

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:1B-47 to 34:1B-61 (NJ Enterprise Development Authority for Small Businesses, Minorities and Women's Enterprises-- establish)

LAWS OF: 1985 **CHAPTER:** 386

BILL NO: A1828

Sponsor(s): Bryant and others

Date Introduced: March 20, 1984

Committee: Assembly: Independent Authorities and Commissions

Senate: State Government, Federal and Interstate Relations and Veterans' Affairs; Revenue, Finance and Appropriations

Amended during passage: Yes Assembly Committee Substitute (3rd OCR) enacted. Amendments according to Governor's recommendations denoted by asterisks.

Date of Passage: Assembly: June 25, 1984 Re-enacted 11-18-85

Senate: February 14, 1985 Re-enacted 12-12-85

Date of Approval: December 18, 1985

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 11-18-84 (with statement)

Committee statement: Assembly Yes

Senate Yes 11-29-84 and 1-28-85

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

(OVER)

See newspaper clipping--attached:

"3 laws enacted to assist small businesses owned by minorities, women"
12-19-85 Star Ledger.

12-18-85

[THIRD OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1828

STATE OF NEW JERSEY

ADOPTED MAY 17, 1984

Sponsored by Assemblymen BRYANT, FORTUNATO and SCHUBER

AN ACT establishing the New Jersey ***[Enterprise]*** Development Authority for Small Businesses, Minorities and ***[Women]*** **Women's Enterprise** and making an appropriation therefor.

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

1 1. The Legislature finds and declares:

2 a. That entrepreneurship is a vital component of the national
 3 heritage that fosters the health and dynamism of the overall
 4 economy;

5 b. That despite their contribution as major generators of em-
 6 ployment, small businesses are struggling to survive in the private
 7 sector;

8 c. That due to an historical legacy of disregard and discrimina-
 9 tion, minorities and women control a disproportionately small
 10 fraction of the productive resources of the State and are therefore
 11 largely excluded from the mainstream of the overall economy;

12 d. That the problems of inadequate capital and management
 13 expertise that pertain to businesses owned by minorities and women
 14 are the same problems that pertain, in varying degrees, to all
 15 small businesses;

16 e. That the public sector at both the national and State levels
 17 has recognized the appropriateness of the role of encouraging
 18 small business generally and women and minorities in particular;

19 f. That the continuing disparity of capital accumulation in the
 20 South Jersey region has hampered the survival of small entrepre-
 21 neurs and the economic development and independence of minori-
 22 ties and women, and has limited opportunities for enterprise

*—Assembly amendments adopted June 18, 1984.

**—Senate committee amendments adopted November 29, 1984.

***—Senate committee amendments adopted January 28, 1985.

****—Assembly amendments adopted in accordance with Governor's recom-
 mendations April 15, 1985.

23 development by individuals from each of these populations;
 24 g. That economic development within the small business and
 25 minority communities and among women increases the prosperity
 26 of the entire State by generating revenues and reducing the State
 27 burden of unemployment, welfare and other supportive social
 28 services;

29 h. That in order to promote these goals it is necessary to estab-
 30 lish a permanent government entity, an authority, with a long-term
 31 mandate for the delivery of financial and overall assistance to
 32 small businesses and businesses owned by minorities and women;

33 i. That the authority shall focus efforts clearly on areas of
 34 greatest need and shall have a commitment toward the establish-
 35 ment of quality programs;

36 j. That the authority shall be responsible, both directly and as
 37 an intermediary, for providing financing and for coordinating a
 38 wide range of intensive and ongoing business expertise;

39 k. That the authority shall pursue its mandate in accordance
 40 with a well-conceived business strategy and underwriting standards
 41 that approximate those utilized by traditional lenders;

42 l. That the authority's success in fulfilling its mandate shall be
 43 measured by the ultimate viability of the enterprises it assists.

1 2. For the purposes of this act:

2 a. "Authority" means the New Jersey ***[Enterprise]*** Develop-
 3 ment Authority for Small Businesses, Minorities and ***[Women]***
 4 **Women's Enterprise** established pursuant to the provisions of
 4A this act;

5 b. "Board" means the Board of Directors of the New Jersey
 6 *****[Enterprise]***** Development Authority for Small Businesses,
 7 Minorities and *****[Women]***** ****Women's Enterprise**** estab-
 7A lished pursuant to the provisions of this act;

8 ******[c.** "Director" means the Director of the Division of De-
 9 velopment for Small Businesses*****[, Minorities and Women]*****
 10 ****and Women and Minority Businesses**** in the Department of
 10A Commerce and Economic Development*****[.]***** ***,***

11 d. "Division" means the Division of Development for Small
 12 Businesses and Women and Minority Businesses established pur-
 13 suant to P. L., c. ... (C.) (now *****[pending]*****
 14 before the *****[Legislature]***** ****Governor**** as the Assembly
 15 Committee Substitute for Assembly Bill No. 1826 of 1984);]****

16 ******[e.]****** ***c.**** "Eligible business" means a small busi-
 17 ness or a minority or women's business ******[certified by the division**
 18 pursuant to P. L., c. ... (C.) (now *****[pending]*****
 19 before the *****[Legislature]***** ****Governor**** as the Assembly

20 Committee Substitute for Assembly Bill No. 1826 of 1984), and]****
 21 determined to be eligible to receive assistance and participate in pro-
 22 grams according to the standards established pursuant to this
 22A act****[.]**** ***,****

23 ****[f.]**** ****d.**** "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 Portugese 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
 30 of the original people of the Far East, Southeast Asia, and Indian
 31 Subcontinent, 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 ****[g.]**** ****e.**** "Minority business" means a business in
 35 which at least 51% of the beneficial ownership of the business is held
 36 by minorities, and in which the majority of the management are
 37 minorities;

38 ****[h.]**** ****f.**** "Small business" means a business in
 39 which at least 51% of the beneficial ownership of the business is held
 40 by persons other than minorities or women and the majority of the
 41 management of which is other than minorities or women, and which
 42 business is of a type and size defined by the ****[Division of De-
 43 velopment for Small Businesses and Women and Minority Busi-
 44 nesses]**** ****Commissioner of the Department of Commerce
 45 and Economic Development**** as a small business, which definition
 46 shall be similar to that of the federal Small Business Administra-
 47 tion;

48 ****[i.]**** ****g.**** "Women" means a woman, regardless of
 49 race;

50 ****[j.]**** ****h.**** "Women's business" means a business in
 51 which at least 51% of the beneficial ownership of the business is held
 52 by women, and in which the majority of the management are women.

1 3. a. There is established in but not of the Department of Com-
 2 merce and Economic Development the New Jersey ****[Enter-
 3 prise]**** Development Authority for Small Businesses, Minorities
 4 and ****[Women]**** ****Women's Enterprise****, which shall as-
 5 sist in providing financing and other services to eligible businesses.
 6 The board of directors of the authority shall consist of ****[13]****
 7 ****six**** members appointed by the Governor with the advice
 8 and consent of the Senate. ****[Two members shall be appointed
 9 by the Governor from three nominees submitted by the Speaker of

10 the General Assembly, and two members shall be appointed from
 11 three nominees submitted by the President of the Senate.]****
 12 The Executive Director of the New Jersey Economic Development
 13 Authority *~~and the director~~* **, ** *the ****~~Director of the~~
 14 *Division of Development for Small Businesses and Women and*
 15 *Minority Businesses***** *****Commissioner of the Department of*
 16 *Commerce and Economic Development*****, and the State Trea-
 17 surer* ****, or their designees,**** shall be members *ex officio*. At
 18 least one member of the board shall be an investment banker,
 19 ****~~two members~~**** *****one member***** shall have experience
 20 in small business finance, and one member shall have experience in
 21 market analysis. At least ****~~three members~~**** *****one mem-*
 22 *ber***** of the board shall be ****~~minorities~~**** *****a minor-*
 23 *ity*****, and ****~~three members~~**** *****one member***** shall
 24 be ****~~women~~**** *****a woman*****. ****~~Two members~~****
 25 *****One member***** of the board shall be ****~~residents~~****
 26 *****a resident***** of Atlantic City. In addition to the
 27 ****~~13~~**** *****six***** members of the board, the Governor
 28 shall appoint a nonvoting member who represents the casino
 28A industry. Initially, the Governor shall appoint ****~~four~~****
 28B *****two***** members for a term of one year, ****~~five~~****
 28C *****two***** members for a term of two years, and ****~~five~~****
 28D *****three***** members for a term of three years. Thereafter,
 28E all members appointed by the Governor shall serve for three-year
 28F terms. Each member shall hold office for the term of his appoint-
 28G ment and until his successor has been appointed and qualified.
 28H Any vacancy in the membership occurring other than by expira-
 28I tion of term shall be filled in the same manner as the original
 28J appointment but for the unexpired term only.

