

40A:11-41 et seq

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:11-41 et seq. Minority and female business set aside programs--allow counties and municipalities to establish)

LAWS OF: 1985 **CHAPTER:** 482

BILL NO: A2385

Sponsor(s): Charles and others

Date Introduced: September 13, 1984

Committee: Assembly: County Government and Regional Authorities

Senate: County and Municipal Government

Amended during passage: Yes Substituted for S2659 (not attached according to Governor's recommendations since identical to original A2385). Amendments denoted by asterisks.

Date of Passage: Assembly: February 25, 1985 Re-enacted 1-13-86

Senate: December 9, 1985 Re-enacted 1-13-86

Date of Approval: January 17, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

1-11-84

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2385

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Assemblymen CHARLES, DORIA, Assemblywoman GARVIN, Assemblymen WATSON and BROWN

AN ACT concerning the establishment of *small* **[female]** *women* and minority business enterprise set-aside programs in counties and municipalities.

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

1 1. As used in this act:

2 a. "County or municipal contracting agency" shall mean the
3 governing body of a county or municipality or any department,
4 board, commission, committee, authority or agency of a county or
5 municipality but shall not include school districts;

6 b. "Minority group members" shall mean **[New Jersey**
7 **residents]** *persons* who are Black, Hispanic, Portuguese,
8 Asian American, American Indian or Alaskan natives;

9 c. "Qualified **[female]** *women* business enterprise" shall
10 mean a business which *has its principal place of business in this*
11 *State, is independently owned and operated,* is at least 51%
12 owned and controlled by women **[who are New Jersey residents**
13 **and which]** *and* is qualified pursuant to section 25 of P. L.
14 1971, c. 198 (C. 40A:11-25);

15 d. "Qualified minority business enterprise" shall mean a busi-
16 ness which *has its principal place of business in this State, is*
17 *independently owned and operated,* is at least 51% owned and
18 controlled by minority group members and **[which]** is quali-
19 fied pursuant to section 25 of P. L. 1971, c. 198 (C. 40A:11-25).

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 October 22, 1984.

**—Assembly amendments adopted in accordance with Governor's recommendations January 13, 1986.

20 **e. “Qualified small business enterprise” shall mean a business
 21 which has its principal place of business in this State, is indepen-
 22 dently owned and operated and meets all other qualifications as
 23 may be established in accordance with P. L. 1981, c. 283 (C.
 24 52:27H-21.1 et seq.).**

25 **[e.]** **f.** “Set-aside contracts” shall mean (1) a contract
 26 for goods, equipment, construction, or services which is designated
 27 as a contract for which bids are invited and accepted only from
 28 **qualified small business enterprises,** qualified minority busi-
 29 ness enterprises or qualified *[female]* *women* business enter-
 30 prises, as appropriate, (2) a portion of a contract when that
 31 portion has been so designated, or (3) any other purchase or
 32 procurement so designated; and

33 **[f.]** **g.** “Total procurements” shall mean all purchases,
 34 contracts or acquisitions of a county or municipal contracting
 35 agency, whether by competitive bidding, single source contracting,
 36 or other method of procurement, as prescribed or permitted by
 37 law.

1 2. a. The governing body of a county or municipality may, by
 2 ordinance or resolution, as appropriate, establish a qualified
 3 minority business enterprise set-aside program. In authorizing
 4 such a program, the governing body of a county or municipality
 5 shall establish a goal for its contracting agencies of setting aside
 6 a certain percentage of the dollar value of total procurements to be
 7 awarded as set-aside contracts to qualified minority business enter-
 8 prises.

9 b. The governing body of a county or municipality may, by
 10 ordinance or resolution, as appropriate, establish a qualified
 11 *[female]* *women* business enterprise set-aside program. In
 12 authorizing such a program, the governing body of a county or
 13 municipality shall establish a goal for its contracting agencies of
 14 setting aside a certain percentage of *the dollar value of* total
 15 procurements to be awarded as set-aside contracts to qualified
 16 *[female]* *women* business enterprises.

