

18A:18A-5/

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:18A-51

(School contracts--small, women & minority business--set aside programs-amend)

LAWS OF: 1988

CHAPTER: 37

Bill No: S1353

Sponsor(s): Rice

Date Introduced: Pre-filed

Committee: Assembly: Education

Senate: Education

Amended during passage: No

Date of Passage: Assembly: May 9, 1988

Senate: March 3, 1988

Date of Approval: June 21, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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P.L. 1988, CHAPTER 37, approved June 20, 1988

1988 Senate No. 1353

1 AN ACT concerning the establishment of small, women's and  
2 minority business set-aside programs by boards of education,  
3 amending the title and body of P.L. 1985, c. 490 and revising  
4 parts of the statutory law.

5

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

8 1. The title of P.L. 1985, c. 490 is amended to read as follows:

9 "An act concerning the establishment of small [women],  
10 women's and minority business set-aside programs by boards of  
11 education and revising parts of the statutory law."

12 2. Section 1 of P.L. 1985, c. 490 (C. 18A:18A-51) is amended  
13 to read as follows:

14 As used in this act:

15 a. "Minority [group members]" means [persons] a person who  
16 [are Black, Hispanic, Portuguese, Asian American, American  
17 Indian or Alaskan natives;] is:

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

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

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

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

28 b. "[Qualified women's] Women's business enterprise" means  
29 a business [which has its principal place of business in the State.

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

Matter underlined thus is new matter.

1 is independently owned and operated and at least 51% of which  
2 is owned and controlled by women and] which is independently  
3 owned and operated, which is qualified pursuant to N.J.S.  
18A:18A-27[;] and which is:

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

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

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

14 c. "[Qualified minority] Minority business enterprise" means  
15 a business [which has its principal place of business in the State,  
16 is independently owned and operated and at least 51% of which  
17 is owned and controlled by minority group members and] which  
18 is independently owned and operated, which is qualified pursuant  
19 to N.J.S. 18A:18A-27[;] and which is:

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

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

26 (3) A corporation or other entity whose management and daily  
27 business operations are controlled by one or more minorities who  
28 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 is  
30 owned by one or more minorities;

31 d. "[Qualified small] Small business enterprise" means a  
32 business [which has its principal place of business in the State, is  
33 independently owned and operated, meets all other  
34 qualifications as may be established in accordance with P. L.  
35 1981, c.283 (C. 52:27H-21.1 et seq.) and] which is independently  
36 owned and operated, which is qualified pursuant to N.J.S.  
37 18A:18A-27 and which is a sole proprietorship, partnership or  
38 corporation which is a size and type defined by the  
39 Commissioner of the Department of Commerce and Economic  
Development;

1 e. "Set-aside contract" means (1) a contract for goods,  
equipment, construction, or services which is designated as a  
3 contract for which bids are invited and accepted only from  
[qualified] small business enterprises, [qualified] minority  
5 business enterprises or [qualified] women's business enterprises,  
as appropriate, (2) a portion of a contract when that portion has  
7 been so designated, or (3) any other purchase or procurement so  
designated; and

9 f. "Total procurements" means all purchases, contracts or  
acquisitions of a board of education, whether by competitive  
11 bidding, single source contracting, or other method of  
procurement, as prescribed or permitted by law.

13 (cf: P.L. 1985, c. 490, s. 1)

15 3. Section 2 of P.L. 1985, c. 490 (C. 18A:18A-52) is amended  
to read as follows:

17 2. a. A board of education may, by resolution, establish a  
[qualified] minority business enterprise set-aside program. In  
authorizing such a program, the board of education shall  
19 establish a goal of setting aside a certain percentage of the  
dollar value of total procurements to be awarded as set-aside  
21 contracts to [qualified] minority business enterprises.

23 b. A board of education may, by resolution, establish a  
[qualified] women's business enterprise set-aside program. In  
authorizing such a program, the board of education shall  
25 establish a goal of setting aside a certain percentage of the  
dollar value of total procurements to be awarded as set-aside  
27 contracts to [qualified] women's business enterprises.

29 c. A board of education may, by resolution, establish a  
[qualified] small business enterprise set-aside program. In  
authorizing such a program, the board of education shall  
31 establish a goal of setting aside a certain percentage of the  
dollar value of total procurements to be awarded as set-aside  
33 contracts to [qualified] small business enterprises.

