

10: 5-31 to 5-38

LEGISLATIVE FACT SHEET

ON *Public contracts -- affirmative action*

N.J.R.S. 10: 5-31 to 5-38

(— Amendment)

LAWS OF 1975

SENATE

INTRODUCED *Oct. 29, 1974*

STATEMENT

AMENDED DURING PASSAGE

HEARING *None discovered*

VETO

CHAPTER 127 *June 23, 1975*

ASSEMBLY 2227 *OCR of CORRECTED COPY*

BY *Hawkins, Woodson, Brown, Owens, Salkind, Hicks, Perkins Berman*

YES NO *No ORIGINAL COPY OF A2227 WASEVER PRINTED.*

CHAPTER 107 LAWS OF N. J. 1975
APPROVED 6-23-75

CORRECTED COPY

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2227

STATE OF NEW JERSEY

INTRODUCED OCTOBER 29, 1974

By Assemlymen HAWKINS, WOODSON, BROWN, OWENS
and SALKIND

(Without Reference)

AN ACT relating to affirmative action in relation to discrimination in connection with certain public contracts and supplementing the "Law Against Discrimination," approved April 16, 1945 (P. L. 1945, c. 169).

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. "Public works contract" means any contract to be performed
3 for or on behalf of the State or any county or municipality or
4 other political subdivision of the State, or any agency or authority
5 created by any of the foregoing, for the construction, alteration or
6 repair of any building or public work or for the acquisition of
7 materials, equipment, supplies or services with respect to which
8 discrimination in the hiring of persons for the performance of
9 work thereunder or under any subcontract thereunder by reason
10 of race, creed, color, national origin, ancestry, marital status or
11 sex is prohibited under R. S. 10:2-1.

12 b. "Equal employment opportunity" means equality in oppor-
13 tunity for employment by any contractor, subcontractor or business
14 firm engaged in the carrying out of a public works project including
15 its development, design, acquisition, construction, management and
16 operation.

1 2. No public works contract shall be awarded by the State, a
2 county, municipality or other political subdivision of the State, or
3 any agency of or authority created by any of the foregoing, nor
4 shall any moneys be paid thereunder to any contractor, subcon-
5 tractor or business firm which has not agreed and guaranteed to
6 afford equal opportunity in performance of the contract in accord-
7 ance with an affirmative action program approved by the State
8 Treasurer.

1 3. In soliciting bids or negotiating public works contracts the
2 State or any county or municipality or other political subdivision
3 of the State, or any agency of or authority created by any of the
4 foregoing, shall include in the advertisement and solicitation of
5 bids and in their contracts provisions the following language:

6 "During the performance of this contract, the contractor agrees
7 as follows:

8 a. The contractor or subcontractor, where applicable, will not
9 discriminate against any employee or applicant for employment
10 because of age, race, creed, color, national origin, ancestry, marital
11 status or sex. The contractor will take affirmative action to ensure
12 that such applicants are recruited and employed, and that em-
13 ployees are treated during employment, without regard to their
14 age, race, creed, color, national origin, ancestry, marital status or
15 sex. Such action shall include, but not be limited to the following:
16 employment, upgrading, demotion, or transfer; recruitment or
17 recruitment advertising; layoff or termination; rates of pay or
18 other forms of compensation; and selection for training, including
19 apprenticeship. The contractor agrees to post in conspicuous
20 places, available to employees and applicants for employment,
21 notices to be provided by the contracting officer setting forth the
22 provisions of this nondiscrimination clause;

23 b. The contractor or subcontractor, where applicable will, in all
24 solicitations or advertisements for employees placed by or on be-
25 half of the contractor, state that all qualified applicants will receive
26 consideration for employment without regard to age, race, creed,
27 color, national origin, ancestry, marital status or sex;

28 c. The contractor or subcontractor where applicable, will send
29 to each labor union or representative of workers with which he has
30 a collective bargaining agreement or other contract or understand-
31 ing, a notice, to be provided by the agency contracting officer,
32 advising the labor union or workers' representative of the con-
33 tractor's commitments under this act and shall post copies of the
34 notice in conspicuous places available to employees and applicants
35 for employment."

1 4. Each prospective bidder on a public works contract or con-
2 tracts and each subcontract bidder to a prime contract bidder shall
3 formulate and submit to the State Treasurer his or its affirmative
4 action program of equal opportunity whereby he or it guarantees
5 minorities employment in all employment categories; the submis-
6 sion shall be accompanied by a fee in an amount to be fixed by
7 the State Treasurer. The State Treasurer shall notify the bidder

8 of approval or disapproval of his or its program within 60 days
9 of its submission; failure of the State Treasurer to so act within
10 60 days shall constitute approval of the program. **Any existing*
10A *federally approved or sanctioned affirmative action program shall*
10B *be approved by the State Treasurer.**

11 No subcontract bidder who has less than five employees need
12 comply with the provisions of this section.

1 5. a. Any public works contract including any subcontract
2 awarded thereunder to any contractor which fails to contain the
3 provisions set forth in sections 2 and 3 of this act shall be null and
4 void; provided that if the award and execution of a contract is
5 subject to Federal regulation requiring inclusion of similar contract
6 provisions the same may be inserted in lieu of those required by
7 sections 2 and 3 of this act*, and further provided that nothing con-
7A *tained in this act shall operate to affect in any manner whatsoever*
7B *any existing federally approved or sanctioned affirmative action*
7C *program*.*

8 b. For any violation of this law in addition to all other penalties
9 allowable by law, the violator shall be subject to a fine of up to
10 \$1,000.00 for each violation for each day during which the violation
11 continues, said fine to be collected in a summary manner pursuant
12 to the "Penalty Enforcement Law" (N. J. S. 2A:58-1 et seq.).

1 6. In carrying out his responsibilities under this act, the State
2 Treasurer, in addition to and without limitation of other powers
3 which he may have by law, shall have the following powers:

4 a. To investigate and determine the percentage of population of
5 minority groups in the State or areas thereof from which the work
6 force for public works contracts is or may be drawn;

7 b. To establish and promulgate such percentages as guidelines
8 in determining the adequacy of affirmative action programs sub-
9 mitted for approval pursuant to section 2 of this act;

10 c. To require all State and local agencies awarding public works
11 contracts to submit for approval their affirmative action programs;

12 d. To prescribe those affirmative action program provisions to
13 be included in all public works contracts;

14 e. To provide guidelines to assist governmental agencies in the
15 formulation of and the administration and enforcement of affirma-
16 tive action programs;

17 f. To require State and local agencies awarding public works
18 contracts to designate appropriate officers or employees to main-
19 tain liaison with and assist the State Treasurer in the implementa-

20 tion of this act and affirmative action programs adopted pursuant
21 thereto;

22 g. To prescribe appropriate administrative procedures relating
23 to prequalification of bidders, bidding practices and contract
24 awards to assure equal employment opportunities;

25 h. To provide staff and technical assistance to public bodies,
26 contractors and subcontractors in furtherance of the objectives
27 of this act;

28 i. To levy on contractors and subcontractors fees and charges
29 found by him to be reasonable and necessary to accomplish the
30 objectives of this act;

31 j. To refer to the Attorney General or his designee circumstances
32 which may constitute violations of the "Law Against Discrimina-
33 tion";

34 k. To issue, amend and rescind rules and regulations in accord-
35 ance with the "Administrative Procedure Act" (C. 52:14B-1 et
36 seq.);

37 l. To enforce in a court of law the provisions of this act or to
38 join in or assist any enforcement proceeding initiated by any
39 aggrieved person;

40 m. To make and execute contracts and all other instruments
41 with other public agencies and private firms or individuals neces-
42 sary or convenient for the exercise of their powers and functions
43 hereunder, including contracts with consultants for rendering pro-
44 fessional or technical assistance and advice;

45 n. To contract for or accept any gifts or grants or loans of funds
46 or property or financial or other aid in any form from the Federal
47 government or any agency or instrumentality thereof, or from
48 the State or any agency or instrumentality thereof, or from any
49 other source and to comply, subject to the provisions of this act,
50 with the terms and conditions thereof.

1 7. Notwithstanding any provision of any State law, ordinance
2 or regulation to the contrary, there may be included in the costs of
3 a project or facility to which a public works contract relates any
4 expenses incurred by a public body or private firm or individual
5 for the purpose of furthering equal employment opportunities with
6 respect to such project or facility or for the purpose of complying
7 with the provisions of this act, and such expenses may be paid for
8 or financed by any method which may be used to pay or finance
9 other costs of development, acquisition or construction of such
10 project or facility.

1 8. Any individual who has been discriminated against in violation
2 of the provisions of this act and any organization which represents
3 or acts to further the interests of individuals who have been dis-
4 criminated against by reason of any violation of the provisions of
5 this act shall have standing in courts of law to institute actions to
6 enforce the provisions of this act.

1 9. This act shall take effect 30 days after enactment.

1 9 7 4

A S S E M B L Y N U M B E R 2227

THIS BILL WAS AMENDED IMMEDIATELY AFTER
INTRODUCTION AND THEREFORE NO ORIGINAL
VERSION WAS PRINTED.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 2227

STATE OF NEW JERSEY

ADOPTED OCTOBER 29, 1974

Amend page 3, section 4, line 10, at the end of first paragraph, insert "Any existing federally approved or sanctioned affirmative action program shall be approved by the State Treasurer."