17 **c. The governing body of a county or municipality may, by
 18 ordinance or resolution, as appropriate, establish a qualified small
 19 business enterprise set-aside program. In authorizing such a pro-
 20 gram, the governing body of a county or municipality shall estab-
 21 lish a goal for its contracting agencies of setting aside a certain
 22 percentage of the dollar value of total procurements to be awarded
 23 as set-aside contracts to qualified small business enterprises.**

1 3. a. Any goal established pursuant to section 2 of this act may

2 be attained by requiring that a portion of a contract be subcon-
 3 tracted to a ***qualified small business enterprise,*** qualified mi-
 4 nority business enterprise or qualified ***[female]*** **women** busi-
 5 ness enterprise, in addition to designating entire contracts to
 5A these enterprises.

6 b. Each contracting agency shall make a good faith effort to
 7 attain any goal established by its governing body. The governing
 8 body shall evaluate each contracting agency's efforts by comparing
 9 the percentage of the dollar value of a contracting agency's total
 10 procurements awarded to ***qualified small business enterprises,***
 11 qualified minority business enterprises or qualified ***[female]***
 12 **women** business enterprises, as appropriate, to the percentage
 13 of the dollar value of the county's or municipality's total procure-
 14 ments awarded to ***qualified small business enterprises,*** quali-
 15 fied minority business enterprises or qualified ***[female]***
 16 **women** business enterprises, as appropriate.

1 4. All provisions of the "Local Public Contracts Law," P. L. 1971,
 2 c. 198 (C. 40A:11-1 et seq.) and any supplements thereto, shall
 3 apply to purchases, contracts and agreements made pursuant to
 4 this act unless otherwise superseded by the provisions of this act.

1 5. Notwithstanding the provisions of any law to the contrary,
 2 a contracting agency of a county or municipality which has estab-
 3 lished ***a qualified small business enterprise set-aside program,***
 4 a qualified minority business enterprise set-aside program or a
 5 qualified ***[female]*** **women** business enterprise set-aside pro-
 6 gram shall designate that a contract, subcontract or other means of
 7 procurement of goods, services, equipment, or construction be
 8 awarded to ***a qualified small business enterprise,*** a qualified
 9 minority business enterprise or a qualified ***[female]*** **women**
 10 business enterprise, if a contracting agency is likely to receive
 11 bids from at least ***[three]*** **two** ***qualified small business*
 12 *enterprises,*** qualified minority business enterprises or qualified
 13 ***[female]*** **women** business enterprises, as appropriate, at a
 14 fair and reasonable price.

15 Such designations shall be made prior to any advertisement for
 16 bids, if required. Once designated, the advertisement for bids, if
 17 necessary, shall indicate that the contract to be awarded is ***a*
 18 *qualified small business enterprise set-aside contract,*** a qualified
 19 minority business enterprise set-aside contract or a qualified
 20 ***[female]*** **women** business enterprise set-aside contract, as
 21 appropriate. All advertisements for bids shall be published in at
 22 least one newspaper which will best provide notice thereof to

23 ***qualified small business enterprises,*** qualified minority busi-
 24 ness enterprises or to qualified ***[female]*** **women** business
 25 enterprises, as appropriate, sufficiently in advance of the date
 26 fixed for receiving the bids to promote competitive bidding, but
 27 shall not be published less than 10 days prior to that date.

1 6. a. If the contracting agency determines that ***[three]*** **two**
 2 bids from ***qualified small,*** qualified minority or ***qualified***
 3 ***[female]*** **women** businesses cannot be obtained, the contract-
 4 ing agency may withdraw the designation of the set-aside con-
 5 tracts and resolicit bids on an unrestricted basis pursuant to the
 6 provisions of P. L. 1971, c. 198 (C. 40A:11-1 et seq.). The cancelled
 7 designation shall not be considered in determining the percentage
 8 of contracts awarded pursuant to subsection b. of section 3 of
 8A this act.

9 b. If the contracting agency determines that the acceptance of
 10 the lowest responsible bid will result in the payment of an un-
 11 reasonable price, the contracting agency shall reject all bids and
 12 withdraw the designation of the set-aside contracts. Qualified
 13 ***small business enterprises, qualified*** minority business enter-
 14 prises or qualified ***[female]*** **women** business enterprises, as
 15 appropriate, shall be notified in writing of the set-aside cancella-
 16 tion, the reasons for the rejection and the agency's intent to
 17 resolicit bids on an unrestricted basis pursuant to the provisions
 18 of P. L. 1971, c. 198 (C. 40A:11-1 et seq.). The cancelled bid
 19 solicitation shall not be considered in determining the percentage
 20 of contracts awarded pursuant to subsection b. of section 3 of
 21 this act.