29 b. Any member of the board may be removed by the Governor
 30 for cause after notice and hearing.

31 c. The *****Governor shall select a chairman and the***** mem-
 31A bers of the board shall elect ****~~a chairman and~~**** a vice
 32 chairman. The authority shall recommend at least three candidates
 33 for the position of Executive Director to the Governor, who shall
 34 appoint one of the candidates to the position, with the advice and
 35 consent of the Senate. A majority of the members of the board
 36 shall constitute a quorum. Any action may be taken by the affir-
 37 mative vote of a majority of the quorum.

38 d. The members of the board shall serve without compensation,
 39 but shall be reimbursed by the authority for their actual expenses.
 40 No officer or employee of the State shall be deemed to have forfeited
 41 or shall forfeit his office or employment or any benefits or emolu-
 42 ments by reason of his appointment to the board or his appoint-

43 ment as a consultant to the board or his performance of other
44 services for the authority.

45 e. ****[A copy of the minutes of every meeting of the board of
46 the authority shall be submitted to the Governor for his approv-
47 al.]**** **** *A true copy of the minutes of every meeting of the*
48 *board, certified by the secretary of the board, shall be delivered by*
49 *the secretary to the Governor. No action taken at a meeting shall*
50 *have effect until the 10th day following the delivery of the minutes*
51 *to the Governor, Saturdays, Sundays and public holidays excepted,*
52 *unless within that period the Governor has approved the minutes,*
53 *in which case the action shall become effective upon his approval.*
54 *If, within the 10-day period, the Governor returns the copy of the*
55 *minutes with his veto of any action taken by the board or any mem-*
56 *ber thereof at the meeting, that action shall be null and void and of*
57 *no effect. The Governor may approve all or part of the action taken*
58 *at such meeting prior to the expiration of the 10-day period.*****

59 ****f.**** On or before March 31 of every year, the authority
60 shall make an annual report of its activities in the preceding
61 calendar year to the Governor and the Legislature, which shall
62 include a statement of its investment policy and its underwriting
63 guidelines as well as a complete operating and financial statement
64 covering the authority's operations during the preceding year. The
65 board shall cause an audit to be made at least once in each calendar
66 year by certified public accountants. A copy of the audit shall be
67 filed with the State Treasurer and shall be available for public
68 inspection.

1 4. The authority shall have the power:

2 a. To adopt bylaws for the regulation of its affairs and the con-
3 duct of its business, which shall include a code of ethics with respect
4 to conflicts of interest;

5 b. To sue or be sued in the name of the authority, provided that
6 a judgment against the authority shall not create any direct liability
7 against its directors, employees, or its agents;

8 c. To indemnify its directors, employees and agents for any and
9 all claims, suits, costs of investigations, costs of defense, settle-
10 ments, or judgments against them on account of an act or omission
11 in the scope of a director's duties, or an employee's or agent's em-
12 ployment, but the authority shall refuse to indemnify if it deter-
13 mines that the act or failure to act was because of actual fraud,
14 willful misconduct, or actual malice;

15 d. To enter into any contracts as are necessary or proper to
16 carry out the provisions and purposes of this act;

17 e. To establish and maintain any reserve or insurance funds as
18 may be necessary to carry out the provisions of this act;

19 f. To sell, convey, lease, purchase, or otherwise acquire real or
20 personal property to carry out its functions under the act;

21 g. To borrow money, to issue bonds, notes, or other debt instru-
22 ments, which may be at a fixed rate of return or otherwise, com-
23 mensurate with the risk, and to provide for the rights of holders
24 thereof as provided in this act, which obligations shall be an eligible
25 investment pursuant to the provisions of section 144 of P. L. 1977,
26 c. 110 (C. 5:12-144) and section ~~28~~ 33 of P. L. 1984, c.
27 218 (C. 5:12-181) ~~[(now pending before the Leg-~~
27A ~~islature as *the Assembly Committee Substitute for* Assembly~~
27B ~~Bill No. 688 (OCR) of 1984)]~~.

28 h. Subject to any agreements with bondholders or noteholders,
29 to purchase bonds or notes of the authority out of any funds or
30 money of the authority available therefor and to hold, cancel, or
31 resell these bonds or notes;

32 i. To contract for and to accept any gifts, grants, loans of funds
33 or financial or other aid in any form from any person, including
34 an individual, authority, partnership, or otherwise, or from the
35 United States of America or any agency or instrumentality thereof,
36 or from the State or any agency, instrumentality, or political sub-
37 division thereof;

38 j. In connection with any application for financing or other as-
39 sistance under this act, to require and collect any reasonable fees
40 and charges, including commitment fees, as the authority may deem
41 necessary for its services;

42 k. Subject to any agreement with bondholders or noteholders,
43 to invest moneys of the authority not required for immediate use,
44 including proceeds from the sale of bonds and notes, in any obliga-
45 tions, securities, and other investments which the authority deems
46 prudent;

47 l. To appoint and employ any persons as may be necessary to
48 carry out the purposes of this act, and to determine their qualifica-
49 tions, terms of office, duties and compensation without regard to
50 the provisions of Title 11, Civil Service, of the Revised Statutes;

51 m. To extend credit, make long term or short term loans, loan
52 guarantees, or provide other financial assistance, including letters
53 of credit or guarantees of letters of credit;

54 n. To establish underwriting standards for eligibility for finan-
55 cial assistance, as provided in section 5 of this act;

56 o. To establish a financial and technical assistance investment
57 policy which delineates the proposed allocation of assistance by the
58 authority by type of business, which policy shall include a provi-
59 sion that no more than 50% of the total assistance made available

60 by the authority be made available to small business, and no more
 61 than 25% of the total assistance made available by the authority
 62 be made available to minorities and 25% of the total assistance
 63 made available by the authority be made available to women; ex-
 64 cept that notwithstanding the foregoing, and in addition to the
 65 funds otherwise allocated by the authority to minorities and women
 66 pursuant to this subsection, 100% of the funds made available
 67 pursuant to the provisions of section **[28]** **33** of P. L.
 68 ***1984***, c. ***218*** (C. ***5:12-181***), ***[(now pending be-
 69 fore the Legislature as *the Assembly Committee Substitute for***
 70 Assembly Bill No. 688 *(OCR)***),]*** shall be made available
 70A to minorities and women, 50% of which shall be made available to
 71 women, and 50% of which shall be made available to minorities and
 72 shall be invested in accordance with the geographic restrictions
 73 established by that act; provided, however, that any repayment of
 74 principal and interest due to the ***[South Jersey]*** ***Casino
 74A Reinvestment*** Development Authority with respect to obligations
 75 purchased or monies otherwise invested in the New Jersey *[[Enter-
 76 prise]]* Development Authority for Small Businesses, Minorities,
 77 and *[[Women]]* *Women's Enterprise** shall be the obligation of
 78 the New Jersey Development Authority for Small Businesses,
 78A Minorities, and *[[Women]]* *Women's Enterprise**;

79 p. To establish standards for providing a letter of credit or other
 80 guarantee for businesses which are unable to secure performance
 81 bonds;

82 q. To take any security which it deems necessary in connection
 83 with any direct loan or any guaranteed loan or other extension of
 84 credit;

85 r. To purchase any loan or assistance package which is con-
 86 sistent with the underwriting standards established by the authority
 87 from any person, including any financial institution or subsidiary
 88 thereof, and to contract with any person to originate these loans;

89 s. To participate with financial institutions and other investors
 90 in providing financial assistance to eligible businesses, under under-
 91 writing standards established by the authority, by means of direct
 92 loan participations or loan guarantees;

93 t. To make any rules and regulations necessary to effectuate
 94 the purposes of this act;

95 u. To take any other actions which are reasonable and necessary
 96 to effectuate the provisions of this act.

