

52:27H-21.7 to 52:27H-21.24 4/16/87

### LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 52:27H-21.7 to 52:27H-21.24 (Division of Development, for Small Businesses and Women and Minority Businesses-- certify such businesses)

**CHAPTER 195**

**Laws Of:** 1986

**Bill No:** S1573

**Sponsor(s):** Lpman

**Date Introduced:** January 30, 1986

**Committee:** **Assembly:** Economic Development & Agriculture

**Senate:** State Government, Federal & Interstate Relations & Veterans' Affairs

**Amended during passage:** Yes

**Date of Passage:** **Assembly:** November 10, 1986

**Senate:** March 10, 1986

**Date of Approval:** December 23, 1986

**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

Report, referred to in Section 7: not issued as fo 2-1-87.

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12-27-86

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SENATE, No. 1573

# STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1986

By Senator LIPMAN

Referred to Committee on State Government and Federal and  
Interstate Relations and Veterans Affairs

AN ACT establishing a unified procedure for the certification of  
\***[small businesses and]**\* businesses owned by minorities or  
women for the purposes of qualifying for certain government  
programs, supplementing Title 52 of the Revised Statutes and  
making an appropriation.

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

1 1. The Legislature finds and declares that:

2 \***[a. Small businesses play a major role in the economy of this**  
3 **State.]**\*

4 \***[b.]**\* *a.* Historically, businesses owned by \***[minority group**  
5 **members]**\* *minorities* and women have been small establishments  
6 offering products and services and their participation in the na-  
7 tion's business community has been disproportionate to their num-  
8 bers in society as a whole.

9 \***[c.]**\* *b.* The opportunity for full participation in our free en-  
10 terprise system by \***[majority group members]**\* *minorities* and  
11 women is essential if social and economic justice for them is to be  
12 attained, and the functioning of our economy improved.

13 \***[d.]**\* *c.* The role of government at the national, State and local  
14 levels in encouraging the development of \***[small businesses, as well**  
15 **as]**\* businesses owned by \***[minority group members]**\* *minori-*  
16 *ties* and women, has been recognized and is developing at a rapid  
17 pace, with technical and financial assistance, contract procurement,  
18 contract set-asides and other programs designed to encourage de-  
18A velopment.

**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 May 22, 1986.

\*\*—Assembly committee amendment adopted June 12, 1986.

19 \***[e.]**\* \*d.\* As a result, each year entrepreneurs in New Jersey  
 20 spend an average of \$5,000.00 to demonstrate that they qualify for  
 21 these programs designed to foster the growth and development of  
 22 their businesses so that the public agencies administering the pro-  
 23 grams can be certain that the businesses which benefit are bona fide  
 24 \***[small,]**\* minority or women's businesses.

25 \***[f.]**\* \*e.\* A unified procedure for the certification of \***[small]**  
 26 businesses and businesses owned by minorities and women, ad-  
 27 ministered by the State, for the purpose of \***[qualifying for these]**\*  
 28 \*certifying the eligibility of the businesses for \* various \*State\*  
 29 programs \***[at the State and local levels]**\* will eliminate duplication  
 30 of effort and improve efficiency, thereby increasing productivity  
 31 and reducing costs in the public and the private sector.

1 2. As used in this act:

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

13 b. "Commissioner" means the Commissioner of the Depart-  
 14 ment of Commerce and Economic Development.

15 c. "Director" means the Director of the Division of Develop-  
 16 ment for Small Businesses and Women and Minority Businesses  
 17 in the Department of Commerce and Economic Development,  
 18 created pursuant to P. L. . . . ., c. . . . (C. . . . .), (now  
 19 pending before the Legislature as Bill No. . . . of 1986).

20 d. "Division" means the Division of Development for Small  
 21 Businesses and Women and Minority Businesses in the Depart-  
 22 ment of Commerce and Economic Development, created pursuant  
 23 to P. L. . . . ., c. . . . . (C. . . . .), (now pending before  
 24 the Legislature as Bill No. . . . of 1986).

25 e. "Minority" \***[or "minority group member"]**\* means a person  
 26 who is:

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

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

32 (3) Asian American, which is a person having origins in any of  
 33 the original peoples of the Far East, Southeast Asia, Indian Sub-  
 34 continent, Hawaii, or the Pacific Islands; or

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

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

38 (1) A sole proprietorship, owned and controlled by a minority  
 39 **\*[group member;]\* \***;

40 (2) A partnership or joint venture owned and controlled by  
 41 **\*[minority group members]\*** *\*minorities\** in which at least 51%  
 42 of the ownership interest is held by **\*[minority group members]\***  
 43 *\*minorities\** and the management and daily business operations  
 44 of which are controlled by one or more of the **\*[minority group**  
 44A **members]\*** *\*minorities\** who own it; or

45 (3) A corporation or other entity **\*[controlled by minority group**  
 46 **members in which at least 51% of the voting interest and at least**  
 47 **51% of the beneficial ownership interest are held by minority group**  
 48 **members]\*** *\*whose management and daily business operations are*  
 48A *controlled by one or more minorities who own it, and which is at*  
 48B *least 51% owned by one or more minorities, or, if stock is issued,*  
 48C *at least 51% of the stock is owned by one or more minorities\*.*

49 g. "Public agency" means the State **\*[and its political subdi-**  
 50 **visions]\*** or any department, division, agency, authority, board,  
 51 commission or committee thereof.

52 **\*[h. "Small business" means a business which is of a size and**  
 53 **type defined by the commissioner.]\***

54 **\*[i.]\*** *\*h.\** "Woman" or "women" means a female or females, re-  
 55 gardless of race.

56 **\*[j.]\*** *\*i.\** "Women's business" means a business which is:

57 **\*[(2)]\* (1)\*** A sole proprietorship owned and controlled by a  
 57A woman; or

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

62 (3) A corporation or other entity **\*[controlled by women in which**  
 63 **at least 51% of the voting interest and at least 51% of the bene-**  
 64 **ficial ownership interest are held by women]\*** *\*whose management*  
 65 *and daily business operations are controlled by one or more women*  
 66 *who own it, and which is at least 51% owned by women, or, if stock*  
 67 *is issued, at least 51% of the stock is owned by one or more women\*.*

1 3. Notwithstanding the provisions of any law, rule or regulation

2 to the contrary, the division shall have the exclusive authority  
 3 within **\*[this]\*** State *government* to certify to public agencies  
 4 the eligibility of a business to bid on contracts. **[,]** apply for assis-  
 5 tance, or otherwise represent itself as a “small business,” “minority  
 6 business” or “women’s business” **]\*** *as a “minority business”*  
 7 *or “women’s business”* under any program conducted by the  
 8 public agency for which such certification is so required. That  
 9 certification by the division shall be binding to the public agency.

1 4. The division shall establish a unified procedure for the cer-  
 2 tification of a business as a **\*[small business,]\*** minority business or  
 3 women’s business, for the purposes of establishing eligibility to bid  
 4 on public contracts **[,]** apply for assistance, or otherwise represent  
 5 itself as a small business, minority business or women’s business  
 6 under any program conducted by any public agency **]\***.

7 In establishing and administering the procedure required by this  
 8 section, the director shall insure that the application and certifica-  
 9 tion process is clear, concise, and, to the extent practicable, does  
 10 not require duplication of effort on the part of the applicant or  
 11 the division or the public agency administering the program. In  
 12 furtherance of these objectives, the director shall:

13 a. Establish criteria to be used to determine the status of a  
 14 business as a **\*[small business,]\*** minority business **[,]\*** or wom-  
 15 en’s business, as defined by section 2 of this act, which criteria, to the  
 16 extent not inconsistent with this act, shall conform to federal law  
 17 or regulations and criteria used by the division;

18 b. Provide a single form for application for certification, which  
 19 form shall be written in a simple, clear, understandable and easily  
 20 readable way, and include instructions as to the certification pro-  
 21 cedure and any additional documents or information required to be  
 22 separately supplied by the applicant for a particular program;

23 c. Have the authority to require the payment of a single fee,  
 24 to be established by the director, to compensate the division for  
 25 its cost in administering the certification process;

26 d. Screen applicants to insure that businesses seeking certifica-  
 27 tion are not misrepresenting their status as **\*[small businesses,]\***  
 28 minority businesses or women’s businesses, as the case may be,  
 29 and that the minority or women’s business applicants are, in fact,  
 30 in the control of members of minority groups or women, and are  
 31 not merely “fronts” for businesses controlled by persons other  
 32 than minorities or women;

33 e. Monitor the status of certified businesses to ensure continued  
 34 compliance with the criteria for certification and control by the  
 35 appropriate persons;

36 f. Compile, maintain and make available to the public agencies  
 37 lists of businesses certified as \***[small businesses,]**\* minority busi-  
 38 nesses or women's businesses; \*and\*

39 g. Provide for dissemination of information to interested par-  
 40 ties, and the public at large, concerning the certification of busi-  
 41 nesses as \***[small businesses,]**\* minority businesses or women's  
 42 businesses as required by this act.

1 5. When the division's procedure for certification of a business  
 2 as a \***[small business,]**\* minority business or women's business con-  
 3 flicts with a federal certification procedure that affects a State  
 4 project in which the federal government participates, the federal  
 5 certification procedure shall take precedence. Public agencies shall  
 6 identify those projects and shall notify the division.

1 6. The director may require of an applicant for certification as  
 2 a \***[small business,]**\* minority business or women's business any in-  
 3 formation or documents he deems necessary to determine the appli-  
 4 cant's eligibility for certification including, but not limited to:

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

7 b. Names and addresses of members of the board of directors in  
 8 the case of corporations;

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

10 d. Names and addresses of capital investors;

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

13 f. Articles of incorporation, by laws, partnership agreements, or  
 14 joint venture agreements, as applicable;

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

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

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

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

20 k. Financial statements and balance sheets;

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

22 m. Any other information he deems necessary to effectuate the  
 23 purposes of this act.

1 7. The commissioner shall report to the Governor and the Legis-  
 2 lature annually as to the status of the uniform certification pro-  
 3 cedure required by this act, including any recommendations for  
 4 legislation which would enable the division to more efficiently and  
 5 effectively carry out its duties and responsibilities under this act.

1 8. The \***[director]**\* \*commissioner\* shall promulgate the rules  
 2 and regulations he deems necessary to effectuate the purposes of

3 this act, pursuant to the "Administrative Procedure Act," P. L.  
4 1968, c. 410 (C. 52:14D-1 et seq.).

1 9. There is appropriated from the General Fund to the Di-  
2 vision of Development for Small Businesses and Women and  
3 Minority Businesses in the Department of Commerce and Economic  
4 Development the sum of \*~~[\$75,000.00]~~\* \*\$175,000.00\* to effectuate  
5 the purposes of this act.

1 10. This act shall take effect immediately but shall remain in-  
2 operative until the enactment into law of Bill No.  
3 of 1986.

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STATE GOVERNMENT—GENERAL

Directs Division of Development for Small Businesses and Women  
and Minority Businesses to certify women's and minority busi-  
nesses; appropriates \$175,000.00.

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## STATEMENT

This bill provides that the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development (yet to be established by law) shall have the authority to certify to public agencies the eligibility of such businesses to bid on contracts, apply for assistance or otherwise represent themselves as a "small" "minority" or "women's" business. This certification shall be binding on agencies for which certification is requested. The division shall establish a unified procedure for such business certification and for the establishment of eligibility standards. It shall also promulgate lists of certified businesses and monitor their status.

The bill appropriates \$75,000.00 to the division to finance this act.

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STATE GOVERNMENT—GENERAL

Provides that the Division of Development for Small Businesses and Women and Minority Businesses shall certify such business and appropriates \$75,000.00 to the division.

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ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

**SENATE, No. 1573**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 12, 1986

The Assembly Appropriations Committee favorably reports this bill with amendments.

This bill as amended provides that the Division of Development for Small Businesses and Women and Minority Businesses, to be established in the Department of Commerce and Economic Development under separate legislation, shall have the exclusive authority to certify to public agencies of State Government the eligibility of a business as a minority or women's business where that certification is required. The certification by the division would be binding on public agencies of State Government. The bill requires the division, among other duties, to establish criteria to determine the status and uniform procedures for certification of eligibility; to compile, maintain and issue lists of certified businesses; and to monitor the status of certified businesses to insure continued compliance with the criteria for certification.

**FISCAL IMPACT:**

This bill appropriates \$175,000.00 from the General Fund to the Division of Development for Small Businesses and Women and Minority Businesses or the Department of Commerce and Economic Development to effectuate the purposes of the act. The bill also authorizes the division to charge a single fee to compensate the division for its cost in administering the certification process. Therefore, fee income will, in part, offset this appropriation, although continuing appropriations will be required to support the activities of the division.

**COMMITTEE AMENDMENTS:**

The committee amended the bill to clarify the provision concerning the exclusive authority to certify is for minority or women's businesses only and not any business bidding on State contracts.

SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS AFFAIRS  
COMMITTEE

STATEMENT TO

**SENATE, No. 1573**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 24, 1986

The Senate State Government Committee reports Senate Bill No. 1573 favorably.

This bill concerns small, minority and women's businesses. It provides that the Division of Development for Small Businesses and Women and Minority Businesses to be established in the Department of Commerce and Economic Development shall have the authority to certify to public agencies the eligibility of such businesses to bid on contracts, apply for assistance or otherwise represent themselves as a "small," "minority," or "women's" business. This certification shall be binding on public agencies for which certification is required. The division shall establish a unified procedure for such business certification and for the establishment of eligibility standards. It shall also promulgate lists of certified businesses and monitor their status.

The bill appropriates \$75,000.00 to the division to finance this act.