22 ***7. Where the governing body of a county or municipality*
 23 *determines that a business has been classified as a qualified small*
 24 *business enterprise, qualified minority business enterprise or*
 25 *qualified women business enterprise on the basis of false informa-*
 26 *tion knowingly supplied by the business and has been awarded a*
 27 *contract to which it would not otherwise have been entitled under*
 28 *this act, the governing body shall have the authority to:*

29 a. *Assess against the business any difference between the con-*
 30 *tract and what the governing body's cost would have been if the*
 31 *contract had not been awarded in accordance with the provisions*
 32 *of this act;*

33 b. *In addition to the amount due under subsection a., assess*
 34 *against the business a penalty in an amount of not more than 10%*
 35 *of the amount of the contract involved; and*

36 c. *Order the business ineligible to transact any business with the*

37 *governing body or contracting agency of the governing body for a*
 38 *period to be determined by the governing body.*

39 *Prior to any final determination, assessment or order under this*
 40 *section, the governing body shall afford the business an oppor-*
 41 *tunity for a hearing on the reasons for the imposition of the*
 42 *penalties set forth in subsections a., b. or c. of this section.***

1 ****[7.]**** ****8.**** Each contracting agency of a county or munici-
 2 pality which has established ***a qualified small business enterprise*
 3 *set-aside program,*** a qualified minority business enterprise set-
 4 aside program or a qualified **[female]** ***women** business enter-
 5 prise set-aside program shall submit a report to its governing
 6 body by **[December]** ***January** 31 of each year describing the
 7 agency's efforts in attaining the set-aside goals and the percentage
 8 of the dollar value of total procurements awarded pursuant to
 9 subsection b. of section 3 of this act. The governing body shall
 10 publish a list of each agency's attainments in the immediately
 11 preceding local fiscal year, to include the county or municipal
 12 average, in at least one newspaper circulating in the county or
 13 municipality, as appropriate, by **[January 31]** ***March 1** of
 14 each year.

1 ****[8.]**** ****9.**** The Director of the Division of Local Govern-
 2 ment Services in the Department of Community Affairs may adopt
 3 rules and regulations pursuant to the provisions of the "Admini-
 4 strative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)
 5 as he may deem necessary to effectuate the purposes of this act.

1 ****[9.]**** ****10.**** This act shall take effect immediately.

6 goals and the percentage of the dollar value of total procurements
7 awarded pursuant to subsection b. of section 3 of this act. The
8 governing body shall publish a list of each agency's attainments
9 in the immediately preceding local fiscal year, to include the county
10 or municipal average, in at least one newspaper circulating in the
11 county or municipality, as appropriate, by January 31 of each year.

1 8. The Director of the Division of Local Government Services
2 in the Department of Community Affairs may adopt rules and
3 regulations pursuant to the provisions of the "Administrative
4 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as he may
5 deem necessary to effectuate the purposes of this act.

1 9. This act shall take effect immediately.

STATEMENT

This bill would permit the governing body of a county or municipality to establish a qualified minority business set-aside program and a qualified female business set-aside program.

Under the provisions of the bill, each county or municipality may establish a percentage of contracts and purchases to be set-aside for minority businesses or female businesses, as appropriate, as a goal for the departments and agencies of the county or municipality to achieve. At the end of each year, each department or agency would report to its governing body concerning its efforts to meet the established goal.

A2385(1985)

ASSEMBLY COUNTY GOVERNMENT AND
REGIONAL AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2385

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 1984

Assembly Bill No. 2385 Aca would permit the governing body of a county or municipality to establish a qualified minority business set-aside program and a qualified women business set-aside program.

Under the provisions of the bill, each county or municipality may establish a percentage of the dollar value of all contracts and purchases to be set-aside for minority businesses or women businesses, as appropriate, as a goal for the departments and agencies of the county or municipality to achieve. Each department or agency, as a contracting agency, is then required to make a good faith effort to attain the goal and shall, by January 31 of each year report to its governing body concerning its efforts in the preceding year.