1 5. a. The authority may make long-term or short-term loans or
 2 other extensions of credit to eligible businesses under terms and
 3 conditions established by the authority. The authority shall estab-

4 lish uniform underwriting standards for loans and other extensions
 5 of credit, which shall include minimum equity requirements, and
 6 the use by the businesses of an approved accounting system. The
 7 authority may, either as a condition of granting the loan or at
 8 ***any*** time during the term of the loan, and in conjunction with
 9 the ****[division]**** ***Commissioner of the Department of
 10 Commerce and Economic Development****, require the use by the
 10A businesses of technical assistance approved by it;

11 b. The authority may cooperate with the New Jersey Economic
 12 Development Authority and the federal Small Business Adminis-
 13 tration in arranging assistance for eligible businesses or may
 14 participate with these agencies in providing loans or other exten-
 15 sions of credit to eligible businesses;

16 c. The authority may contract with any depository institution
 17 to maintain a portion of its funds on deposit for a specified period
 18 of time at a specified rate of interest as part of an arrangement
 19 whereby the depository institution agrees to make loans or other
 20 extensions of credit to eligible businesses, except that the com-
 21 pensating balance so deposited shall not be treated as a guarantee.

1 6. a. The authority shall establish requirements as may be neces-
 2 sary and practical for the use of minority or women's businesses
 3 on projects financed in whole or in part by the authority. The
 4 authority may waive bonding requirements in full or in part in
 5 order to facilitate the use of a minority or women's business if:

6 (1) The minority or women's business has been rejected by two
 7 surety companies authorized to do business in this State; and

8 (2) The minority or women's business meets the underwriting
 9 standards established pursuant to subsection p. of section 4 of
 10 this act.

11 The authority may require a cash deposit, increase the amount
 12 of retention, or limit or eliminate periodic payments. No waiver
 13 may be extended more than three times to any one contractor.

14 b. The authority may provide assistance to eligible businesses
 15 which are unable to secure bonding for projects other than those
 16 financed by the authority. Upon presentation of evidence in writ-
 17 ing that an eligible business has been rejected by two surety com-
 18 panies authorized to do business in this State, and if the applicant
 19 meets the underwriting standards established pursuant to subsec-
 20 tion p. of section 4 of this act, ***the authority may*** guarantee
 21 the performance of the applicant through a letter of credit or by
 22 other means.

1 7. The authority shall, by resolution of the board, have the power
 2 to incur indebtedness, borrow money and issue bonds to provide

3 long-term and short-term financing to eligible businesses pursuant
4 to the provisions of this act. Every issue of its bonds shall be
5 general obligations of the authority payable from any revenues of
6 the authority, subject only to agreements with the holders of par-
7 ticular bonds or notes pledging any particular revenues or moneys.
8 The bonds may be issued in one or more series and shall bear
9 dates, mature at times not exceeding 40 years, bear interest at
10 rates, be in a form, either coupon or registered, carry any con-
11 version or registration privileges, have any rank or priority, be
12 executed in a manner, be payable from a source in a medium of
13 payment at places inside or outside the State, and be subject to
14 any terms or redemption, with or without premium, as the resolu-
15 tion may provide. Bonds of the authority may be sold by the
16 authority at a public or private sale at prices as the authority may
17 determine.

1 8. Bonds and notes of the authority issued under the provisions
2 of this act shall not be in any way a debt or liability of the State
3 or of any political subdivision thereof or be or constitute a pledge
4 of the faith and credit of the State or of any political subdivision
5 thereof but all bonds and notes, unless funded or refunded by the
6 bonds or notes of the authority, shall be payable solely from reve-
7 nues or funds pledged or available for their payment as authorized
8 in this act. Each bond and note shall contain on its face a state-
9 ment to the effect that the authority is obligated to pay the prin-
10 cipal thereof or the interest thereon only from revenues or funds
11 of the agency and that neither the State nor any political sub-
12 division thereof is obligated to pay the principal or interest and
13 that neither the faith and credit nor the taxing power of the State
14 or any political subdivision thereof is pledged to the payment of
15 the principal of or the interest on the bonds or notes.

1 9. Any bond or other obligation issued by the authority pursuant
2 to this act shall be fully negotiable, within the meaning and for
3 the purposes of Title 12A of the New Jersey Statutes, and each
4 holder of a bond or other obligation or any coupon appurtenant
5 thereto, by accepting the bond or coupon shall be conclusively
6 deemed to have agreed that the bond, obligation or coupon is and
7 shall be fully negotiable within the meaning and for the purposes
8 of Title 12A.

1 10. In order to secure the payment of its bonds and in addition
2 to its other powers, the authority shall have power by resolution
3 to covenant and agree with the several holders of the bonds, as to:

4 a. The custody, security, use, expenditure or application of the
5 proceeds of the bonds;

6 b. Payment of the principal of or interest on the bonds, or any
7 other obligations, and the sources and methods thereof, the rank
8 or priority of the bonds or obligations as to any lien or security,
9 or the acceleration of the maturity of the bonds or obligations;

10 c. The use and disposition of any moneys of the authority, in-
11 cluding all revenues or other moneys derived or to be derived from
12 any of the authority's activities;

13 d. ****The**** pledging, setting aside, depositing or trusteeing all
14 or any part of the revenues or other moneys of the authority to
15 secure the payment of the principal or interest on the bonds or any
16 other obligations and the powers and duties of any trustees with
17 regard thereto;

18 e. The setting aside out of the revenues or other moneys of the
19 authority of reserves and sinking funds, and the source, custody,
20 security, regulation, application and disposition thereof;

21 f. The rents, fees or other charges for the use of any projects,
22 including any parts of any project previously constructed or ac-
23 quired and any part, replacement or improvement of any project
24 subsequently constructed or acquired, and the fixing, establishment,
25 collection and enforcement of the same;

26 g. Limitation on the issuance of additional bonds or any other
27 obligations or on the incurrence of indebtedness of the authority;

28 h. Vesting in trustees, fiscal or escrow agents within or without
29 the State property, rights, powers and duties in trust as the au-
30 thority may determine and limiting the rights, duties and powers
31 of those trustees or agents;

32 i. Payment of costs or expenses incident to the enforcement of
33 the bonds or of the provisions of the resolution or of any covenant
34 or contract with the holders of the bonds;

35 j. The procedure, if any, by which the terms of any covenant or
36 contract with, or duty to, the holders of bonds may be amended or
37 abrogated, the amount of bonds the holders of which must consent
38 thereto, and the manner in which that consent may be given or
39 evidenced; or

40 k. Any other matter or course of conduct which, by recital in
41 the resolution, is declared to further secure the payment of the
42 principal of or interest on the bonds.

1 ****[11.]**** *****12.***** All provisions of the resolution and
2 all covenants and agreements shall constitute valid and legally-
3 binding contracts between the authority and the several holders of
4 the bonds, regardless of the time of issuance of the bonds, and shall
5 be enforceable by holders by appropriate action, suit or proceeding
6 in any court of competent jurisdiction or by proceeding in lieu of
7 prerogative writ.

1 ****[12.]**** ****13.**** No member of the board, officer, em-
 2 ployee or agent of the authority shall have an interest, either
 3 directly or indirectly, in any project, transaction or business
 4 activity in which the authority is a party.

1 ****[13.]**** ****14.**** All expenses incurred in carrying out
 2 the provisions of this act shall be payable solely from revenues or
 3 funds provided or to be provided under the provisions of this act
 4 and nothing in this act shall be construed to authorize the authority
 5 to incur any indebtedness or liability on behalf of or payable by the
 6 State or any political subdivision thereof.

1 ****[14.]**** ****15.**** Notwithstanding the provisions of any
 2 other law to the contrary, the State, its political subdivisions,
 3 agencies and instrumentalities, their officers, boards, commissioners,
 4 departments, any trust company, State or federally chartered bank,
 5 savings bank, savings and loan association, investment companies,
 6 insurance companies, all executors, administrators, guardians and
 7 fiduciaries, and all other persons whoever who now are or may here-
 8 after be authorized to invest in bonds or other obligations of the
 9 State, may legally invest funds belonging to them or within their
 10 control in bonds or notes issued by the authority pursuant to the
 11 provisions of this act. These bonds and notes are securities which
 12 may properly and legally be deposited with and received by any
 13 State or municipal officer or agency of the State for any purpose for
 14 which the deposit of bonds or other obligations of the State is now
 15 or may hereafter be authorized by law.