(cf: P.L. 1985, c. 490, s.2)

35 4. Section 3 of P.L. 1985, c. 490 (C. 18A:18A-53) is amended  
to read as follows:

37 3. a. Any goal established pursuant to section 2 of this act  
may be attained by requiring that a portion of a contract shall  
39 be subcontracted to a [qualified] small business enterprise,  
[qualified] minority business enterprise or [qualified] women's

1 business enterprise, in addition to designating entire contracts  
to these enterprises.

3 b. Each board of education shall make a good faith effort to  
attain any goal established.

5 (cf: P.L. 1985, c. 490, s. 3)

7 5. Section 5 of P.L. 1985, c. 490 (C. 18A:18A-55) is amended  
to read as follows:

9 5. Notwithstanding the provisions of any law to the contrary,  
a board of education which has established a [qualified] small  
11 business enterprise set-aside program, a [qualified] minority  
business enterprise set-aside program or a [qualified] women's  
13 business enterprise set-aside program shall designate that a  
contract, subcontract or other means of procurement of goods,  
15 services, equipment, or construction shall be awarded to a  
[qualified] small business enterprise, a [qualified] minority  
17 business enterprise or a [qualified] women's business enterprise,  
if the board is likely to receive bids from at least two [qualified]  
small business enterprises, [qualified] minority business  
19 enterprises or [qualified] women's business enterprises, as  
appropriate, at a fair and reasonable price.

21 The designations shall be made prior to any advertisement for  
bids, if required. Once designated, the advertisement for bids,  
23 if necessary, shall indicate that the contract to be awarded is a  
[qualified] small business enterprise set-aside contract, a  
25 [qualified] minority business enterprise set-aside contract or a  
[qualified] women's business enterprise set-aside contract, as  
27 appropriate. All advertisements for bids shall be published in at  
least one newspaper which will best provide notice thereof to  
29 [qualified] small business enterprises, [qualified] minority  
business enterprises or to [qualified] women's business  
31 enterprises, as appropriate, sufficiently in advance of the date  
fixed for receiving the bids to promote competitive bidding, but  
33 shall not be published less than 10 days prior to that date.

(cf: P.L. 1985, c. 490, s. 5)

35 6. Section 6 of P.L. 1985, c. 490 (C. 18A:18A-56) is amended  
to read as follows:

37 6. a. If the board of education determines that two bids from  
[qualified] small businesses, minority or women's businesses  
39 cannot be obtained, the board may withdraw the designation of  
the set-aside contract and resolicit bids on an unrestricted basis

1 pursuant to the provisions of N.J.S. 18A:18A-1 et seq. The  
cancelled designation shall not be considered in determining  
3 whether or not the board attained its goal established pursuant  
to section 2 of this act.

5 b. If the board of education determines that the acceptance  
of the lowest responsible bid will result in the payment of an  
7 unreasonable price, the board shall reject all bids and withdraw  
the designation of the set-aside contract. [Qualified small]  
9 Small business enterprises, [qualified] minority business  
enterprises or [qualified] women's business enterprises, as  
11 appropriate, shall be notified in writing of the set-aside  
cancellation, the reasons for the rejection and the board's  
13 intent to resolicit bids on an unrestricted basis pursuant to the  
provisions of N.J.S. 18A:18A-1 et seq. The cancelled bid  
15 solicitation shall not be considered in determining whether or  
not the board attained its goal established pursuant to section 2  
17 of this act.

(cf: P.L. 1985, c. 490, s. 6)

19 7. Section 7 of P. L. 1985, c.490 (C. 18A:18A-57) is amended  
to read as follows:

21 7. Any board of education which has established a [qualified]  
small business set-aside program, a [qualified] minority business  
23 enterprise set-aside program or a [qualified] women's business  
enterprise set-aside program shall prepare a report by January  
25 31 of each year describing the board's efforts in attaining the  
set-aside goals and the percentage of the dollar value of total  
27 procurements awarded in the immediately preceding local fiscal  
year. The board of education shall publish a list of its  
29 attainments in at least one newspaper circulating in the school  
district by March 1 of each year.

31 (cf: P.L. 1985, c. 490, s. 7)

8. R.S. 10:2-1 is amended to read as follows:

33 10:2-1. Every contract for or on behalf of the State or any  
county or municipality or other political subdivision of the  
35 State, or any agency of or authority created by any of the  
foregoing, for the construction, alteration or repair of any  
37 public building or public work or for the acquisition of materials,  
equipment, supplies or services shall contain provisions by which  
39 the contractor agrees that:

1       a. In the hiring of persons for the performance of work under  
2 this contract or any subcontract hereunder, or for the  
3 procurement, manufacture, assembling or furnishing of any such  
4 materials, equipment, supplies or services to be acquired under  
5 this contract, no contractor, nor any person acting on behalf of  
6 such contractor or subcontractor, shall, by reason of race,  
7 creed, color, national origin, ancestry, marital status or sex,  
8 discriminate against any person who is qualified and available to  
9 perform the work to which the employment relates;

10       b. No contractor, subcontractor, nor any person on his behalf  
11 shall, in any manner, discriminate against or intimidate any  
12 employee engaged in the performance of work under this  
13 contract or any subcontract hereunder, or engaged in the  
14 procurement, manufacture, assembling or furnishing of any such  
15 materials, equipment, supplies or services to be acquired under  
16 such contract, on account of race, creed, color, national origin,  
17 ancestry, marital status or sex;

18       c. There may be deducted from the amount payable to the  
19 contractor by the contracting public agency, under this  
20 contract, a penalty of \$50.00 for each person for each calendar  
21 day during which such person is discriminated against or  
22 intimidated in violation of the provisions of the contract; and

23       d. This contract may be canceled or terminated by the  
24 contracting public agency, and all money due or to become due  
25 hereunder may be forfeited, for any violation of this section of  
26 the contract occurring after notice to the contractor from the  
27 contracting public agency of any prior violation of this section  
28 of the contract.

29       No provision in this section shall be construed to prevent a  
30 board of education from designating that a contract,  
31 subcontract or other means of procurement of goods, services,  
32 equipment or construction shall be awarded to a [qualified] small  
33 business enterprise, [qualified] minority business enterprise or a  
34 [qualified] women's business enterprise pursuant to P.L. 1985, c.  
35 490 (C. 18A:18A-51 et seq.).

(cf: P.L. 1985, c. 490, s. 9)

37       9. Section 8 of P.L. 1962, c. 37 (C. 10:5-2.1) is amended to  
38 read as follows:

39       8. Nothing contained in this act or in P. L. 1945, c. 169  
(C.10:5-1 et seq.) shall be construed to require or authorize any

1 act prohibited by law, nor to prevent the award of a contract to  
2 a [qualified] small business enterprise, [qualified] minority  
3 business enterprise or [qualified] women's business enterprise  
4 under P.L. 1985, c. 490 (C. 18A:18A-51 et seq.) nor to conflict  
5 with the provisions of chapter 2 (child labor) of Title 34 of the  
6 Revised Statutes, nor to require the employment of any person  
7 under the age of 18, nor to prohibit the establishment and  
8 maintenance of bona fide occupational qualifications or the  
9 establishment and maintenance of apprenticeship requirements  
10 based upon a reasonable minimum age, nor to prevent the  
11 termination or change of the employment of any person who in  
12 the opinion of the employer, reasonably arrived at, is unable to  
13 perform adequately the duties of employment, nor to preclude  
14 discrimination among individuals on the basis of competence,  
15 performance, conduct or any other reasonable standards, nor to  
16 interfere with the operation of the terms or conditions and  
17 administration of any bona fide retirement, pension, employee  
18 benefit or insurance plan or program, including any State or  
19 locally administered public retirement system, provided that the  
20 provisions of those plans or programs are not used to establish  
21 an age for mandatory retirement.

(cf: P.L. 1985, c. 490, s. 10)

23 10. N.J.S. 18A:18A-15 is amended to read as follows:

24 18A:18A-15. Specifications generally. Any specifications for  
25 an acquisition under this chapter, whether by purchase, contract  
26 or agreement, shall be drafted in a manner to encourage free,  
27 open and competitive bidding. In particular, no specifications  
under this chapter may:

29 a. Require any standard, restriction, condition or limitation  
not directly related to the purpose, function or activity for  
31 which the purchase, contract or agreement is made; or

32 b. Require that any bidder be a resident of, or that his place  
33 of business be located in, the county or school district in which  
the purchase will be made or the contract or agreement  
35 performed, unless the physical proximity of the bidder is  
requisite to the efficient and economical purchase or  
37 performance of the contract or agreement; or

38 c. Discriminate on the basis of race, religion, sex, national  
39 origin; or



1       d. Require, with regard to any purchase, contract or  
3 agreement, the furnishing of any "brand name," but may in all  
5 cases require "brand name or equivalent," except that if the  
7 materials to be supplied or purchased are patented or  
9 copyrighted, such materials or supplies may be purchased by  
11 specification in any case in which the resolution authorizing the  
purchase, contract, sale or agreement so indicates, and the  
special need for such patented or copyrighted materials or  
supplies is directly related to the performance, completion or  
undertaking of the purpose for which the purchase, contract or  
agreement is made; or

13       e. Fail to include any option for renewal, extension, or  
15 release which the board of education may intend to exercise or  
17 require; or any terms and conditions necessary for the  
performance of any extra work; or fail to disclose any matter  
necessary to the substantial performance of the contract or  
agreement.

19       The specifications for every contract for public work, the  
21 entire cost whereof will exceed \$20,000.00, shall provide that  
23 the board of education, through its authorized agent, shall upon  
25 completion of the contract report to the department as to the  
contractor's performance, and shall also furnish such report  
from time to time during performance if the contractor is then  
in default.

27       Any specification adopted by the board of education which  
29 knowingly excludes prospective bidders by reason of the  
31 impossibility of performance, bidding or qualification by any but  
one bidder, except as provided herein, shall be null and void and  
of no effect and such purchase, contract or agreement shall be  
readvertised, and the original purchase, contract or agreement  
shall be set aside by the board of education.

33       No provision in this section shall be construed to prevent a  
35 board of education from designating that a contract,  
37 subcontract or other means of procurement of goods, services,  
equipment or construction shall be awarded to a [qualified] small  
business enterprise, a [qualified] minority business enterprise or  
a [qualified] women's business enterprise pursuant to P.L. 1985,  
c. 490 (C. 18A:18A-51 et seq.).  
39 (cf: P.L. 1985, c. 490, s. 11)

41       11. Section 13 of P.L. 1985, c. 490 (C. 18A:18A-59) is  
amended to read as follows:

1       13. Where the local board of education determines that a  
3       business has been classified as a [qualified] small business  
5       enterprise, [qualified] minority business enterprise or [qualified]  
7       women's business enterprise on the basis of false information  
9       knowingly supplied by the business and has been awarded a  
11       contract to which it would not otherwise have been entitled  
13       under this act, the local board of education shall have the  
15       authority to:

17       a. Assess the business any difference between the contract  
19       amount and what the local board of education's cost would have  
21       been if the contract had not been awarded in accordance with  
23       the provisions of this act;

25       b. In addition to the amount due under subsection a., assess  
27       the business a penalty in an amount of not more than 10% of the  
29       amount of the contract involved; and

31       c. Order the business ineligible to transact any business with  
33       the local board of education for a period to be determined by  
35       the local board of education.

37       Prior to any final determination, assessment or order under  
39       this section, the local board of education shall afford the  
41       business an opportunity for a hearing on the reasons for the  
43       imposition of the penalties set forth in subsection a., b. or c. of  
45       this section.

(cf: P.L. 1985, c. 490, s. 13)

47       12. This act shall take effect immediately.

49

#### EDUCATION

51

#### Public Contracts

53       Amends law authorizing establishment of small, women's and  
55       minority business set-aside programs by school boards to  
57       conform terminology with that used by other State and federal  
59       agencies.

1        11. Section 13 of P.L. 1985, c. 490 (C. 18A:18A-59) is  
amended to read as follows:

3        13. Where the local board of education determines that a  
business has been classified as a [qualified] small business  
5        enterprise, [qualified] minority business enterprise or [qualified]  
women's business enterprise on the basis of false information  
7        knowingly supplied by the business and has been awarded a  
contract to which it would not otherwise have been entitled  
9        under this act, the local board of education shall have the  
authority to:

11        a. Assess the business any difference between the contract  
amount and what the local board of education's cost would have  
13        been if the contract had not been awarded in accordance with  
the provisions of this act;

15        b. In addition to the amount due under subsection a., assess  
the business a penalty in an amount of not more than 10% of the  
17        amount of the contract involved; and

      c. Order the business ineligible to transact any business with  
19        the local board of education for a period to be determined by  
the local board of education.

21        Prior to any final determination, assessment or order under  
this section, the local board of education shall afford the  
23        business an opportunity for a hearing on the reasons for the  
imposition of the penalties set forth in subsection a., b. or c. of  
25        this section.

      12. This act shall take effect immediately.

27

29

#### STATEMENT

31        This bill amends the act which authorized set-aside programs  
by boards of education for small, women's and minority  
33        businesses, P.L. 1985, c. 490 (C. 18A:18A-51 et seq.). The  
amendments do not change the substance of the law. Rather,  
35        they conform the terminology to that which is currently used by  
other State and federal agencies. Essentially, the bill clarifies  
37        the definition of "minority." Also, it specifies that, to be  
qualified, a business must be: (1) a sole proprietorship owned  
39        and controlled by a woman or a minority; or (2) a partnership,  
joint venture or corporation in which at least 51% of the  
41        ownership is held by women or minorities and in which the  
management and daily business operations are controlled by one  
43        or more women or minorities.

1 Under the program, a board of education may establish a goal  
of setting aside a certain percentage of the dollar value of total  
3 procurements to be awarded as set-aside contracts for minority  
business enterprises, women's business enterprises, and/or small  
5 business enterprises. If a board of education adopted such a  
resolution, it would name certain contracts for which bids would  
7 be invited and accepted only from the designated group of  
businesses. A board of education must make a good faith effort  
9 to reach any goal which it established for the set-aside program;  
however, if no suitable bids are received, the board may  
11 withdraw the set-aside designation and resolicit bids on an  
unrestricted basis.

13

15

EDUCATION  
Public Contracts

17

Amends law authorizing establishment of small, women's and  
19 minority business set-aside programs by school boards to  
conform terminology with that used by other State and federal  
21 agencies.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1353

STATE OF NEW JERSEY

DATED: FEBRUARY 18, 1988

The Senate Education Committee favorably reports this bill without committee amendments.

This bill amends the act which authorized set-aside programs by boards of education for small, women's and minority businesses, P.L. 1985, c. 490 (C. 18A:18A-51 et seq.). The amendments do not change the substance of the law. Rather, they conform the terminology to that which is currently used by other State and federal agencies. Essentially, the bill clarifies the definition of "minority." Also, it specifies that, to be qualified, a business must be: (1) a sole proprietorship owned and controlled by a woman or a minority; or (2) a partnership, joint venture or corporation in which at least 51% of the ownership is held by women or minorities and in which the management and daily business operations are controlled by one or more women or minorities.

Under the program, a board of education may establish a goal of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts for minority business enterprises, women's business enterprises, and/or small business enterprises. If a board of education adopted such a resolution, it would name certain contracts for which bids would be invited and accepted only from the designated group of businesses. A board of education must make a good faith effort to reach any goal which it established for the set-aside program; however, if no suitable bids are received, the board may withdraw the set-aside designation and resolicit bids on an unrestricted basis.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1353

STATE OF NEW JERSEY

DATED: APRIL 14, 1988

The Assembly Education Committee favorably reports Senate, No. 1353.

This bill amends the act which authorized set-aside programs by boards of education for small, women's and minority businesses, P.L.1985, c.490 (C.18A:18A-51 et seq.). The amendments do not change the substance of the law. Rather, they conform the terminology to that which is currently used by other State and federal agencies. Essentially, the bill clarifies the definition of "minority." Also, it specifies that, to be qualified, a business must be: (1) a sole proprietorship owned and controlled by a woman or a minority; or (2) a partnership, joint venture or corporation in which at least 51% of the ownership is held by women or minorities and in which the management and daily business operations are controlled by one or more women or minorities.

Under the program, a board of education may establish a goal of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts for minority business enterprises, women's business enterprises, and/or small business enterprises. If a board of education adopted such a resolution, it would name certain contracts for which bids would be invited and accepted only from the designated group of businesses. A board of education must make a good faith effort to reach any goal which it established for the set-aside program; however, if no suitable bids are received, the board may withdraw the set-aside designation and resolicit bids on an unrestricted basis.

This bill is identical to Assembly, No. 2747 of 1986.