The bill, as amended, would provide that, if a set-aside program is established, a contracting agency shall designate a contract, subcontract or other means of procurement as a set-aside contract if the agency is likely to receive bids from at least two qualified minority business enterprises or qualified women business enterprises, as appropriate, at a fair and reasonable price. Such a designation shall be made prior to advertisement and notice of the set-aside designation shall be included in the advertisement.

If a contracting agency determines that two bids cannot be obtained, or that acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the contracting agency may withdraw the designation and resolicit bids on an unrestricted basis.

The bill, as amended, was reported favorably.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 2385

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MAY 2, 1985

Assembly Bill No. 2385 OCR would authorize the governing body of any county or municipality to establish a qualified minority business enterprise set-aside program and a qualified women business enterprise set-aside program.

Under the provisions of the bill, each county or municipality would be authorized to establish a percentage of the dollar value of all contracts and purchases to be set aside for minority business enterprises or women business enterprises, as appropriate, as a goal for the departments and agencies of the county or municipality. Each department or agency, as a contracting agency, would then be required to make a good faith effort to attain the goal and to report annually to its governing body on its efforts.

If a set-aside program were established, a contracting agency would be required to designate a contract, subcontract or other means of procurement as a set-aside contract if the agency was likely to receive bids from at least two qualified minority business enterprises or qualified women business enterprises, as appropriate, at a fair and reasonable price. Such a designation would be required to be made prior to advertisement, and notice of the set-aside designation included in the advertisement.

If a contracting agency determined that two bids could not be obtained, or that acceptance of the lowest responsible bid would result in the payment of an unreasonable price, the contracting agency would be permitted to withdraw the designation and resolicit bids on an unrestricted basis.

January 13, 1986

ASSEMBLY BILL NO. 2385 (OCR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 2385 (OCR) of 1984 with my recommendations for reconsideration.

Assembly Bill No. 2385 (OCR) would permit the governing body of a county or municipality to establish a minority business enterprise set-aside program or a women business enterprise set-aside program or both. The provisions of A-2385 (OCR) are permissive. A governing body may establish both programs, one program or no program. Assembly Bill No. 2385 (OCR) contains various procedural guidelines with which a county or municipal governing body must adhere if it wishes to establish a minority business enterprise set-aside program or a women business enterprise set-aside program.

I support the establishment of minority and women business set-aside programs in this State. Minority and women business set-aside programs encourage the growth and competitiveness of minority businesses and women businesses in the market place. They provide the opportunity for these businesses to establish favorable reputations in their areas of expertise. On December 18, 1985, I signed Senate Bill No. 1776 (3rd OCR) of 1984 (P.L. 1985, c.384), a bill that requires State contracting agencies to establish minority business and women business set-aside programs.

I hoped that Assembly Bill No. 2385 (OCR) would reach my desk in a form in which I could sign. Regretfully, this is not the case. Assembly Bill No. 2385 (OCR) does not contain several elements that are vitally important to the success of the business set-aside program concept. These elements are contained in P.L. 1985, c.384. Accordingly, I am recommending that Assembly Bill No. 2385 (OCR) be amended in the following areas.

Assembly Bill No. 2385 (OCR) does not give the governing body of a county or municipality the opportunity to establish a small business set-aside program. The successful development of small businesses, along with minority and women businesses, is essential to the continuing economic development that we have enjoyed in this State. Under the Small Business Set-Aside Act (C.52:32-17 et.seq.), which was amended by P.L. 1985, c. 384, each State contracting agency

is required to establish a small business set-aside program. I recommend that Assembly Bill No. 2385 (OCR) be amended to allow a county or municipal governing body the opportunity to establish such a program.

The terms "qualified women business enterprise" and "qualified minority business enterprise" differ from similar terms contained in P.L. 1985, c.384 in two areas.

P.L. 1985, c.384 requires that a minority business or women business be owned and operated, and at least 51% owned and controlled by a minority group member or a woman, as appropriate. Assembly Bill No. 2385 (OCR) requires only that a minority business or women business be at least 51% owned and controlled by a minority group member or a woman, as appropriate. I recommend that the terms "qualified minority business enterprise" and "qualified women business enterprise" be amended to insert an "owned and operated" requirement to ensure that minority and women businesses will not be "fronts" for other businesses wishing to take advantage of a minority business set-aside program or women business set-aside program.

