

5:12-185

12/3/87

LEGISLATIVE HISTORY CHECKLIST

NJSA: 5:12-185 (Casino licensees-- set asides)

CHAPTER 137

Laws Of: 1987

Bill No: A3499

Sponsor(s): Schuber and others

Date Introduced: December 18, 1986

Committee: **Assembly:** Independent Authorities and Regional Authorities

Senate: -----

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: **Assembly:** March 12, 1987

Senate: April 23, 1987

Date of Approval: June 3, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Regulations mentioned in act not promulgated as of 9-1-87.

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ASSEMBLY, No. 3499

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1986

By Assemblymen SCHUBER, DiGAETANO, Arango, Gargiulo
and Dario

AN ACT concerning affirmative action contracts in the casino industry, amending P. L. 1985, c. 539 and amending and supplementing P. L. 1977, c. ***[210]*** *110*.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. As used in this act:

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

7 b. "Minority business enterprise" means a business that is **[at**
8 **least 51% owned and controlled by minority group member]**:

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

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

14 (3) *A corporation or other entity whose management and daily*
15 *business operations are controlled by one or more minorities who*
16 *own it, and which is at least 51% owned by one or more minorities,*
17 *or if stock is issued, at least 51% of the stock is owned by one*
18 *or more minorities.*

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted March 5, 1987.**

19 c. **["Minority group member"]** "*Minority*" means a person who
 20 is **[either Black, Hispanic, Asian American, American Indian or**
 21 **an Alaskan Native]**:

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

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

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

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

32 **[d. "Woman" or "Women" means a female or females, regardless**
 33 **of race.]**

34 **[e.] d. "Women's business enterprise" means a business that is**
 35 **[at least 51% owned and controlled by women]:**

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

37 (2) *A partnership or joint venture owned and controlled by*
 38 *women in which at least 51% of the ownership is held by women*
 39 *and the management and daily business operations of which are*
 40 *controlled by 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*
 43 *it, and which is at least 51% owned by women, or if stock is issued,*
 44 *at least 51% of the stock is owned by one or more women.*

1 2. Section 63 of P. L. 1977, c. ***[210]*** *110* (C. 5:12-63) is
 2 amended to read as follows:

3 63. Duties of the commission. The Casino Control Commission
 4 shall have general responsibility for the implementation of this act,
 5 as hereinafter provided, including, without limitation, the respon-
 6 sibility:

7 a. To hear and decide promptly and in reasonable order all
 8 license, registration, certificate, and permit applications and causes
 9 affecting the granting, suspension, revocation, or renewal thereof
 10 **[which decision, in the case of casino licensees shall be withheld**
 11 **until a determination has been made by the commission that the**
 12 **provisions of sections 4 and 5 of P. L., c. (C.**
 13 **and C.) (now pending before the Legislature as this**
 14 **bill) relating to expenditures on and assignments to minority and**
 15 **women's business enterprises have been met, except that if a**
 16 **determination is made that a casino licensee has failed to demon-**

17 *strate compliance with the provisions of section 4 or 5 of P. L.*
 18 *....., c. (C. and C.) (now pending*
 19 *before the Legislature as this bill), a casino licensee will have 90*
 20 *days from the date of the determination of noncompliance within*
 21 *which to comply with the provisions of those sections】;*

22 b. To conduct all hearings pertaining to civil violations of this
 23 act or regulations promulgated hereunder;

24 c. To promulgate such regulations as in its judgment may be
 25 necessary to fulfill the policies of this act;

26 d. To collect all license and registration fees and taxes imposed
 27 by this act and the regulations issued pursuant hereto;

28 e. To levy and collect penalties for the violation of provisions of
 29 this act and the regulations promulgated hereunder;

30 f. To be present through its inspectors and agents at all times
 31 during the operation of any casino for the purpose of certifying
 32 the *【revenues】* **revenue** thereof, receiving complaints from
 33 the public, and conducting such other investigations into the con-
 34 duct of the games and the maintenance of the equipment as from
 35 time to time the commission may deem necessary and proper; and

36 g. To review and rule upon any complaint by a casino licensee
 37 regarding any investigative procedures of the division which are
 38 unnecessarily disruptive of casino operations. The need to inspect
 39 and investigate shall be presumed at all times. The disruption
 40 of a licensee's operations shall be proved by clear and convincing
 41 evidence, and establish that: (1) the procedures had no reasonable
 42 law enforcement purpose, and (2) the procedures were so disrupt-
 43 tive as to inhibit unreasonably casino operations.

1 3. Section 4 of P. L. 1985, c. 539 (C. 5:12-186) is amended to
 2 read as follows:

3 4. a. Notwithstanding the provisions of any law, rule or regula-
 4 tion to the contrary, 【no】 *every* casino licensee shall 【expend less
 5 than】 *establish goals of expending at least 5% of the dollar value of*
 6 *its contracts for goods and services with minority and women's*
 7 *business enterprises by the end of the third year following the*
 8 *operative date of this 1985 amendatory and supplementary act or*
 9 *by the end of third year following the receipt of a casino license,*
 10 *whichever is later and 10% of the dollar value of its contracts for*
 11 *goods and services with minority and women's business enterprises*
 12 *by the end of the sixth year following the operative date of this*
 13 *1985 amendatory and supplementary act or by the end of the sixth*
 14 *year following the receipt of a casino license, whichever is later;*
 15 *and each such licensee shall have a goal of expending 15% of the*

16 *dollar value* of its contracts for goods and services with minority
 17 and women's business enterprises by the end of the 10th year
 18 following that operative date *or by the end of the 10th year follow-*
 19 *ing the receipt of a casino license, whichever is later.* Each casino
 20 licensee shall be required to demonstrate annually to the commis-
 21 sion that the requirements of this act have been met by submitting
 22 a report which shall include the total dollar value of contracts
 23 awarded for goods or services and the percentage thereof awarded
 24 to minority and women's business enterprises.

25 As used in this section, "goods and services" shall not include (1)
 26 utilities and taxes; (2) financing costs, such as mortgages, loans or
 27 any other type of debt; (3) medical insurance; (4) dues and fees to
 28 the Atlantic City Casino Association; (5) fees and payments to a
 29 parent or affiliated company of the casino licensee *other than those*
 30 *that represent fees and payments for goods and services supplied*
 31 *by non-affiliated persons through an affiliated company for the use*
 32 *or benefit of the casino licensee; and (6) rents paid for real prop-*
 33 *erty and any payments constituting the price of an interest in real*
 34 *property as a result of *a* real estate ***[transactions]*** **[**; and (7)*
 35 *gaming chips, plaques, cards, tokens, dice and slot machines]*
 35A **transaction*.*

36 b. **[**In those areas where an insufficient amount of minority and
 37 women's business enterprises exist, a**]** A casino licensee shall make
 38 a good faith effort to meet the requirements of this section and
 39 shall annually demonstrate to the commission that such an effort
 40 was made.

41 c. A casino licensee may fulfill no more than 70% of its obligation
 42 or part of it under this act by requiring a vendor to set aside a
 43 portion of his contract for minority or women's business enterprises.
 44 Upon request, the licensee shall provide the commission with proof
 45 of the amount of the set-aside.

1 4. Section 5 of P. L. 1985, c. 539 (C. 5:12-187) is amended to
 2 read as follows:

3 5. a. **[No]** Every casino licensee shall **[assign less than]** *estab-*
 4 *lish goals of expending at least 5% of the dollar value* of its bus
 5 business with minority and women's business ****[enterprise]*** *en-*
 6 *terprises** by the end of the third year following the operative date
 7 of this 1985 amendatory and supplementary act *or by the end of*
 8 *the third year following the receipt of a casino license, whichever is*
 9 *later* and 10% of the dollar value of its bus business with minority
 10 and women's business enterprises by the end of the sixth year fol-
 11 lowing the operative date of this 1985 amendatory and supplemen-

12 tary act or *by the end of the sixth year following the receipt of a*
 13 *casino license, whichever is later*; and each such licensee shall have
 14 a goal of expending 15% of the dollar value of its bus business with
 15 minority and women's business enterprises by the end of the 10th
 16 year following that operative date or *by the end of the 10th year*
 17 *following the receipt of a casino license, whichever is later*. Each
 18 casino licensee shall be required to demonstrate annually to the
 19 commission that the requirements of this act have been met by
 20 submitting a report which shall include the total bus business
 21 **[assigned]** *expended* and the percentage thereof awarded to
 22 minority and women's business enterprises.

23 b. **[In those areas where an insufficient amount of minority and**
 24 **women's business enterprises exist, a]** A casino licensee shall make
 25 a good faith effort to meet the requirements of this section and shall
 26 annually demonstrate to the commission that such an effort was
 27 made.

28 **[c.** A casino licensee may fulfill no more than 70% of its obliga-
 29 tion or part of it under this act by requiring a vendor to set aside a
 30 portion of his contract for minority or women's business enterprises.
 31 Upon request, the licensee shall provide the commission with proof
 32 of the amount of the set-aside.]

1 5. Section 6 of P. L. 1985, c. 539 (C. 5:12-188) is amended to
 2 read as follows:

3 6. The Division of Development for Small Businesses and Women
 4 and Minority Businesses in the Department of Commerce and
 5 Economic Development created pursuant to P. L., c. (C.
 6) (now pending before the Legislature as Assembly
 7 Bill No. **[3488 of 1985]** *2413 *or Senate Bill No. 1709* of 1986*)
 8 shall establish **[within the 180 days of the effective date of this**
 9 **act reasonable regulations appropriate for determining the quali-**
 10 **fications of]** *and administer a unified certification procedure for*
 11 *minority and women's business enterprises [according to their*
 12 *financial ability and experience and the capital and equipment*
 13 *available to them pursuant to and reasonably related to the class*
 14 *or category of work to be performed or materials and supplies to*
 15 *be furnished]* *that do business with casino licensees on contracts*
 16 *for goods and services or contracts for bus business.*

1 6. Section 7 of P. L. 1985, c. 539 (C. 5:12-189) is amended to
 2 read as follows:

3 7. The Division of Development for Small Businesses and Women
 4 and Minority Businesses shall supply casino licensees with a list of
 5 those minority and women's business enterprises which it has

6 **【found to be qualified】** *certified*. The division shall review the list
 7 annually to determine which of those minority and women's busi-
 8 ness enterprises *shall* continue to **【qualify】** *be certified*. The
 9 division shall establish a procedure whereby the designation of a
 10 **【qualified】** *certified* minority and women's business enterprise may
 11 be challenged. The procedure shall include proper notice and a
 12 hearing for all parties concerned.

1 7. (New section) ***【No casino license shall be issued by the com-**
 2 **mission unless a determination has been made by】*** **If** the com-
 3 mission **determines** that the provisions of sections 4 and 5 of
 4 P. L. 1985, c. 539 (C. 5:12-186 and C. 5:12-187) relating to expendi-
 5 tures and assignments to minority and women business enterprises
 6 have **not** been met***【.】*** **by a licensee, the commission may sus-*
 7 *pend or revoke the casino license, or fine or impose appropriate*
 8 *conditions on the licensee, to ensure that the goals for expenditures*
 9 *and assignments to minority and women business enterprises are*
 10 *met;** except that if a determination is made that a casino licensee
 11 has failed to demonstrate compliance with the provisions of sec-
 12 tions 4 and 5 of P. L. 1985, c. 539 (C. 5:12-186 and C. 5:12-187), a
 13 casino licensee will have 90 days from the date of the determina-
 14 tion of noncompliance within which to comply with the provisions
 15 of those sections.

1 8. This act shall take effect immediately but shall remain in-
 2 operative until the 90th day following the day of adoption of rules
 3 and regulations by the Division of Development for Small Busi-
 4 nesses and Women and Minority Businesses pursuant to section 5
 5 of this act.

GAMBLING—CASINOS

Amends the law concerning set-asides for small, minority and
 women's businesses by casino licensees.

9 division shall establish a procedure whereby the designation of a
 10 **[qualified]** *certified* minority and women's business enterprise may
 11 be challenged. The procedure shall include proper notice and a
 12 hearing for all parties concerned.

1 7. (New section) No casino license shall be issued by the commis-
 2 sion unless a determination has been made by the commission that
 3 the provisions of sections 4 and 5 of P. L. 1985, c. 539 (C. 5:12-186
 4 and C. 5:12-187) relating to expenditures and assignments to
 5 minority and women business enterprises have been met, except
 6 that if a determination is made that a casino licensee has failed to
 7 demonstrate compliance with the provisions of sections 4 and 5 of
 8 P. L. 1985, c. 539 (C. 5:12-186 and C. 5:12-187), a casino licensee
 9 will have 90 days from the date of the determination of noncom-
 10 pliance within which to comply with the provisions of those sections.

1 8. This act shall take effect immediately but shall remain in-
 2 operative until the 90th day following the day of adoption of rules
 3 and regulations by the Division of Development for Small Busi-
 4 nesses and Women and Minority Businesses pursuant to section 5
 5 of this act.

STATEMENT

The purpose of this bill is to make several amendments to P. L. 1985, c. 539 so that the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development that will be created pursuant to Assembly Bill No. 2413 of 1986 and the Casino Control Commission will be able to administer the set-aside program for minority and women businesses created pursuant to P. L. 1985, c. 539.

The terms "Minority business enterprise", "Minority group member" and "Women's business enterprise" are amended to conform the terms to the definitions that are currently used by the New Jersey Department of Commerce and Economic Development and federal agencies.

Casino licensees will be required to establish set-aside goals of expending at least 5% of the dollar value of their contracts for goods and services and 5% of their contracts for bus business with minority and women businesses by the end of the third year following the effective date of P. L. 1985, c. 539 or by the end of the third year following the receipt of a casino license, whichever is later. Casino licensees will be required to establish set-aside goals of expending at least 10% of the dollar value of their contracts for goods and services, and 10% of their contracts for bus business with minority and women businesses by the end of the sixth year

following the effective date of P. L. 1985, c. 539 or by the end of the sixth year following the receipt of a casino license, whichever is later. P. L. 1985, c. 539 currently mandates that casino licensees achieve the above set-aside percentages within the specified periods of time and does not consider the circumstance of the applicant who receives a casino license after the effective date of P. L. 1985, c. 539. These deficiencies, which make P. L. 1985, c. 539 difficult to administer, are rectified by the amendments discussed above.

The exceptions to the term “goods and services” are narrowed and the provisions that would allow a casino licensee to achieve its percentage set-aside obligations through subcontracting are modified to ensure that percentage set-aside goals are achieved from a larger number of contracts awarded by casino licensees. In its current form, P. L. 1985, c. 539 exempts too many contracts for goods and services from the provisions of the statute and allows casino licensees to escape a portion of their direct percentage set-aside obligations through subcontracting.

Finally, this bill would clarify that the Division of Development for Small Businesses and Women and Minority Businesses will certify minority and women businesses that do business with casino licensees on contracts for goods and services and bus business.

GAMBLING—CASINOS

Amends the law concerning set-asides for small, minority and women’s businesses by casino licensees.

ASSEMBLY INDEPENDENT AND REGIONAL
AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3499

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 1987

The Assembly Independent and Regional Authorities Committee reports favorably Assembly Bill No. 3499 with committee amendments.

As amended, this bill amends several sections of P. L. 1985, c. 539 (C. 5:12-184 et seq.), to permit the Division of Development for Small Businesses and Women's and Minority Businesses that will be created pursuant to Assembly Bill No. 2413 or Senate Bill No. 1709 of 1986 and the Casino Control Commission to administer the set-aside program for minority and women businesses created pursuant to P. L. 1985, c. 539. This bill makes the following specific changes:

(1) The definitions of "Minority business enterprise," "Minority group member" and "Women's business enterprise" are amended to conform those terms to the definitions currently in use by the New Jersey Department of Commerce and Economic Development;

(2) The bill requires that casino licensees establish set-aside goals of expending at least 5% of the dollar value of their contracts for goods and services and 5% of the dollar value of their contracts for bus business with minority and women businesses by the end of the third year following the effective date of P. L. 1985, c. 539 or by the end of the third year following the receipt of a casino license, whichever is later. Casino licensees will be required to establish set-aside goals of expending at least 10% of the dollar value of their contracts for goods and services, and 10% of the dollar value of their contracts for bus business with minority and women businesses by the end of the sixth year following the effective date of P. L. 1985, c. 539 or by the end of the sixth year following receipt of a casino license, whichever is later. Casino licensees will be required to expend at least 15% of the dollar value of their contracts for goods and services, and 15% of the dollar value of their contracts for bus business with minority and women businesses by the end of the 10th year following the effective date of

P. L. 1985, c. 539 or by the end of the 10th year following the receipt of a casino license, whichever is later. P. L. 1985, c. 539 currently mandates that casino licensees achieve the above set-aside percentages within the third, sixth and tenth year, respectively, following the effective date of P. L. 1985, c. 539 and does not consider the circumstances of an applicant who receives a casino license after the effective date of P. L. 1985, c. 539. These deficiencies, which make P. L. 1985, c. 539 difficult to administer, are rectified by this bill.

This bill also narrows the exceptions to the term "goods and services" and modifies the provisions allowing a casino licensee to achieve its percentage set-aside obligations through subcontracting to ensure that percentage set-aside goals are achieved from a larger number of contracts awarded by casino licensees. Currently, P. L. 1985, c. 539 exempts too many contracts for goods and services from the provisions of the statute and allows casino licensees to escape a portion of their direct percentage set-aside obligations through subcontracting.

This bill also clarifies that the Division of Development for Small Businesses and Women's and Minority Businesses in the Department of Commerce and Economic Development will certify minority and women businesses that do business with casino licensees on contracts for goods and services and bus business.

The amendments adopted by the committee make this bill identical to Senate Bill No. 2881 which was released from the Senate Institutions, Health and Welfare Committee with committee amendments on February 26, 1987.

In particular, the amendments make the following specific changes:

(1) Rectifies an incorrect citation to the "Casino Control Act," P. L. 1977, c. 110 contained in the title and in section 2 of the bill;

(2) Includes a reference to Senate Bill No. 1709 in section 5 of the bill since Senate Bill No. 1709 was substituted for Assembly Bill No. 2413 which is currently referenced in section 5;

(3) Modifies the penalty provisions of the bill to permit the Casino Control Commission as assess fines, suspend or revoke a casino license or impose appropriate conditions on a licensee to ensure that the licensee meets its set-aside obligations under this bill.