Amend page 3, section 5, line 3, after "act", insert ", and further provided that nothing contained in this act shall operate to affect in any manner whatsoever any existing federally approved or sanctioned affirmative action program".

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 2227

STATE OF NEW JERSEY

INTRODUCED OCTOBER 29, 1974

By Assemblymen HAWKINS, WOODSON, BROWN, OWENS
and SALKIND

(Without Reference)

AN ACT relating to affirmative action in relation to discrimination
in connection with certain public contracts and supplementing
the "Law Against Discrimination," approved April 16, 1945
(P. L. 1945, c. 169).

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. "Public works contract" means any contract to be performed
3 for or on behalf of the State or any county or municipality or
4 other political subdivision of the State, or any agency or authority
5 created by any of the foregoing, for the construction, alteration or
6 repair of any building or public work or for the acquisition of
7 materials, equipment, supplies or services with respect to which
8 discrimination in the hiring of persons for the performance of
9 work thereunder or under any subcontract thereunder by reason
10 of race, creed, color, national origin, ancestry, marital status or
11 sex is prohibited under R. S. 10:2-1.

12 b. "Equal employment opportunity" means equality in oppor-
13 tunity for employment by any contractor, subcontractor or business
14 firm engaged in the carrying out of a public works project including
15 its development, design, acquisition, construction, management and
16 operation.

1 2. No public works contract shall be awarded by the State, a
2 county, municipality or other political subdivision of the State, or
3 any agency of or authority created by any of the foregoing, nor
4 shall any moneys be paid thereunder to any contractor, subcon-
5 tractor or business firm which has not agreed and guaranteed to
6 afford equal opportunity in performance of the contract in accord-
7 ance with an affirmative action program approved by the State
8 Treasurer.

1 3. In soliciting bids or negotiating public works contracts the
2 State or any county or municipality or other political subdivision
3 of the State, or any agency of or authority created by any of the
4 foregoing, shall include in the advertisement and solicitation of
5 bids and in their contracts provisions the following language:

6 "During the performance of this contract, the contractor agrees
7 as follows:

8 a. The contractor or subcontractor, where applicable, will not
9 discriminate against any employee or applicant for employment
10 because of age, race, creed, color, national origin, ancestry, marital
11 status or sex. The contractor will take affirmative action to ensure
12 that such applicants are recruited and employed, and that em-
13 ployees are treated during employment, without regard to their
14 age, race, creed, color, national origin, ancestry, marital status or
15 sex. Such action shall include, but not be limited to the following:
16 employment, upgrading, demotion, or transfer; recruitment or
17 recruitment advertising; layoff or termination; rates of pay or
18 other forms of compensation; and selection for training, including
19 apprenticeship. The contractor agrees to post in conspicuous
20 places, available to employees and applicants for employment,
21 notices to be provided by the contracting officer setting forth the
22 provisions of this nondiscrimination clause;

23 b. The contractor or subcontractor, where applicable will, in all
24 solicitations or advertisements for employees placed by or on be-
25 half of the contractor, state that all qualified applicants will receive
26 consideration for employment without regard to age, race, creed,
27 color, national origin, ancestry, marital status or sex;

28 c. The contractor or subcontractor where applicable, will send
29 to each labor union or representative of workers with which he has
30 a collective bargaining agreement or other contract or understand-
31 ing, a notice, to be provided by the agency contracting officer,
32 advising the labor union or workers' representative of the con-
33 tractor's commitments under this act and shall post copies of the
34 notice in conspicuous places available to employees and applicants
35 for employment."

1 4. Each prospective bidder on a public works contract or con-
2 tracts and each subcontract bidder to a prime contract bidder shall
3 formulate and submit to the State Treasurer his or its affirmative
4 action program of equal opportunity whereby he or it guarantees
5 minorities employment in all employment categories; the submis-
6 sion shall be accompanied by a fee in an amount to be fixed by
7 the State Treasurer. The State Treasurer shall notify the bidder

8 of approval or disapproval of his or its program within 60 days
9 of its submission; failure of the State Treasurer to so act within
10 60 days shall constitute approval of the program. **Any existing*
10A *federally approved or sanctioned affirmative action program shall*
10B *be approved by the State Treasurer.**

11 No subcontract bidder who has less than five employees need
12 comply with the provisions of this section.

1 5. a. Any public works contract including any subcontract
2 awarded thereunder to any contractor which fails to contain the
3 provisions set forth in sections 2 and 3 of this act*, and further
4 *provided that nothing contained in this act shall operate to affect*
5 *in any manner whatsoever any existing federally approved or*
6 *sanctioned affirmative action program** shall be null and void;
7 provided that if the award and execution of a contract is subject
7A to Federal regulation requiring inclusion of similar contract
7B provisions the same may be inserted in lieu of those required by
7C sections 2 and 3 of this act.

8 b. For any violation of this law in addition to all other penalties
9 allowable by law, the violator shall be subject to a fine of up to
10 \$1,000.00 for each violation for each day during which the violation
11 continues, said fine to be collected in a summary manner pursuant
12 to the "Penalty Enforcement Law" (N. J. S. 2A:58-1 et seq.).

1 6. In carrying out his responsibilities under this act, the State
2 Treasurer, in addition to and without limitation of other powers
3 which he may have by law, shall have the following powers:

4 a. To investigate and determine the percentage of population of
5 minority groups in the State or areas thereof from which the work
6 force for public works contracts is or may be drawn;

7 b. To establish and promulgate such percentages as guidelines
8 in determining the adequacy of affirmative action programs sub-
9 mitted for approval pursuant to section 2 of this act;

10 c. To require all State and local agencies awarding public works
11 contracts to submit for approval their affirmative action programs;

12 d. To prescribe those affirmative action program provisions to
13 be included in all public works contracts;

14 e. To provide guidelines to assist governmental agencies in the
15 formulation of and the administration and enforcement of affirma-
16 tive action programs;

17 f. To require State and local agencies awarding public works
18 contracts to designate appropriate officers or employees to main-
19 tain liaison with and assist the State Treasurer in the implementa-

20 tion of this act and affirmative action programs adopted pursuant
21 thereto;

22 g. To prescribe appropriate administrative procedures relating
23 to prequalification of bidders, bidding practices and contract
24 awards to assure equal employment opportunities;

25 h. To provide staff and technical assistance to public bodies,
26 contractors and subcontractors in furtherance of the objectives
27 of this act;

28 i. To levy on contractors and subcontractors fees and charges
29 found by him to be reasonable and necessary to accomplish the
30 objectives of this act;

31 j. To refer to the Attorney General or his designee circumstances
32 which may constitute violations of the "Law Against Discrimina-
33 tion";

34 k. To issue, amend and rescind rules and regulations in accord-
35 ance with the "Administrative Procedure Act" (C. 52:14B-1 et
36 seq.);

37 l. To enforce in a court of law the provisions of this act or to
38 join in or assist any enforcement proceeding initiated by any
39 aggrieved person;

40 m. To make and execute contracts and all other instruments
41 with other public agencies and private firms or individuals neces-
42 sary or convenient for the exercise of their powers and functions
43 hereunder, including contracts with consultants for rendering pro-
44 fessional or technical assistance and advice;

45 n. To contract for or accept any gifts or grants or loans of funds
46 or property or financial or other aid in any form from the Federal
47 government or any agency or instrumentality thereof, or from
48 the State or any agency or instrumentality thereof, or from any
49 other source and to comply, subject to the provisions of this act,
50 with the terms and conditions thereof.

1 7. Notwithstanding any provision of any State law, ordinance
2 or regulation to the contrary, there may be included in the costs of
3 a project or facility to which a public works contract relates any
4 expenses incurred by a public body or private firm or individual
5 for the purpose of furthering equal employment opportunities with
6 respect to such project or facility or for the purpose of complying
7 with the provisions of this act, and such expenses may be paid for
8 or financed by any method which may be used to pay or finance
9 other costs of development, acquisition or construction of such
10 project or facility.

1 8. Any individual who has been discriminated against in violation
2 of the provisions of this act and any organization which represents
3 or acts to further the interests of individuals who have been dis-
4 criminated against by reason of any violation of the provisions of
5 this act shall have standing in courts of law to institute actions to
6 enforce the provisions of this act.

1 9. This act shall take effect 30 days after enactment.

FROM THE OFFICE OF THE GOVERNOR

JUNE 23, 1975

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

DICK CAMPBELL

Governor Brendan Byrne signed into law Monday a bill that requires that all government contracts include an affirmative action program that provides equal employment opportunities to minority groups.

The measure, A-2227, sponsored by Assemblyman Eldridge Hawkins, D-Essex, was signed at a public ceremony in the Governor's Office.

The bill requires all public works contracts to include an affirmative action program approved in advance by the State Treasurer which guarantees equal employment opportunity to minority groups.

The measure authorizes the State Treasurer to investigate and determine the percentage of population of minority groups in the state or areas of the state from which the work force for public works contracts is drawn.

The Treasurer could establish such percentages as guidelines in determining the adequacy of affirmative action programs.

The bill also empowers the Treasurer to prescribe the affirmative action programs to be included in all public works contracts.

The measure applies to state, county and local governments, and all other political subdivisions.

###