Assembly Bill No. 2385 (OCR) also contains a requirement that a minority group member or a woman be a New Jersey resident to qualify for a minority business set-aside program or a women business set-aside program. P.L. 1985, c.384 does not contain a New Jersey residency requirement, but requires that a business have its principal place of business in this State. I recommend that Assembly Bill No. 2385 (OCR) be amended to delete the New Jersey residency requirement and to insert a requirement that an eligible minority and women business have its principal place of business in this State. This amendment will ensure that only businesses that are committed to this State, and that have a workforce consisting predominantly of New Jersey residents, will be able to take advantage of a minority business set-aside program or a women business set-aside program established by a county or municipal governing body.

P.L. 1985, c.384 contains penalty provisions to be assessed against a minority or women business if it is determined that the business was awarded a set-aside contract on the basis of false information knowingly supplied. Assembly Bill No. 2385 (OCR) does not contain penalty provisions. I recommend that the penalty provisions contained in P.L. 1985, c.384 be inserted into

Assembly Bill No. 2385 (OCR). Penalty provisions will enhance the likelihood that set-aside contracts will be awarded only to qualified businesses.

Accordingly, I herewith return Assembly Bill No. 2385 (OCR) and recommend that it be amended as follows:

Page 1, Title, Line 1: After "of" insert "small,"

Page 1, Section 1, Line 6: Omit "New Jersey residents" insert "persons"

Page 1, Section 1 Line 10: After "which" insert "has its principal place of business in this State, is independently owned and operated,"

Page 1, Section 1, Line 11: Omit "who are New Jersey residents and which" insert "and"

Page 1, Section 1, Line 12B: After "which" insert "has its principal place of business in this State, is independently owned and operated,"

Page 1, Section 1, Line 12C: Omit "which"

Page 1, Section 1, After Line 12D: Insert new subsection "e." as follows:

"e. "Qualified small business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated and meets all other qualifications as may be established in accordance with P.L. 1981, c.283 (C.52:27H-21.1 et.seq.)"

Page 1, Section 1, Line 13: Omit "e." insert "f."

Page 1, Section 1, Line 15: After "from" insert "qualified small business enterprises,"

Page 2, Section 1, Line 20: Omit "f." insert "g."

Page 2, Section 2, After Line 16: Insert new subsection "c." as follows:

"c. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified small business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified small business enterprises."

Page 2, Section 3, Line 3: After "to a" insert "qualified small business enterprise,"

Page 2, Section 3, Line 10: After "awarded to" insert "qualified small business enterprises,"

Page 2, Section 3, Line 13: After "awarded to" insert "qualified small business enterprises,"

Page 3, Section 5, Line 3: After "lished" insert "a qualified small business enterprise set-aside program,"

Page 3, Section 5, Line 7: After "awarded to" insert "a qualified small business enterprise,"

Page 3, Section 5, Line 9: After "two" insert "qualified small business enterprises,"

Page 3, Section 5, Line 14: After "awarded is" insert "a qualified small business enterprise set-aside contract,"

Page 3, Section 5, Line 18: After "thereof to" insert "qualified small business enterprises,"

Page 3, Section 6, Line 2: After "bids from" insert "qualified small,"; after "minority or" insert "qualified"

Page 3, Section 6, Line 12: After "Qualified" insert "small business enterprises, qualified"

Page 3, Section 6, After Line 20: Insert new section "7." as follows:

"7. Where the governing body of a county or municipality determines that a business has been classified as a qualified small business enterprise, qualified minority business enterprise or qualified women business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the governing body shall have the authority to:

a. Assess against the business any difference between the contract and what the governing body's cost would have been if the contract had not been awarded in accordance with the provisions of this act;

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

c. Order the business ineligible to transact any business with the governing body or contracting agency of the governing body for a period to be determined by the governing body.

Prior to any final determination, assessment or order under this section, the governing body shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in subsections a., b. or c. of this section."

Page 3, Section 7, Line 1: Omit "7." insert "8."

Page 4, Section 7, Line 2: After "established" insert "a qualified small business enterprise set-aside program,"

Page 4, Section 8, Line 1: Omit "8." insert "9."

Page 4, Section 9, Line 1: Omit "9." insert "10."

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel