as determined by the Commissioner  
42 of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of  
43 the contract to be performed.

44 d. A board, officer or agent contracting on behalf of the  
45 State, contracting unit or school district shall not accept a payment or  
46 performance bond unless there is attached thereto a Surety Disclosure

1 Statement and Certification to which each surety executing the bond  
2 shall have subscribed. This statement and certification shall be  
3 complete in all respects and duly acknowledged according to law, and  
4 shall have substantially the following form:

5 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

6

7 , surety(ies) on the attached bond, hereby  
8 certifies(y) the following:

9

10 (1) The surety meets the applicable capital and surplus  
11 requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most  
12 current annual filing with the New Jersey Department of Insurance.

13 (2) The capital (where applicable) and surplus, as determined in  
14 accordance with the applicable laws of this State, of the surety(ies)  
15 participating in the issuance of the attached bond is (are) in the  
16 following amount(s) as of the calendar year ended December 31,  
17 (most recent calendar year for which capital and surplus amounts are  
18 available), which amounts have been certified as indicated by certified  
19 public accountants (indicating separately for each surety that surety's  
20 capital and surplus amounts, together with the name and address of the  
21 firm of certified public accounts that shall have certified those  
22 amounts):

23 (3) (a) With respect to each surety participating in the issuance of  
24 the attached bond that has received from the United States Secretary  
25 of the Treasury a certificate of authority pursuant to 31 U.S.C.9305,  
26 the underwriting limitation established therein and the date as of which  
27 that limitation was effective is as follows (indicating for each such  
28 surety that surety's underwriting limitation and the effective date  
29 thereof):

30 (b) With respect to each surety participating in the issuance of the  
31 attached bond that has not received such a certificate of authority from  
32 the United States Secretary of the Treasury, the underwriting  
33 limitation of that surety as established pursuant to R.S.17:18-9 as of  
34 (date on which such limitation was so established) is as follows  
35 (indicating for each such surety that surety's underwriting limitation  
36 and the date on which that limitation was established):

37 (4) The amount of the bond to which this statement and  
38 certification is attached is \$ .

39 (5) If, by virtue of one or more contracts of reinsurance, the  
40 amount of the bond indicated under item (4) above exceeds the total  
41 underwriting limitation of all sureties on the bond as set forth in items  
42 (3)(a) or (3)(b) above, or both, then for each such contract of  
43 reinsurance:

44 (a) The name and address of each such reinsurer under that

1 contract and the amount of that reinsurer's participation in the contract  
2 is as follows:

3

4

5

6 ; and

7 (b) Each surety that is party to any such contract of reinsurance  
8 certifies that each reinsurer listed under item (5)(a) satisfies the credit  
9 for reinsurance requirement established under P.L.1993, c.243  
10 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the  
11 date on which the bond to which this statement and certification is  
12 attached shall have been filed with the appropriate public agency.

13 CERTIFICATE

14 (to be completed by an authorized certifying agent  
15 for each surety on the bond)

16

17 I (name of agent) , as (title of agent) for (name of  
18 surety) , a corporation/mutual insurance company/other (indicating  
19 type of business organization) (circle one) domiciled in (state of  
20 domicile) , DO HEREBY CERTIFY that, to the best of my  
21 knowledge, the foregoing statements made by me are true, and  
22 ACKNOWLEDGE that, if any of those statements are false, this bond  
23 is VOID.

24

25 (Signature of certifying agent)

26

27

28 (Printed name of certifying agent)

29

30 (Title of certifying agent)

31 (cf: P.L.1995, c.384, s.1)

32

33 15. Section 1 of P.L.1977, c.1 (C.17:16F-1) is amended to read as  
34 follows:

35 1. The Legislature hereby finds and declares that depository  
36 institutions have sometimes failed to provide adequate home financing  
37 on a nondiscriminatory basis for all neighborhoods within the  
38 communities from which these institutions receive deposits. The  
39 Legislature further finds that neighborhood discrimination on the part  
40 of depository institutions results in the arbitrary denial of loans to  
41 creditworthy persons; substantially reduces the availability of funds  
42 from the private sector for urban housing investments; accelerates the  
43 physical decline of the affected neighborhoods; and undercuts publicly  
44 supported programs for the preservation and revival of urban  
45 neighborhoods.

46 The Legislature also finds and declares that the State has an

1 obligation to ensure that home financing is available on an equal basis  
2 to all persons without regard to race, color, religion, national origin,  
3 gender, marital status or age.

4 The purposes of this act are to prohibit the arbitrary denial of  
5 mortgage loans on the basis of the location of the property to be  
6 mortgaged; to encourage an increase in the availability or mortgage  
7 capital to neighborhoods to which such investment capital has  
8 generally been denied; and to provide the citizens and public officials  
9 of the State of New Jersey with sufficient information to enable them  
10 to determine which depository institutions are fulfilling their  
11 obligations to serve the housing needs of the communities and  
12 neighborhoods in which they are located. It is also a purpose of this  
13 act to ensure that depository institutions do not discriminate in  
14 mortgage lending against any person on the basis of race, color,  
15 religion, national origin, gender, marital status or age.

16 (cf: P.L.1977, c.1, s.1)

17

18 16. Section 3 of P.L.1977, c.1 (C.17:16F-3) is amended to read as  
19 follows:

20 3. a. No depository institution shall discriminate by intent or in  
21 effect, on a basis that is arbitrary or unsupported by a reasonable  
22 analysis of the lending risks associated with the applicant for a given  
23 loan or the condition of the property to secure it, in the accepting of  
24 applications for, granting, withholding, extending, modifying or  
25 renewing, or in the fixing of the rates, terms, conditions, or provisions  
26 of, any mortgage loan on real property located in the municipality in  
27 which a depository institution has a home or branch office, or in any  
28 municipality contiguous to such municipality, merely because such  
29 property is located in a specific neighborhood or geographical area;  
30 provided, however, that it shall not be a violation of this section if the  
31 mortgage loan is made pursuant to a specific public or private  
32 program, the purpose of which is to increase the availability of  
33 mortgage loans within a specific neighborhood or geographical area.

34 b. No depository institution shall discriminate, by intent or in  
35 effect, in the accepting of applications for, granting, withholding,  
36 extending, modifying or renewing, or in the fixing of the rates, terms,  
37 conditions or provisions of, any mortgage loan on real property  
38 because of the applicant's race, color, religion, national origin, gender,  
39 marital status or age.

40 c. No depository institution may discourage, or refuse to allow,  
41 receive, or consider, any application, request, or inquiry regarding a  
42 mortgage loan, or discriminate in imposing conditions upon, or in  
43 processing, any such application, request, or inquiry on any basis  
44 prohibited by law.

45 (cf: P.L.1979, c.148, s.2)

1       17. Section 4 of P.L.1977, c.1 (C.17:16F-4) is amended to read as  
2 follows:

3       4. Each depository institution which has a home office or branch  
4 office located within a standard metropolitan statistical area, as  
5 defined by the commissioner of banking consistent with the definition  
6 used by the Federal Office of Management and Budget, shall compile  
7 and make available to the public for inspection and copying at the  
8 home office, and at least one branch office within each standard  
9 metropolitan statistical area in which the depository institution has an  
10 office, in accordance with regulations promulgated by the  
11 Commissioner of Banking:

12       a. The number and total dollar amount of mortgage loans which  
13 were (1) originated, or (2) purchased, by that institution during each  
14 fiscal year, beginning with the last full fiscal year of that institution  
15 which immediately preceded the effective date of this act;

16       b. The number and dollar amount of each such loan by census tract,  
17 where readily available at a reasonable cost, as determined by the  
18 Commissioner of Banking, otherwise by ZIP code, for mortgage loans  
19 secured by property located within that standard metropolitan  
20 statistical area;

21       c. The number and dollar amount of all such mortgage loans  
22 secured by property located outside such standard metropolitan  
23 statistical area;

24       d. The number and dollar amount of loans which are insured under  
25 Title II of the National Housing Act or under Title V of the Housing  
26 Act of 1949 or which are guaranteed under Chapter 37 of Title 38,  
27 United States Code;

28       e. The number and dollar amount of mortgage loans made pursuant  
29 to the "New Jersey Mortgage Finance Agency Law," P.L.1970, c.38  
30 (C.17:1B-4 et seq.);

31       f. The number and dollar amount of loans made to mortgagors who  
32 did not, at the time of execution of the mortgage, intend to reside in  
33 the property securing the mortgage loan;

34       g. The number and dollar amount of home improvement loans;

35       h. The number and dollar amount of all applications for mortgage  
36 loans, by census tract or ZIP code as required by subsection b. of this  
37 section;

38       i. The number and dollar amount of all mortgage loan applications  
39 received by the institution by the applicant's race, color, religion,  
40 national origin, gender, marital status and age; and

41       j. The number and dollar amount of all mortgage loans made by the  
42 institution by the borrower's race, color, religion, national origin,  
43 gender, marital status and age.

44       The regulations promulgated by the Commissioner of Banking shall  
45 be consistent with the terms and provisions of, and regulations  
46 promulgated pursuant to the "Home Mortgage Disclosure Act of

1 1975," Pub.L. 94-200, and compliance with the provisions of section  
2 304 thereof shall constitute compliance with this section, except to the  
3 extent that additional data is required by subsections e. and h. of this  
4 section.

5 (cf: P.L.1977, c.1, s.4)

6

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

9 2. As used in this act:

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

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

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

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

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

24 c. "Minority" means a person who is:

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

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

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

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

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

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

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

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

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

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

3       2. For the purposes of this act:

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

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

10       c. "Eligible business" means a small business or a minority or  
11 women's business determined to be eligible to receive assistance and  
12 participate in programs according to the standards established  
13 pursuant to this act;

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

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

17       (2) 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       (3) 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[; or

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

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

28       f. "Small business" means a business in which at least 51% of the  
29 beneficial ownership of the business is held by persons other than  
30 minorities or women and the majority of the management of which is  
31 other than minorities or women, and which business is of a type and  
32 size defined by the Commissioner of the Department of Commerce and  
33 Economic Development as a small business, which definition shall be  
34 similar to that of the federal Small Business Administration;

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

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

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

40

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

43       2. For the purposes of this act:

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

- 1       b. "Commissioner" means the Commissioner of the Department of  
2 Commerce and Economic Development;
- 3       c. "Division" means the Division of Development for Small  
4 Businesses and Women's and Minority Businesses;
- 5       d. "Eligible business" means a small business or a minority or  
6 women's business certified by the division and determined to be  
7 eligible to receive assistance and to participate in programs according  
8 to the standards established pursuant to this act;
- 9       e. "Minority" means a person who is:
- 10      (1) Black, which is a person having origins in any of the black  
11 racial groups in Africa;
- 12      (2) Hispanic, which is a person of Spanish or Portuguese culture,  
13 with origins in Mexico, South or Central America, or the Caribbean  
14 islands, regardless of race;
- 15      (3) Asian American, which is a person having origins in any of the  
16 original people of the Far East, Southeast Asia, the Indian  
17 Subcontinent, Hawaii, or the Pacific Islands]; or
- 18      (4) American Indian or Alaskan native, which is a person having  
19 origins in any of the original peoples of North America;]
- 20       f. "Minority business" means a business which is:
- 21      (1) A sole proprietorship, owned and controlled by a minority;
- 22      (2) A partnership or joint venture owned and controlled by  
23 minorities in which at least 51% of the ownership interest is held by  
24 minorities and whose management and daily business operations are  
25 controlled by one or more of the minorities who own it; or
- 26      (3) A corporation or other entity the management and daily  
27 business operations of which are controlled by one or more minorities  
28 who own it, and which is at least 51% owned by one or more  
29 minorities, or, if stock is issued, at least 51% of the stock of which is  
30 owned by one or more minorities;
- 31       g. "Small business" means a sole proprietorship, partnership or  
32 corporation which is a size and type defined by the commissioner;
- 33       h. "Women's business" means a business which is:
- 34      (1) A sole proprietorship owned and controlled by a woman; or
- 35      (2) A partnership or joint venture owned and controlled by women  
36 in which at least 51% of the ownership is held by women; or
- 37      (3) A corporation or other entity the management and daily  
38 business operations of which are controlled by one or more women  
39 who own it, and which is at least 51% owned by women, or, if stock  
40 is issued, at least 51% of the stock of which is owned by one or more  
41 women.
- 42 (cf: P.L.1987, c.55, s.2)
- 43
- 44       21. Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is amended to  
45 read as follows:
- 46       2. As used in this act:

1 a. "Control" means authority over the affairs of a business,  
2 including, but not limited to, capital investment, property acquisition,  
3 employee hiring, contract negotiations, legal matters, officer and  
4 director selection, operating responsibility, financial transactions and  
5 the rights of other shareholders or joint partners; except that control  
6 shall not include absentee ownership, nor shall it be deemed to exist  
7 where an owner or employee who is not a minority, in the case of a  
8 minority business; or a male owner or employee, in the case of a  
9 women's business, is disproportionately responsible for the operation  
10 of the business or for policy and contractual decisions.

11 b. "Commissioner" means the Commissioner of the Department of  
12 Commerce and Economic Development.

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

18 d. "Division" means the Division of Development for Small  
19 Businesses and Women's and Minority Businesses in the Department  
20 of Commerce and Economic Development, created pursuant to  
21 P.L.1987, c.55 (C.52:27H-21.7 et seq.)[, (now pending before the  
22 Legislature as Senate Bill No. 1709 of 1986)].

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

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

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

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

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

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

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

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

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

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

- 1 h. "Woman" or "women" means a female or females, regardless of  
2 race.
- 3 i. "Women's business" means a business which is:
- 4 (1) A sole proprietorship owned and controlled by a woman; or  
5 (2) A partnership or joint venture owned and controlled by women  
6 in which at least 51% of the ownership is held by women and the  
7 management and daily business operations of which are controlled by  
8 one or more women who own it; or  
9 (3) A corporation or other entity whose management and daily  
10 business operations are controlled by one or more women who own it,  
11 and which is at least 51% owned by women, or, if stock is issued, at  
12 least 51% of the stock is owned by one or more women.  
13 (cf: P.L.1986, c.195, s.2)  
14
- 15 22. Section 2 of P.L.1987, c.56 (C.52:27H-21.26) is amended to  
16 read as follows:
- 17 2. As used in this act:
- 18 a. "Commissioner" means the Commissioner of the Department of  
19 Commerce and Economic Development or his designated  
20 representative, which may be the New Jersey Economic Development  
21 Authority.
- 22 b. "Minority" means a person who is:
- 23 (1) Black, which is a person having origins in any of the black  
24 racial groups in Africa; or  
25 (2) Hispanic, which is a person of Spanish or Portuguese culture,  
26 with origins in Mexico, South or Central America, or the Caribbean  
27 Islands regardless of race; or  
28 (3) Asian American, which is a person having origins in any of the  
29 original peoples of the Far East, Southeast Asia, Indian Subcontinent,  
30 Hawaii, or the Pacific Islands[; or  
31 (4) American Indian or Alaskan native, which is a person having  
32 origins in any of the original peoples of North America].
- 33 c. "Minority business" means a business which is:
- 34 (1) A sole proprietorship, owned and controlled by a minority;  
35 (2) A partnership or joint venture owned and controlled by  
36 minorities in which at least 51% of the ownership interest is held by  
37 minorities and the management and daily business operations of which  
38 are controlled by one or more of the minorities who own it; or  
39 (3) A corporation or other entity whose management and daily  
40 business operations are controlled by one or more minorities who own  
41 it, and which is at least 51% owned by one or more minorities, or, if  
42 stock is issued, at least 51% of the stock is owned by one or more  
43 minorities.
- 44 d. "Small business" means a business which is of a size and type  
45 defined by the commissioner.
- 46 e. "Women's business" means a business which is:

- 1 (1) A sole proprietorship owned and controlled by a woman;
- 2 (2) A partnership or joint venture owned and controlled by women  
3 in which at least 51% of the ownership is held by women and the  
4 management and daily business operations of which are controlled by  
5 one or more women who own it; or
- 6 (3) A corporation or other entity whose management and daily  
7 business operations are controlled by one or more women who own it,  
8 and which is at least 51% owned by women, or, if stock is issued, at  
9 least 51% of the stock is owned by one or more women.
- 10 f. "Grantee" means a county or municipality who has received a  
11 grant under this act.
- 12 g. "Technical assistance" means aiding the establishment,  
13 development and promotion of small, minority and women's businesses  
14 operating within the grantee's jurisdiction by means that will be defined  
15 by the commissioner under the provisions of the act.
- 16 h. "Certification assistance" means aiding minority and women's  
17 businesses within the grantee's jurisdiction in becoming certified, under  
18 State regulations, to be eligible to bid on public contracts or otherwise  
19 represent themselves as a "minority business" or "women's business"  
20 under any program conducted by public agencies for which such  
21 certification is so required. Certification assistance also covers the  
22 cost to the grantee of integrating and standardizing existing local  
23 government certification procedures with State certification standards  
24 and procedures.
- 25 (cf: P.L.1987, c.56, s.2)
- 26
- 27 23. Section 3 of P.L.1983, c.482 (C.52:32-19) is amended to read  
28 as follows:
- 29 3. As used in this act:
- 30 a. "Contracting agency" means the State or any board, commission,  
31 committee, authority or agency of the State.
- 32 b. "Chief" means the Chief of the Office of Small Business  
33 Assistance when used in conjunction with the small business and  
34 female business set-aside programs, or the Chief of the Office of  
35 Minority Business Enterprise when used in conjunction with the  
36 minority business set-aside program.
- 37 c. "Department" means the Department of Commerce and  
38 Economic Development.
- 39 d. "Office" means the Office of Small Business Assistance in the  
40 Department of Commerce and Economic Development when used in  
41 conjunction with the small business and female business set-aside  
42 programs, or the Office of Minority Business Enterprise when used in  
43 conjunction with the minority business set-aside program.
- 44 e. "Small business" means a business which has its principal place  
45 of business in the State, is independently owned and operated and  
46 meets all other qualifications as may be established in accordance with

1 P.L.1981, c.283 (C.52:27H-21.1 et seq.).

2 f. "Small 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 small businesses, or (2) a portion of a contract when that portion has  
6 been so designated.

7 g. "Minority business" means a business which has its principal  
8 place of business in the State, is independently owned and operated  
9 and at least 51% of which is owned and controlled by persons who are  
10 black, Hispanic, including Portuguese, or Asian-American[, American  
11 Indian or Alaskan natives].

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

17 i. "Female business" means a business which has its principal place  
18 of business in the State, is independently owned and operated and at  
19 least 51% of which is owned and controlled by women.

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

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

26

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

31

32 25. This act shall take effect immediately.

33

34

35

#### STATEMENT

36

37 This bill would implement the recommendations contained in the  
38 final report of the Governor's Study Commission on Discrimination in  
39 Public Works Procurement and Construction Contracts issued on  
40 February 22, 1993.

41 In City of Richmond v. Croson, 109 S.Ct. 706 (1989), the United  
42 States Supreme Court held that public contract set-aside programs for  
43 minority-owned businesses were constitutionally impermissible unless  
44 narrowly tailored to address documented discrimination against  
45 specific racial groups in a particular industry or where a public entity's  
46 own spending practices had aggravated a pattern of discrimination. In

1 the wake of this decision, the State suspended its minority and women  
2 set-aside programs. On August 14, 1989, then-Governor Kean issued  
3 Executive Order No. 213 creating the commission to investigate the  
4 nature and scope of discriminatory practices in public contracting in  
5 New Jersey. Because the commission was able to document  
6 discrimination in this area against African-Americans, Hispanics,  
7 Asian-Americans and women, it recommended the reimplementation  
8 of set-aside programs for these groups. On March 5, 1993,  
9 then-Governor Florio issued Executive Order No. 84 reestablishing the  
10 State's set-aside programs, for the groups against which discrimination  
11 was found to exist.

12 This bill conforms the statutory definition of "minority" to the  
13 findings of the commission. It creates an independent Office of Public  
14 Contract Oversight with broad powers to implement, monitor and  
15 coordinate the State's set-aside programs. It also establishes a Public  
16 Contract Oversight Advisory Committee to assist the office. The  
17 office would be responsible for collecting data, establishing set-aside  
18 goals and monitoring compliance. The bill imposes certain  
19 record-keeping responsibilities on contracting agencies and requires  
20 them to take affirmative actions to meet set-aside goals. It provides  
21 for the monitoring of State benefit programs, the lending practices of  
22 financial institutions and the issuance of insurance policies to ensure  
23 that minorities and women have equal access to benefits, loans and  
24 insurance. It also prohibits discrimination in mortgage lending and  
25 liberalizes bonding requirements for State contracts.

26

27

28

29

30 Rectifies effects of certain discriminatory practices; creates Office of  
31 Public Contract Oversight and Public Contract Oversight Advisory  
32 Committee.