1 ****[15.]**** ****16.**** There is appropriated ***from the
 2 *General Fund**** \$90,000.00 to effectuate the purposes of this act,
 3 which shall be repaid by the authority to the State Treasurer from
 4 the proceeds of its activities in five annual installments, beginning
 5 with the ****[second]**** *****third***** year following enactment.

1 ****[16.]**** ****17.**** This act shall take effect immediately.

ASSEMBLY, No. 1828

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1984

By Assemblymen BRYANT, RILEY, WATSON and CHARLES

AN ACT establishing the New Jersey Business Development Corporation for Women and Minorities.

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

1 1. The Legislature finds and declares:

2 a. That the historical legacy of disregard, discrimination and
3 institutional bias has produced economic inequities for the minori-
4 ties and women among the population;

5 b. That the public sector at both the national and State levels
6 has recognized the appropriateness of the role of encouraging small
7 business generally and women and minorities in particular;

8 c. That small entrepreneurship plays a major role in the health
9 and dynamism of the overall economy;

10 d. That the minority and female populations of New Jersey con-
11 trol a disproportionately small fraction of the productive resources
12 of the State;

13 e. That the continuing disparity of capital accumulation in the
14 South Jersey region has hampered the economic development of
15 the minority community and the economic independence of women
16 and limited opportunities for enterprise development by individuals
17 from either population;

18 f. That the generation of minority and women-owned enterprise
19 through expanded ownership of productive resources is essential
20 to the goal of bringing women and minorities into the mainstream
21 of the overall economy;

22 g. That economic development within minority communities and
 23 among women increases the prosperity of the State as a whole by
 24 reducing the State burden of unemployment, welfare and other
 25 supportive social services;

26 h. That in order to promote these goals it is necessary to estab-
 27 lish a permanent government entity, a corporation, with a long-
 28 term mandate for the implementation, coordination and monitoring
 29 of assistance to minority and women's business;

30 i. That the corporation shall focus efforts clearly on areas of
 31 greatest need and shall have a commitment toward quality pro-
 32 gramming and studied reliance on the private sectors;

33 j. That the corporation shall be responsible, both directly and
 34 as an intermediary, for providing financing and a wide range of
 35 intensive and ongoing business expertise;

36 k. That the corporation shall fulfill its mandate in accordance
 37 with a well-conceived business strategy and underwriting standards
 38 that approximate those utilized by traditional lenders;

39 l. That the corporation shall function to fulfill its public mandate
 40 so that, to the extent reasonable, its revenues exceed its expendi-
 41 tures; and

42 m. That the corporation's ultimate measures of success shall be
 43 the profitability of the enterprises it assists and a reasonable return
 44 to private investors.

1 2. For the purpose of this act:

2 a. "Board" means the Board of Directors of the New Jersey
 3 Business Development Corporation for Women and Minorities.

4 b. "Corporation" means the New Jersey Business Develop-
 5 ment Corporation for Women and Minorities established by this
 6 act.

7 c. "Eligible business" means any business in which there is sub-
 8 stantial minority participation;

9 d. "Fund" means the Venture Capital Fund established pur-
 10 suant to section 8 of this act.

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

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

14 (2) Hispanic, which is a person of Spanish or Portugese culture,
 15 with origins in Mexico, South or Central America, or the Caribbean
 16 islands, regardless of race; or

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

20 (4) American Indian or Alaskan Native, which is a person having
21 origins in any of the original peoples of North America; or

22 (5) A woman, regardless of race.

23 f. "Substantial minority participation" means that minorities
24 hold at least 30% of the beneficial ownership of a business and that
25 the majority of the business management are members of a minority
26 group.

1 3. There is established the New Jersey Business Development
2 Corporation for Minorities and Women, which shall assist in pro-
3 viding financing and other services to eligible businesses in accor-
4 dance with the investment objectives established by the provisions
5 of this act. The board of directors of the corporation shall consist
6 of nine members, appointed by the Governor with the advice and
7 consent of the Senate. The Executive Director of the New Jersey
8 Economic Development Authority shall be a member ex officio. At
9 least one member of the board shall be an investment banker, one
10 member shall have experience in small business finance, and one
11 member shall have experience in market analysis. At least five
12 members of the board shall be minorities, and two members shall
13 be residents of Atlantic City. Initially, the Governor shall appoint
14 two members for a term of one year, three members for a term of
15 two years, and three members for a term of three years. There-
16 after, all members appointed by the Governor shall serve for three
17 year terms. Each member shall hold office for the term of his
18 appointment and until his successor has been appointed and quali-
19 fied. Any vacancy in the membership occurring other than by ex-
20 piration of term shall be filled in the same manner as the original
21 appointment but for the unexpired term only.

22 b. The members of the board shall elect a chairman and a vice
23 chairman. The corporation shall recommend at least three candi-
24 dates for the position of executive director to the Governor, who
25 shall appoint one of the candidates to the position, with the advice
26 and consent of the Senate. A majority of the members of the board
27 shall constitute a quorum. Any action may be taken by the affirma-
28 tive vote of a majority of the quorum.

29 c. The members of the board shall serve without compensation,
30 but shall be reimbursed by the corporation for their actual ex-
31 penses. No officer or employee of the State shall be deemed to have
32 forfeited or shall forfeit his office or employment or any benefits
33 or emoluments by reason of his appointment to the board or his
34 appointment as a consultant to the board or his performance of
35 other services for the corporation.

36 d. A copy of the minutes of every meeting of the board of the
37 corporation shall be delivered to the Governor. On or before March
33 31 of every year, the corporation shall make an annual report of
39 its activities in the preceding calendar year to the Governor and
40 the Legislature, which shall include a statement of its investment
41 policy and its underwriting guidelines as well as a complete oper-
42 ating and financial statement covering the corporation's operations
43 during the preceding year. The board shall cause an audit to be
44 made at least once in each calendar year by certified public ac-
45 countants. A copy of the audit shall be filed with the State Trea-
46 surer and shall be available for public inspection.

1 4. The corporation shall have the power:

2 a. To adopt bylaws for the regulation of its affairs and the con-
3 duct of its business, which shall include a code of ethics with
4 respect to conflicts of interest;

5 b. To sue or be sued in the name of the corporation, provided
6 that a judgment against the corporation shall not create any direct
7 liability against its directors, employees, or its agents;

8 c. To indemnify its directors, employees and agents for any and
9 all claims, suits, costs of investigations, costs of defense, settle-
10 ments, or judgements against them on account of an act or omission
11 in the scope of a director's duties, or an employee's or agent's em-
12 ployment, but the corporation shall refuse to indemnify if it deter-
13 mines that the act or failure to act was because of actual fraud,
14 willful misconduct, or actual malice;

15 d. To enter into any contracts as are necessary or proper to
16 carry out the provisions and purposes of this act;

17 e. To establish and maintain any reserve or insurance funds as
18 may be necessary to carry out the provisions of this act;

19 f. To sell, convey, lease, purchase, or otherwise acquire real or
20 personal property to carry out its functions under the act;

21 g. To borrow money, to issue bonds, notes, or other debt instru-
22 ments, which may be at a fixed rate of return or otherwise, com-
23 mensurate with the risk, and to provide for the rights of holders
24 thereof as provided in this act, which obligations shall be eligible
25 investments pursuant to the provisions of section 144 of P. L. 1977,
26 c. 110 (C. 5:12-144);

27 h. Subject to any agreements with bondholders or noteholders,
28 to purchase bonds or notes of the corporation out of any funds or
29 money of the corporation available therefor and to hold, cancel, or
30 resell these bonds or notes;

31 i. To contract for and to accept any gifts, grants, loans of funds
32 or financial or other aid in any form from any person, including

33 an individual, corporation, partnership, or otherwise, or from the
34 United States of America or any agency or instrumentality thereof,
35 or from the State or any agency, instrumentality, or political sub-
36 division thereof;

37 j. In connection with any application for financing other assis-
38 tance under this act, to require and collect any reasonable fees and
39 charges, including commitment fees, as the corporation may deem
40 necessary for its services in order to assure that corporation
41 revenues exceed expenditures;

42 k. Subject to any agreement with bondholders or noteholders, to
43 invest moneys of the corporation not required for immediate use,
44 including proceeds from the sale of bonds and notes, in any obliga-
45 tions, securities, and other investments which the corporation
46 deems prudent;

47 l. To appoint and employ any persons as may be necessary to
48 carry out the purposes of this act, and to determine their qualifica-
49 tions, terms of office, duties and compensation without regard to the
50 provisions of Title 11, Civil Service, of the Revised Statutes;

51 m. To extend credit, make long term or short term loans, loan
52 guarantees, or provide other financial assistance, including letters
53 of credit or guarantees of letters of credit;

54 n. To establish underwriting standards for eligibility for finan-
55 cial assistance, as provided in section 5 of this act;

56 o. To establish a financial and technical assistance investment
57 policy which delineates the proposed allocation of assistance by the
58 corporation by type of business, which policy shall include a pro-
59 vision that no more than 50% of the total assistance made available
60 by the corporation be made available to women, and no more than
61 50% of the total assistance made available by the corporation be
62 made available to other minorities;

63 p. To establish standards for providing a letter of credit or other
64 guarantee for eligible businesses which are unable to secure per-
65 formance bonds;

66 q. To take any security which it deems necessary in connection
67 with any direct loan or any guaranteed loan or other extension
68 of credit;

69 r. To purchase any eligible loan or assistance package which is
70 consistent with the underwriting standards established by the
71 corporation from any person, including any financial institution or
72 subsidiary thereof, and to contract with any person to originate
73 these loans;

74 s. To participate with financial institutions and other investors
75 in providing financial assistance to eligible businesses, under under-

76 writing standards established by the corporation, by means of
77 direct loan participations or loan guarantees;

78 t. To compile lists of qualified professionals in specific areas of
79 expertise to be disseminated to eligible businesses or to be used in
80 making referrals;

81 u. To establish, in cooperation with institutions of higher educa-
82 tion, an internship program for candidates for graduate degrees in
83 business administration and related fields for the purpose of pro-
84 viding assistance to the corporation and to minority businesses
85 which are eligible to receive assistance under this act;

86 v. To provide, consistent with the provisions of this act, tech-
87 nical assistance to eligible businesses, as provided in section 6 of
88 this act;

89 w. Receive at least 10% of the proceeds of bonds issued by the
90 South Jersey Economic Development Authority established pur-
91 suant to P. L. . . . , c. . . . (C.) (now pending before
92 the Legislature as Assembly Bill No. 688 of 1984).

93 x. To make any rules and regulations necessary to effectuate
94 the purposes of this act;

95 y. To take any other actions which are reasonable and necessary
96 to effectuate the provisions of this act.

1 5. a. The corporation may make long-term or short-term loans
2 or other extensions of credit to eligible businesses under terms and
3 conditions established by the corporation; and consistent with the
4 geographical requirements for investments pursuant to the provi-
5 sions of P. L. 66, c. . . . (C.) (now pending before the
6 Legislature as Assembly Bill No. 688 of 1984). The corporation
7 shall establish uniform underwriting standards for loans and other
8 extensions of credit, which shall include minimum equity require-
9 ments, and the use by the businesses of an approved accounting
10 system. The corporation may, either as a condition of granting the
11 loan or at any time during the term of the loan, require the use by
12 the businesses of other technical assistance provided by it or ap-
13 proved by it;

14 b. The corporation may cooperate with the New Jersey Economic
15 Development Authority and the federal Small Business Adminis-
16 tration in arranging assistance for eligible businesses or may par-
17 ticipate with the authority and the administration in providing
18 loans or other extensions of credit to eligible businesses;

19 c. The corporation may contract with a depository institution to
20 maintain a portion of its funds on deposit for a specified period of
21 time at a specified rate of interest as part of an arrangement
22 whereby the depository institution agrees to make loans or other

23 extensions of credit to eligible businesses, except that the compen-
24 sating balance so deposited shall not be treated as a guarantee.

1 6. Any eligible business may apply to the corporation for tech-
2 nical assistance pursuant to the provisions of this act. If the ap-
3 plicant meets the standards for assistance established by the cor-
4 poration pursuant to this act, the corporation may:

5 a. Provide assistance in researching markets or in market
6 analysis;

7 b. Provide assistance in advertising and marketing;

8 c. Provide assistance in selecting sales or other distribution
9 channels;

10 d. Provide information and assistance with respect to bidding
11 on government contracts;

12 e. Provide legal assistance;

13 f. Provide financial analysis and accounting assistance;

14 g. Assist in obtaining appropriate insurance, including benefits
15 packages for employees;

16 h. Assist in arranging contracts with franchisers;

17 i. Assist in arranging or guaranteeing commercial bank loans,
18 including bridge loans and cash flow loans;

19 j. Assist in negotiating license agreements;

20 k. Assist in procuring bonding or substitutes therefor;

21 l. Make referrals to private consultants and other providers of
22 commercial services, according to the specific needs of an eligible
23 business;

24 m. Provide any other services which it deems necessary to ef-
25 fectuate the purposes of this act.

26 The corporation may charge any fees to applicants as are reason-
27 able and necessary for the provision of technical assistance. The
28 corporation may contract with any person to provide technical
29 assistance to applicants on a discounted fee basis or otherwise, or
30 it may provide these services directly. The cost of providing the
31 services may be included in any financing package arranged for or
32 purchased by the corporation.

1 7. The corporation shall conduct advertising and promotional
2 campaigns to increase awareness of the services provided by the
3 corporation to eligible businesses and shall prepare, compile, and
4 disseminate research and other information useful to eligible busi-
5 nesses. The corporation shall sponsor seminars and programs di-
6 rected toward small and medium-sized eligible businesses to pro-
7 vide information which is useful to persons seeking practical
8 information on business management, marketing, and other matters,
9 and shall compile lists of qualified professionals in specific areas

10 of expertise, which shall be disseminated to eligible businesses or
11 used by the corporation in making referrals.

1 8. The corporation may establish a Venture Capital Fund by
2 accepting monies from institutional and private investors for the
3 purpose of providing equity capital to eligible businesses. These
4 investments shall be made under an equity investment policy estab-
5 lished by the board. The corporation may charge a service fee to
6 investors from any profit accrued by the fund. No profit or loss
7 from investments in the fund shall be payable or chargeable to any
8 bondholder or to the corporation other than the service fees charged
9 pursuant to this section.

1 9. a. The corporation shall establish requirements as may be
2 necessary and practical for the use of contractors who are eligible
3 business or projects financed in whole or in part by the corpora-
4 tion. The corporation may waive bonding requirements in full or
5 in part in order to facilitate the use of eligible businesses if:

6 (1) The eligible business has been rejected by two surety com-
7 panies authorized to do business in this State; and

8 (2) The eligible business meets the underwriting standards
9 established pursuant to subsection p. of section 4 of this act.

10 The corporation may require a cash deposit, increase the amount
11 of retention, or limit or eliminate periodic payments. No waiver may
12 be extended more than three times to any one contractor.

13 b. The corporation may provide assistance to eligible businesses
14 which are unable to secure bonding for projects other than those
15 financed by the corporation upon presentation of evidence in writing
16 that an eligible business has been rejected by two surety companies
17 authorized to do business in this State, and if the applicant meets
18 the underwriting standards established pursuant to subsection p.
19 of section 4 of this act, guarantee the performance of the applicant
20 through a letter of credit or by other means.

1 10. The corporation shall, by resolution of the board, have the
2 power to incur indebtedness, borrow money and issue bonds to
3 provide long-term and short-term financing export trade and pro-
4 vide services to minority business pursuant to the provisions of
5 this act. Every issue of its bonds shall be general obligations of
6 the corporation payable from any revenues of the corporation, sub-
7 ject only to agreements with the holders of particular bonds or
8 notes pledging any particular revenues or moneys. The bonds may
9 be issued in one or more series and shall bear dates, mature at times
10 not exceeding 40 years, bear interest at rates, be in a form, either
11 coupon or registered, carry any conversion or registration privi-
12 leges, have any rank or priority, be executed in a manner, be pay-

13 able from a source in a medium of payment at places inside or out-
14 side the State, and be subject to any terms of redemption, with or
15 without premium, as the resolution may provide. Bonds of the
16 corporation may be sold by the corporation at a public or private
17 sale at prices as the corporation may determine.

1 11. Bonds and notes of the corporation issued under the provi-
2 sions of this act shall not be in any way a debt or liability of the
3 State or of any political subdivision thereof or be or constitute a
4 pledge of the faith and credit of the State or of any political sub-
5 division thereof but all bonds and notes, unless funded or refunded
6 by the bonds or notes of the authority, shall be payable solely from
7 revenues or funds pledged or available for their payment as au-
8 thorized in this act. Each bond and note shall contain on its face a
9 statement to the effect that the corporation is obligated to pay the
10 principal thereof or the interest thereon only from revenues or
11 funds of the agency and that neither the State nor any political
12 subdivision thereof is obligated to pay the principal or interest and
13 that neither the faith and credit nor the taxing power of the State
15 or any political subdivision thereof is pledged to the payment of
16 the principal of or the interest on the bonds or notes.

1 12. Any bond or other obligation issued by the corporation pur-
2 suant to this act shall be fully negotiable, within the meaning and
3 for the purposes of Title 12A of the New Jersey Statutes, and each
4 holder of a bond or other obligation or any coupon appurtenant
5 thereto, by accepting the bond or coupon shall be conclusively
6 deemed to have agreed that the bond, obligation or coupon is and
7 shall be fully negotiable within the meaning and for the purposes
8 of Title 12A.

1 13. In order to secure the payment of its bonds and in addition
2 to its other powers, the corporation shall have power by resolution
3 to covenant and agree with the several holders of those bonds, as to:
4 a. The custody, security, use, expenditure or application of the
5 proceeds of the bonds;
6 b. Payment of the principal of or interest on the bonds, or any
7 other obligations, and the sources and methods thereof, the rank
8 or priority of those bonds or obligations as to any lien or security,
9 or the acceleration of the maturity of those bonds or obligations;
10 c. The use and disposition of any moneys of the corporation,
11 including all revenues or other moneys derived or to be derived
12 from any of the corporation's activities;
13 d. Pledging, setting aside, depositing or trusteeing all or any
14 part of the revenues or other moneys of the corporation to secure
15 the payment of the principal or interest on the bonds or any other

16 obligations and the powers and duties of any trustees with regard
17 thereto;

18 e. The setting aside out of the revenues or other moneys of the
19 corporation of reserves and sinking funds, and the source, custody,
20 security, regulation, application and disposition thereof;

21 f. The rents, fees or other charges for the use of any projects,
22 including any parts of a project previously constructed or acquired
23 and any parts, replacements or improvements of a project there-
24 after constructed or acquired, and the fixing, establishment, collec-
25 tion and enforcement of the same;

26 g. Limitation on the issuance of additional bonds or any other
27 obligations or on the incurrence of indebtedness of the corporation;

28 h. Vesting in a trustee or fiscal or escrow agent within or without
29 the State property, rights, powers and duties in trust as the cor-
30 poration may determine and limiting the rights, duties and powers
31 of the trustee or agent;

32 i. Payment of costs or expenses incident to the enforcement of
33 the bonds or of the provisions of the resolution or of any covenant
34 or contract with the holders of the bonds;

35 j. The procedure, if any, by which the terms of any covenant or
36 contract with, or duty to, the holders of bonds may be amended or
37 abrogated, the amount of bonds the holders of which must consent
38 thereto, and the manner in which that consent may be given or
39 evidenced; or

40 k. Any other matter or course of conduct which, by recital in the
41 resolution, is declared to further secure the payment of the princi-
42 pal of or interest on the bonds.

1 14. All provisions of the resolution and all covenants and agree-
2 ments shall constitute valid and legally-binding contracts between
3 the corporation and the several holders of the bonds, regardless of
4 the time of issuance of the bonds, and shall be enforceable by
5 holders by appropriate action, suit or proceeding in any court of
6 competent jurisdiction, or by proceeding in lieu of prerogative writ.

1 15. No member of the board, officer, employee or agent of the
2 corporation shall have an interest, either directly or indirectly, in
3 any project, transaction or business activity in which the corpora-
4 tion is a party.

1 16. All expenses incurring in carrying out the provisions of this
2 act shall be payable solely from revenues or funds provided or to
3 be provided under the provisions of this act and nothing in the act
4 shall be construed to authorize the corporation to incur any in-
5 debtedness or liability on behalf of or payable by the State or any
6 political subdivision thereof.

1 17. Notwithstanding the provisions of any other law to the con-
2 trary, the State, its political subdivisions, agencies and instrumen-
3 talities, their officers, boards, commissioners, departments, any
4 trust company, State or federally chartered bank, savings bank,
5 savings and loan association, investment companies, insurance
6 company, all executors, administrators, guardians and fiduciaries,
7 and all other persons who now are or may hereafter be authorized
8 to invest in bonds or other obligations of the State, may legally
9 invest any funds belonging to them or within their control in any
10 bonds or notes issued by the corporation pursuant to the provisions
11 of this act; and these bonds and notes are hereby made securities
12 which may properly and legally be deposited with and received by
13 any State or municipal officers or agency of the State for any pur-
14 pose for which the deposit of bonds or other obligations of the
15 State is now or may hereafter be authorized by law.

1 18. There is appropriated \$500,000.00 to effectuate the purposes
2 of this act, which shall be repaid by the corporation to the State
3 Treasurer from the proceeds of its activities in five annual install-
4 ments, beginning in the second year following enactment.

1 19. This act shall take effect immediately.

STATEMENT

This bill establishes the New Jersey Business Development Corporation for Women and Minorities. This corporation would provide financial and technical assistance to minority businesses, which are businesses in which the substantial beneficial interest is owned by blacks, Hispanics, Asian Americans, native Americans, or women.

The corporation would be governed by a nine-member board of directors, one member of which would be an investment banker, one member of which would have a background in small business finance, and one member of which would have experience in market analysis. Five members of the board must be minorities and two members must be from Atlantic City.

FINANCIAL ASSISTANCE

One of the principal purposes of the corporation is to provide or assist in providing financing for minority businesses. The board would establish underwriting standards for the making of loans and extensions of credit and a general investment policy which would establish standards for the allocation of credit; there is a statutory requirement that no more than 50% of the financial assis-

tance made available by the corporation go to women, and no more than 50% to other minorities.

The corporation could make long-term or short-term loans or other extensions of credit such as letters of credit, or make loan guarantees. It could establish minimum equity requirements for eligibility, and could require the use by the business of an approved accounting system. The corporation may, as a condition of granting the loan or at any time during the term of the loan, require the business to make use of technical assistance provided by the corporation. Loans would be monitored by the corporation.

TECHNICAL ASSISTANCE

The corporation would have the capability of providing minority businesses with access to a range of services. This will help to ensure the soundness of its financial investments. Many small businesses have failed because they lack the sophistication and expertise to allocate their resources wisely. The corporation would provide small businesses with assistance in market analysis, advertising and marketing, selecting sales or other distribution channels, obtaining insurance, including health benefits for employees, arranging contracts with franchisers, and in financial analysis and establishing proper accounting procedures.

The corporation could, if it deemed it to be practical, provide assistance directly, arrange for assistance to be provided by outside consultants, or arrange a discounted package deal with a provider of services to provide services to the corporation's clients at a reduced rate. The bill also provides for the establishment of an internship program using candidates for graduate degrees in business administration and related fields to provide various types of assistance to the corporation's clients.

The corporation could also sponsor seminars and informational programs and disseminate information on a regular basis which would be useful to owners of small businesses.

PURPOSE OF BILL

The purpose of the legislation is to provide a stable source of financing for minority businesses while at the same time providing technical assistance to help ensure the success of the business.

ASSEMBLY INDEPENDENT AUTHORITIES AND
COMMISSIONS COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1828

STATE OF NEW JERSEY

DATED: MAY 17, 1984

This bill establishes the New Jersey Enterprise Development Authority for Small Businesses, Minorities, and Women. The principal purpose of this authority is to provide or assist in providing financing and other services to small businesses and businesses owned and managed by minorities and women.

The authority is governed by a Board of Directors consisting of 20 members. The Governor appoints 13 voting members with the advice and consent of the Senate and one nonvoting member who represents the casino industry. The President of the Senate and the Speaker of the General Assembly nominate three persons each to the Governor, and the Governor appoints two of each set of three nominees. The Executive Director of the New Jersey Development Authority and the Director of the Division of Development for Small Businesses and Women and Minorities are ex officio voting members.

The board is to have at least one investment banker, two persons experienced in small business finance, and one person experienced in market analysis. At least three members are to be minorities and three women; two members are to be residents of Atlantic City.

The authority is empowered to extend credit, make long-term or short-term loans, make loan guarantees, provide letters of credit, purchase loan or assistance packages, become involved in loan participations with banks and other investors, make arrangements with banks to establish compensating balances in return for banks making loans to eligible businesses. The authority is to establish uniform underwriting standards for loans and other extensions of credit and is permitted, as a condition of granting a loan, to require the use of technical assistance.

The authority may establish a financial and technical assistance investment policy delineating the proposed allocation of assistance by type of business. Such a policy shall limit the amount of assistance going to small businesses to no more than 50% of the amount available, the amount going to minority businesses to 25% of the amount available, and the amount going to women's businesses to 25% of the amount available.

The authority is to be the recipient of \$1,200,000.00 annually for 20 years from the proceeds of the sale of South Jersey Development Authority bonds. Half of this money is to be made available to minorities and half to women; the money is to be invested in accordance with the geographic restrictions placed on casino investments under P. L. . . . , c. . . . (now pending before the Legislature as Assembly Committee Substitute for Assembly Bill No. 638).

Besides the \$1,200,000.00 annually, other sources of revenues to the authority include the proceeds of bonds which it is authorized to issue and sell; gifts, grants, loans, and other financial aid from the federal, State, and local governments and from individuals, authorities, partnerships, and other entities; application and commitment fees; investment income derived when moneys are not immediately required for use.

One of the mandates of the authority is to establish requirements for the use of minority or women's businesses on construction projects financed by the authority. The authority is also permitted to waive bonding requirements, under certain conditions, in order to facilitate the use of a minority or women's business, and to provide assistance to eligible businesses which are unable to secure bonding for projects other than those financed by the authority.

An appropriation of \$90,000.00 is made to the authority which amount is to be repaid in five annual installments.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1828

[OFFICIAL COPY REPRINT]

with Senate committee amendments
with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

PURPOSE:

This bill establishes the New Jersey Development Authority for Small Businesses, Minorities, and Women's Enterprise. The principal purpose of this authority is to provide financial and technical assistance and other services to small businesses and businesses owned and managed by minorities and women.

COMPOSITION:

The authority is governed by a 17-member board of directors, as follows:

- 13 members appointed by the Governor with the advice and consent of the Senate; of which two shall be chosen from three nominees submitted by the Speaker of the General Assembly and two from three nominees submitted by the President of the Senate;
- The Executive Director of the New Jersey Economic Development Authority, the Director of the Division of Development for Small Businesses and Women and Minority Businesses, and the State Treasurer as *ex officio* members; and
- One nonvoting member, appointed by the Governor, who shall represent the casino industry.

The board's membership is to include at least one investment banker, two persons experienced in small business finance, and one person experienced in market analysis. At least three members are to be minorities and three women; two members are to be residents of Atlantic City. The Governor shall appoint an Executive Director of the authority from a list of candidates submitted by the authority board.

POWERS AND DUTIES:

The authority is empowered to extend credit, make long-term or short-term loans, make loan guarantees, provide letters of credit, purchase loan or assistance packages, become involved in loan participations with banks and other investors, make arrangements with banks

to establish compensating balances in return for banks making loans to eligible businesses. The authority is to establish uniform underwriting standards for loans and other extensions of credit and is permitted, as a condition of granting a loan, to require the use of technical assistance.

The authority is empowered to incur indebtedness, borrow money and issue its own bonds; however, its bonds shall be authority obligations only, payable from its own revenues, and shall not constitute a debt of the State or any political subdivision.

The authority may establish a financial and technical assistance investment policy delineating the proposed allocation of assistance by type of business. Such a policy shall limit the amount of assistance going to small businesses to no more than 50% of the amount available, the amount going to minority businesses to 25% of the amount available, and the amount going to women's businesses to 25% of the amount available.

FUNDING AND FISCAL IMPACT:

Pursuant to P. L. 1984, c. 218, the authority's obligations are to be purchased by the Casino Reinvestment Development Authority in the amount of \$1,200,000.00 annually for 25 years. Half of these proceeds are to be made available to minorities and half to women; the proceeds are to be invested in accordance with the geographic restrictions placed on casino investments under P. L. 1984, c. 218.

Besides the \$1,200,000.00 annually, other sources of revenue to the authority include any additional proceeds of bonds which it is authorized to issue and sell; the repayment of outstanding loans or other debts; gifts, grants, loans, and other financial aid from the federal, State, and local governments and from individuals, authorities, partnerships, and other entities; application and commitment fees; and investment income derived when moneys are not immediately required for use.

A General Fund appropriation of \$90,000.00 is made to the authority which is to be repaid in five annual installments.

COMMITTEE AMENDMENTS:

The committee amended the bill to make technical corrections in titles and punctuation and to specify that the \$90,000.00 appropriation to the authority shall come from the General Fund.

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

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1828

[OFFICIAL COPY REPRINT]

with Senate committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 29, 1984

The Assembly Independent Authorities and Commissions Committee
statement adequately explains the bill's provisions and purposes.

The committee amended the bill to make technical corrections.

Assembly Amendments

to

Assembly Bill No. 1828 (Acs)
~~(Typed copy)~~

ADOPTED

JUN 18 1984

Amend:

Page	Sec.	Line	
1	Title	1	Omit "Enterprise"
1	Title	2	Omit "Women" insert "Women's ^{Enterprise} "
3 2	2	2	Omit "Enterprise"
3	2	3	After "Authority" insert "for Small Businesses, ^{and "Women's Enterprise"} Minority and Women's Enterprise"
4 3	3	12	Omit "and the director" insert "the Director of the Division of Development for Small Businesses and Women and Minority Businesses, and the State Treasurer"
8 4	4	²⁵⁻²⁶ 21	Omit "Enterprise"
8 4	4	227	Omit "Women" insert "Women's Enterprise"
8	4	23 ¹⁸	Omit "Women" insert "Women's Enterprise"

STATEMENT

These amendments add the State Treasurer to the Authority's board and change the name of the authority to the New Jersey Development Authority for Small Businesses, Minorities, and Women's Enterprise.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 15, 1985

ASSEMBLY BILL NO. 1828 ACS (2nd OCR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1828 ACS (2nd OCR) with my recommendations for reconsideration.

Assembly Bill No. 1828 ACS (2nd OCR) creates a New Jersey Development Authority for Small, Minority and Women's Business Enterprises (Authority). The function of the Authority is to provide financial and technical assistance to these enterprises. A 17 member Board of Directors will administer the Authority.

The Authority will fund its operation from many sources. Assembly Bill No. 1828 ACS (2nd OCR) appropriates \$90,000.00 for the start-up of the Authority. However, the Authority must repay the appropriation in equal installments beginning in the second year following the enactment of Assembly Bill No. 1828 ACS (2nd OCR). The Casino Reinvestment Development Authority, for the next 25 years, must annually set aside \$1.2 million of the proceeds received from the sale of its bonds for the purpose of investing in obligations of the Authority. The Authority will also fund its operation from a variety of income generating vehicles including the proceeds from bonds, the repayment of loans made to eligible businesses, application and other fees from eligible businesses, gifts, grants, loans and other financial aid, and investment income from moneys that are not needed for immediate use.

I support the concept of creating a Development Authority to provide financial and technical assistance to small, minority and women's business enterprises. The Authority will assist these entrepreneurs to establish themselves in the mainstream of our economy. The Authority will complement other financial and technical assistance mechanisms currently existing within the Executive branch such as the Office of Small Business Assistance, the Office of Minority Business Enterprise, the Interagency Procurement Committee, the Advisory Council on Minority Business Assistance, the Local Development Financing Fund, the New Jersey Economic Development Authority's direct loan and loan guarantee programs and the Community Development Block Grant program.

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Despite my support for the concept, I must return Assembly Bill No. 1828 ACS (2nd OCR) and recommend that it be amended as follows:

The references within the bill to Assembly Bill No. 1826 ACS (OCR), which created a Division of Development for Small Businesses and Women and Minority Businesses, must be deleted. I vetoed Assembly Bill No. 1826 ACS (OCR) on February 4, 1985.

I recommend that the number of members on the Board of Directors be reduced from 17 to ten, and that its membership be reconstituted. I am concerned that a 17 member Board will be cumbersome and will impede the work of the Authority.

The bill currently provides for a Board of Directors consisting of 3 ex-officio members, a non-voting member representing the casino industry and 13 public members. The ex-officio members are the Director of the New Jersey Economic Development Authority, the Director of the Division of Development for Small Businesses and Women and Minority Businesses, and the State Treasurer. The non-voting member will be appointed by the Governor. The 13 voting public members will be appointed by the Governor with the advice and consent of the Senate. Two of the voting public members will be selected by the Governor from three nominees submitted by the Speaker of the General Assembly. Two of the voting public members will be selected by the Governor from three nominees submitted by the President of the Senate. Three voting public members shall be minorities and three shall be women. One voting public member must be an investment banker, two must have experience in small business finance and one must have experience in market analysis. The members of the Board will select the Chairman and Vice Chairman.

I am recommending a 10 member Board of Directors which will be less cumbersome and will enhance the efficiency of the Authority. It will consist of three ex-officio members and seven public members.

The ex-officio members will be the Director of the New Jersey Economic Development Authority, the State Treasurer and the Commissioner of the Department of Commerce and Economic Development. I have removed the Director of the Division of Development for Small Businesses and Women and Minority Businesses because the position does not exist. The position was created by Assembly Bill No. 1826 ACS (OCR). As indicated, I vetoed the bill on February 4, 1985. I

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have placed the Commissioner of the Department of Commerce and Economic Development on the Board because the Department will be impacted by many of the Authority's programs. Additionally, the Commissioner's expertise will be an asset to the Authority.

I also recommend that the ex-officio members be allowed to appoint designees to serve and vote in their absence. The appointment of designees will ensure that a quorum will be achieved for every Authority meeting and that divergent points of view will be represented.

The public members of the Board will include one non-voting member representing the casino industry who will be appointed by the Governor, and six voting public members who will be appointed by the Governor with the advice and consent of the Senate. Of the six voting public members, one must be an investment banker, one must have experience in small business finance, one must have experience in market analysis, one must be a minority, one must be a woman and one must be a resident of Atlantic City. The Governor will appoint two original public members for terms of one year, two original public members for terms of two years and three original public members for terms of three years. Thereafter, all members appointed by the Governor will serve terms of three years.

I have deleted the provision that would have required the Governor to select several public members from nominees submitted by the Speaker of the General Assembly and the President of the Senate. This method of selecting public members to serve on a Board of an entity that will be situated within the Executive branch constitutes an unwarranted intrusion upon the prerogative of the Chief Executive.

The Chairman of the Board of Directors will be selected by the Governor, and the Vice Chairman will be selected by the members of the Board. Assembly Bill No. 1828 ACS (2nd OCR) currently provides that the members of the Board shall select the Chairman. Traditionally, the Governor, not the members, select the Chairman. I see no reason to deviate from tradition in the instant case.

I recommend that Section 3e be amended to clarify that the Governor shall have veto power over the minutes of Board meetings and shall have 10 days from the date of receipt, excluding Saturdays, Sundays and public holidays, to exercise this power. Section 3e currently provides only that the minutes of every meeting of the Board shall be submitted to the Governor for his approval.

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Assembly Bill No. 1828 ACS (2nd OCR) must be amended to guarantee the Casino Reinvestment Development Authority (CRDA) a reasonable rate of return on obligations that it purchases from the Authority. Current law requires the CRDA, for the next 25 years, to set aside \$1.2 million annually of the proceeds from the sale of its bonds for the purpose of investing in obligations of the Authority. The statute also requires the CRDA to guarantee licensees a fixed rate of return on CRDA bonds.

Assembly Bill No. 1828 ACS (2nd OCR) does not guarantee the CRDA a rate of return on obligations that the CRDA purchases from the Authority. As such, there could easily arise an instance where the CRDA will earn less than it pays out on the \$1.2 million of bond proceeds that it must annually allocate to purchasing obligations of the Authority. I recommend that Assembly Bill No. 1828 ACS (2nd OCR) be amended to insure the CRDA a rate of return that is at least equal to the rate of return that the CRDA must pay licensees on CRDA bonds.

In conjunction with the above recommendation, I recommend that the CRDA be designated a priority creditor with respect to obligations that it purchases from the Authority, in the event of a default by the Authority. The CRDA will achieve its priority status only if it perfects its security interest in the manner set forth in Title 12A of the New Jersey Statutes. This amendment will ensure that the CRDA will be able to meet its obligations to licensees on CRDA bonds.

Finally, I recommend that the repayment obligation for the Authority on the \$90,000.00 appropriation be adjusted. Section 15 currently requires the Authority to repay the appropriation in five annual installments commencing the second year following the enactment of Assembly Bill No. 1828 ACS (2nd OCR). I am concerned that this obligation is too onerous as the Authority will only be beginning operations and will generate very little income by the second year. I recommend that Section 15 be amended to delay the Authority's repayment obligation until the third year following enactment.

Accordingly, for the aforementioned reasons, I return Assembly Bill No. 1828 ACS (2nd OCR) and recommend that it be amended as follows:

Page 2, Section 2, Lines 8-15: Delete in its entirety

Page 2, Section 2, Line 16: Delete "e." insert "c."

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Pages 2-3, Section 2, Lines 17-20: Delete "certified by the division pursuant to P.L....., c....(C.....) (now before the Governor as the Assembly Committee Substitute for Assembly Bill No. 1826 of 1984), and"

Page 3, Section 2, Line 23: Delete "f." insert "d."

Page 3, Section 2, Line 34: Delete "g." insert "e."

Page 3, Section 2, Line 37: Delete "h." insert "f."

Page 3, Section 2, Lines 41-42: Delete "Division of Development for Small Businesses and Women and Minority Businesses" insert "Commissioner of the Department of Commerce and Economic Development"

Page 3, Section 2, Line 45: Delete "i." insert "g."

Page 3, Section 2, Line 46: Delete "j." insert "h."

Page 3, Section 3, Line 6: Delete "13" insert "6"

Page 3, Section 3, Lines 8-11: Delete "Two members shall be appointed by the Governor from three nominees submitted by the Speaker of the General Assembly, and two members shall be appointed from three nominees submitted by the President of the Senate."

Page 4, Section 3, Lines 13-14: Delete "Director of the Division of Development for Small Businesses and Women and Minority Businesses" insert "Commissioner of the Department of Commerce and Economic Development"

Page 4, Section 3, Line 14: After "Treasurer" insert ", or their designees,"

Page 4, Section 3, Line 16: Delete "two members" insert "one member"

Page 4, Section 3, Line 18: Delete "three members" insert "one member"

Page 4, Section 3, Line 19: Delete "minorities" insert "a minority"

Page 4, Section 3, Line 19: Delete "three members" insert "one member"

Page 4, Section 3, Line 19: Delete "women" insert "a woman"

Page 4, Section 3, Line 19: Delete "Two members" insert "One member"

Page 4, Section 3, Line 20: Delete "residents" insert "a resident"

Page 4, Section 3, Line 20: Delete "13" insert "6"

Page 4, Section 3, Line 23: Delete "four" insert "two"

Page 4, Section 3, Line 23: Delete "five" insert "two"

Page 4, Section 3, Line 24: Delete "five" insert "three"

Page 4, Section 3, Line 31: After "The" insert "Governor shall select a chairman and the" delete "a chairman and "

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Page 4, Section 3, Lines 45-46: After "e." delete lines 45-46 in their entirety insert "A true copy of the minutes of every meeting of the board, certified by the secretary of the board, shall be delivered by the secretary to the Governor. No action taken at a meeting shall have effect until the 10th day following the delivery of the minutes to the Governor, Saturdays, Sundays and public holidays excepted, unless within that period the Governor has approved the minutes, in which case the action shall become effective upon his approval. If, within the 10-day period, the Governor returns the copy of the minutes with his veto of any action taken by the board or any member thereof at the meeting, that action shall be null and void and of no effect. The Governor may approve all or part of the action taken at such meeting prior to the expiration of the 10-day period."

Page 4, Section 3, Line 47: Before "On" insert "f."

Page 10, Section 10, After Line 42: Insert new section as follows:

11. On obligations purchased or monies otherwise invested by the Casino Reinvestment Development Authority as required by section 33 of P.L. 1984, c.218 (C.5:12-181), the Authority shall covenant and agree to guarantee the Casino Reinvestment Development Authority at least the rate of return established by subsection d of Section 14 of P.L. 1984, c.218. The Casino Reinvestment Development Authority shall have a priority interest with respect to obligations purchased or monies otherwise invested in the Authority, so long as the security interest is perfected in the manner set forth within Title 12A of the New Jersey Statutes." Renumber the remaining sections accordingly.

Page 11, Section 15, Line 4: Delete "second" insert "third"

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel