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Yes

"Minority business bill signed by McGreevey," 10-3-2003 Courier-Post, p.B1

"Small business law," 10-3-2003 Star Ledger, p.48

P.L. 2003, CHAPTER 189, *approved October 3, 2003*
Senate, No. 75 (*Third Reprint*)

1 **AN ACT** concerning documentation required from business seeking
2 certification as minority or ¹[woman's] women's¹ business for
3 certain State programs and ²amending P.L.1987, c.55 and²
4 amending ¹and supplementing¹ P.L.1986, c.195 ¹(C.52:27H-21.17
5 et seq.)¹.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 ²1. Section 5 of P.L.1987, c.55 (C.52:27H-21.11) is amended to
11 read as follows:

12 5. The division shall have the power to:

13 a. Establish a loan referral program and loan packaging program
14 for eligible businesses, using criteria for eligibility which meet the
15 standards established by the authority or which meet the standards
16 established by private sources or by other State or federal programs;

17 b. Compile lists of qualified professionals, including women and
18 minorities in specific areas of expertise, to be disseminated to eligible
19 businesses and to be used in making referrals;

20 c. Use available resources within the State, including, but not
21 limited to, small business development centers, business organizations,
22 academic institutions with business programs, and minority business
23 development offices, to coordinate managerial and technical
24 assistance;

25 d. Establish, in cooperation with institutions of higher education,
26 an internship program for candidates for undergraduate and graduate
27 degrees in business administration and related fields for the purpose of
28 providing assistance to the division, the authority and to businesses
29 which are eligible to receive assistance under this act;

30 e. Provide, consistent with the provisions of this act and in
31 conjunction with, or at the request of, the authority, assistance to
32 eligible businesses, including, but not limited to:

33 (1) Assistance in researching markets or in market analysis;

34 (2) Advice in advertising and marketing;

35 (3) Advice in selecting sales or other distribution channels;

36 (4) Providing information and training with respect to bidding on
37 government contracts;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted September 19, 2002.

² Assembly ACE committee amendments adopted February 3, 2003.

³ Assembly floor amendments adopted March 13, 2003.

- 1 (5) Serving as liaison with the Department of the Treasury and
2 other departments and agencies of State, federal and local government
3 to promote the procurement of contracts for eligible businesses;
- 4 (6) Assistance in obtaining legal counsel;
- 5 (7) Providing financial analysis and accounting assistance;
- 6 (8) Assistance in obtaining appropriate insurance, including benefit
7 packages for employees;
- 8 (9) Assistance in arranging contracts with franchisers;
- 9 (10) Assistance in arranging commercial loans made by a State or
10 federally chartered bank, savings bank, or savings and loan
11 association, if, with respect to loans made by State chartered
12 institutions, the loans are made in accordance with the powers
13 conferred on those institutions pursuant to Title 17 of the Revised
14 Statutes, including bridge loans and cash flow loans;
- 15 (11) Assistance in negotiating license agreements;
- 16 (12) Assistance in procuring bonding or substitutes therefor;
- 17 (13) Making referrals to private consultants, institutions, and other
18 providers of services, according to the specific needs of an eligible
19 business;
- 20 (14) Assistance in finding sources of financing from federal, State,
21 and local sources;
- 22 (15) Assistance in gaining information about employee training and
23 development programs; and
- 24 f. Provide a central resource for eligible businesses in their dealing
25 with federal, State, and local governments, including information
26 regarding government regulations or laws which affect eligible
27 businesses;
- 28 g. Initiate and encourage education programs for eligible
29 businesses;
- 30 h. Notwithstanding any other provision of law, exercise exclusive
31 authority within the State to establish a uniform procedure for
32 departments, agencies and authorities of the State and of its political
33 subdivisions to certify the eligibility of a business to bid on contracts,
34 or otherwise represent itself as a minority or women's business [under
35 any program of the State or of its political subdivisions for which that
36 certification is required]. The division shall be the certifying authority
37 for departments, agencies and authorities of the State, except that
38 when the division's procedure for certification of a business as a
39 minority business or women's business conflicts with a federal
40 certification procedure that affects a State project in which the federal
41 government participates, the federal certification procedure shall take
42 precedence. Public agencies shall identify those projects and shall
43 notify the division. A political subdivision shall have the responsibility
44 of certifying the eligibility of a women's business or minority business
45 to bid on contracts or otherwise represent itself as a women's business
46 or minority business within the political subdivision, except that, if the

1 business is certified by the division to represent itself as being a
 2 minority or women's business under State programs, the political
 3 subdivision may accept that certification for eligibility of the business
 4 under programs of the political subdivision. A political subdivision
 5 shall utilize the uniform certification procedure formulated by the
 6 division;

7 i. Submit to the Governor and the Legislature an annual report
 8 regarding its activities and setting forth recommendations of methods
 9 which might be utilized to more efficiently and effectively carry out the
 10 purposes of this act, and submit to the commissioner periodic reports
 11 on the condition of small businesses, and women's and minority
 12 businesses in the State; and

13 j. Provide any other services which it deems necessary or which
 14 may be requested by the authority.²

15 (cf: P.L.1987, c.55, s.5)

16

17 ²[¹1.] 2.² Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is
 18 amended to read as follows:

19 2. As used in this act:

20 a. "Control" means authority over the affairs of a business,
 21 including, but not limited to, capital investment, property acquisition,
 22 employee hiring, contract negotiations, legal matters, officer and
 23 director selection, operating responsibility, financial transactions and
 24 the rights of other shareholders or joint partners; except that control
 25 shall not include absentee ownership, nor shall it be deemed to exist
 26 where an owner or employee who is not a minority, in the case of a
 27 minority business; or a male owner or employee, in the case of a
 28 women's business, is disproportionately responsible for the operation
 29 of the business or for policy and contractual decisions.

30 b. "Commissioner" means the ²[Commissioner of the Department
 31 of Commerce and Economic Development, or any successor public
 32 agency] Secretary and Chief Executive Officer of the New Jersey
 33 Commerce and Economic Growth Commission created pursuant to
 34 section 3 of P.L.1998, c.44 (C.52:27C-63)².

35 c. "Director" means the Director of the Division of Development
 36 for Small Businesses and Women's and Minority Businesses in the
 37 ²[Department of Commerce and Economic Development, created
 38 pursuant to]² [P.L. , c. (C.), (now pending before the
 39 Legislature as Senate Bill No. 1709 of 1986)] ²[P.L.1987, c.55
 40 (C.52:27H-21.7 et seq.), or any successor public agency] New Jersey
 41 Commerce and Economic Growth Commission created pursuant to
 42 section 3 of P.L.1998, c.44 (C.52:27C-63)².

43 d. "Division" means the Division of Development for Small
 44 Businesses and Women's and Minority Businesses in the ²[Department
 45 of Commerce and Economic Development, created pursuant to]²

1 [P.L. , c. (C.), (now pending before the Legislature as Senate
2 Bill No. 1709 of 1986)] ²[P.L.1987, c.55 (C.52:27H-21.7 et seq.), or
3 any successor public agency] New Jersey Commerce and Economic
4 Growth Commission created pursuant to section 3 of P.L.1998, c.44
5 (C.52:27C-63)².

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

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

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

12 (3) Asian-American, which is a person having origins in any of the
13 original peoples of the Far East, Southeast Asia, Indian subcontinent,
14 Hawaii, or the Pacific Islands; or

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

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

18 (1) A sole proprietorship owned and controlled by a minority;

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

23 (3) A corporation or other entity whose management and daily
24 business operations are controlled by one or more minorities who own
25 it, and which is at least 51% owned by one or more minorities, or, if
26 stock is issued, at least 51% of the stock is owned by one or more
27 minorities.

28 g. "Public agency" means the State or any department, division,
29 agency, authority, board, commission or committee thereof.

30 h. "Woman" or "women" means a female or females, regardless of
31 race.

32 i. "Women's business" means a business which is:

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

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

38 (3) A corporation or other entity whose management and daily
39 business operations are controlled by one or more women who own it,
40 and which is at least 51% owned by women, or, if stock is issued, at
41 least 51% of the stock is owned by one or more women.

42 j. "Applicant" means an individual or individuals, a sole proprietor,
43 partnership, joint venture or corporation that applies for certification
44 as a minority business or women's business, in accordance with the
45 provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).¹

1 ¹[1.] ²[2.¹] ³.² Section 6 of P.L.1986, c.195 (C.52:27H-21.22)
2 is amended to read as follows:

3 6. ¹[The director may require of an applicant for certification as a
4 minority business or women's business [any information or documents
5 he deems] only the minimal documentation that is necessary to
6 determine the applicant's eligibility for certification[, including, but not
7 limited to:

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

10 b. Names and addresses of members of the board of directors, in
11 the case of corporations;

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

13 d. Names and addresses of capital investors;

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

16 f. Articles of incorporation, bylaws, partnership agreements, or
17 joint venture agreements, as applicable;

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

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

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

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

23 k. Financial statements and balance sheets;

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

25 m. Any other information he deems necessary to effectuate the
26 purposes of this act]. Such documentation may include, but need not
27 be limited to, an applicant's certificate of birth and motor vehicle
28 driver's license, but shall not include that applicant's personal or
29 corporate federal or State income tax returns.]

30 The director may require of a first-time applicant for certification
31 as a minority business or women's business the documentation that is
32 necessary to determine the applicant's eligibility for certification. Such
33 documentation may include, but not be limited to:

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

36 b. Names and addresses of members of the board of directors, in
37 the case of corporations;

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

39 d. Number of shares of stock issued and outstanding, in the case
40 of a corporation;

41 e. Articles of incorporation, bylaws, partnership agreements, or
42 joint venture agreements, as applicable;

43 f. Organizational charts;

44 g. An applicant's certificate of birth and motor vehicle driver's
45 license; and

46 h. An affidavit certifying that the applicant is a minority business

1 or women's business, as defined pursuant to section 2 of P.L.1986,
2 c.195 (C.52:27H-21.18).

3 The director ²[shall not] ³[may²] shall not³ require an applicant to
4 provide any personal federal or personal State income tax returns.¹

5 (cf: P.L.1986, c.195, s.6)

6
7 ²[¹3.] ^{4.}² (New section) The director shall require a first-time
8 applicant to apply for recertification as a minority business or women's
9 business one year after the original certification was issued. The
10 director may require of the applicant the documentation that is
11 necessary to determine the applicant's eligibility for recertification,
12 including but not limited to:

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

15 b. Names and addresses of members of the board of directors, in
16 the case of corporations;

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

18 d. Names and addresses of capital investors;

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

21 f. Articles of incorporation, bylaws, partnership agreements, or
22 joint venture agreements, as applicable;

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

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

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

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

28 k. Financial statements and balance sheets;

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

30 m. Organizational charts;

31 n. An applicant's certificate of birth and motor vehicle driver's
32 license;

33 o. Personal or corporate federal or State income tax returns;

34 p. An affidavit certifying that the applicant is a minority business
35 or women's business, as defined in section 2 of P.L.1986, c.195
36 (C.52:27H-21.18); and

37 q. Any other information the director deems necessary to effectuate
38 the purposes of this act.¹

39
40 ²[¹4.] ^{5.}² (New section) After a minority business or women's
41 business has been recertified after first receiving initial certification,
42 the director shall require the certified minority business or certified
43 women's business to apply for recertification every five years. The
44 director may require of the applicant the documentation that is
45 necessary to determine the applicant's eligibility for recertification,
46 including but not limited to:

- 1 a. Names and addresses of the owner, partners or shareholders, as
2 applicable, and their representative shares of ownership;
3 b. Names and addresses of members of the board of directors, in
4 the case of corporations;
5 c. Names and addresses of the officers of the business;
6 d. Names and addresses of capital investors;
7 e. Number of shares of stock issued and outstanding, in the case of
8 a corporation;
9 f. Articles of incorporation, bylaws, partnership agreements, or
10 joint venture agreements, as applicable;
11 g. The capacity of the business to be bonded;
12 h. The affiliation of the business or any of its owners, officers or
13 directors with any other business entity;
14 i. A representative list of prior and current clients;
15 j. Major real and personal property holdings of the business;
16 k. Financial statements and balance sheets;
17 l. Banking institutions with which the business is affiliated; and
18 m. Organizational charts;
19 n. An applicant's certificate of birth and motor vehicle driver's
20 license;
21 o. Personal or corporate federal or State income tax returns;
22 p. An affidavit certifying that the applicant is a minority business
23 or women's business, as defined in section 2 of P.L.1986, c.195
24 (C.52:27H-21.18); and
25 q. Any other information the director deems necessary to effectuate
26 the purposes of this act.¹
27
28 ²[¹⁵. (New section) Where the director determines that a business
29 has been certified as a minority business or women's business on the
30 basis of false information knowingly supplied by the business and has
31 been awarded a contract to which the business would not otherwise
32 have been entitled under this act, the director shall:
33 a. Assess the business any difference between the contract amount
34 and what the State's cost would have been if the contract had not been
35 awarded in accordance with the provisions of this act;
36 b. In addition to the amount due under subsection a., assess the
37 business a penalty in an amount of not more than 10 percent of the
38 amount of the contract involved;
39 c. Order the business ineligible to transact any business with the
40 State for a period of not less than 24 months; and
41 d. Prior to any final determination, assessment or order under this
42 section, afford the business an opportunity for a contested case hearing
43 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
44 (C.52:14B-1 et seq.).
45 All payments to the State pursuant to subsection a. of this section
46 shall be deposited in the fund out of which the contract involved was

1 awarded. All payments to the State pursuant to subsection b. of this
2 section shall be deposited in the General Fund.¹²

3

4 ² 6. (New section) Any applicant who knowingly supplies false
5 information or has been awarded a contract to which the business
6 would not otherwise have been entitled under P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall, upon conviction, be
8 guilty of a crime of the fourth degree.²

9

10 ¹[2.] ²[6.1] ^{7.}² This act shall take effect immediately.

11

12

13

14

15 Changes certain documentation required for certification as minority
16 or woman's business for certain State programs.

SENATE, No. 75

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

SYNOPSIS

Eases certain documentation required for certification as minority or woman's business for certain State programs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S75 RICE

2

1 AN ACT concerning documentation required from business seeking
2 certification as minority or woman's business for certain State
3 programs and amending P.L.1986, c.195.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 6 of P.L.1986, c.195 (C.52:27H-21.22) is amended to
9 read as follows:

10 6. The director may require of an applicant for certification as a
11 minority business or women's business [any information or documents
12 he deems] only the minimal documentation that is necessary to
13 determine the applicant's eligibility for certification[, including, but not
14 limited to:

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

17 b. Names and addresses of members of the board of directors, in
18 the case of corporations;

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

20 d. Names and addresses of capital investors;

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

23 f. Articles of incorporation, bylaws, partnership agreements, or
24 joint venture agreements, as applicable;

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

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

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

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

30 k. Financial statements and balance sheets;

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

32 m. Any other information he deems necessary to effectuate the
33 purposes of this act]. Such documentation may include, but need not
34 be limited to, an applicant's certificate of birth and motor vehicle
35 driver's license, but shall not include any personal or corporate federal
36 or State income tax return.

37 (cf: P.L.1986, c.195, s.6)

38

39 2. This act shall take effect immediately.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 STATEMENT

2

3 The purpose of this bill is to require only minimal documentation
4 that an applicant is qualified for certification as a minority business or
5 woman's business and eligible to participate in State programs for
6 these businesses.

7 The bill provides that such documentation may include, but need
8 not be limited to, the applicant's certificate of birth and motor vehicle
9 driver's license, but cannot include that applicant's personal or
10 corporate federal or State income tax returns.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 75

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Senate Bill No. 75(1R). Senate Bill 75 (1R), as amended, establishes applicant status procedures and the respective documentation requirements for businesses who wish to be certified as a minority or women's business in order to qualify for certain State programs.

Specifically, the bill sets forth the documentation necessary to determine a first-time applicant's eligibility for certification as a minority or women's business. Such documentation may include, but not be limited to: 1) the names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership; 2) the names and addresses of members of the board of directors, in the case of corporations; 3) the names and addresses of the officers of the business; 4) the number of shares of stock issued and outstanding, in the case of a corporation; 5) the articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable; 6) organizational charts; 7) an applicant's certificate of birth and motor vehicle driver's license; and 8) an affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L.1986, c.195 (C.52:27H-21.18). A first-time applicant may be required to provide any personal federal or personal State income tax returns.

The bill, as amended, allows a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. In addition to the documentation provided by a first-time applicant, additional documentation necessary to determine the applicant's eligibility for recertification may include, but not be limited to: 1) the names and addresses of capital investors; 2) the capacity of the business to be bonded; 3) the affiliation of the business or any of its owners, officers or directors with any other business entity; 4) a representative list of prior and current clients; 5) major real and personal property holdings

of the business; 6) financial statements and balance sheets; 7) banking institutions with which the business is affiliated; 8) personal or corporate federal or State income tax returns; and 9) any other information deemed necessary to effectuate the purposes of the bill.

The bill, as amended, requires that after a minority business or women's business has been recertified after first receiving initial certification, the certified minority business or certified women's business shall apply for recertification every five years and shall submit the same documentation required of first-time applicants who apply for recertification as a minority business or women's business one year after the original certification was issued.

The bill, as amended, establishes that if any applicant knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled in the absence of that false information, that applicant shall, upon conviction, be guilty of a crime of the fourth degree.

COMMITTEE AMENDMENTS

Under current law, the Division of Development for Small Businesses and Women's and Minority Businesses is granted the power to exercise exclusive authority to establish a uniform procedure for State departments, agencies and authorities to certify the eligibility of minority or women's businesses to bid on contracts under any program of the State for which that certification is required. The committee amended the bill to delete the language limiting this power to any program of the State for which that certification is required.

The committee amendments remove the reference in the underlying law to the Commissioner of Commerce and Economic Development and to the former department in order to conform the law to changes enacted under P.L.1998, c.44 which established the New Jersey Commerce and Economic Growth Commission.

The committee amendments authorize the Director of the Division of Development for Small Businesses and Women's and Minority Businesses to require an applicant to provide personal federal or State income tax returns as part of the original application for designation as a women's or minority business. As introduced, the bill forbade the director from requiring an applicant to produce this information.

The committee amendments make it a crime of the fourth degree for an applicant to knowingly supply false information or be awarded a contract to which the business would not otherwise have been entitled in the absence of that false information. As originally introduced, the bill provided that where it is determined that a business has been certified as a minority business or women's business on the basis of false information knowingly supplied by the business and has been awarded a contract to which the business would not otherwise have been entitled under the State certification program, the State would have been required to: 1) assess the business any difference between the contract amount and what the State's cost would have

been if the contract had not been awarded in accordance with the provisions of the bill; 2) in addition to the amount due to the State, assess the business a penalty in an amount of not more than 10% of the amount of the contract involved; 3) order the business ineligible to transact any business with the State for a period of not less than 24 months; and 4) prior to any final determination, assessment or order under the certification program, afford the business an opportunity for a contested case hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bill would have further required that all payments to the State would have to be deposited in the fund out of which the contract involved was awarded and that all payments to the State pursuant to the bill would have to be deposited in the General Fund.

Senate Bill 75(1R) with committee amendments is identical to Assembly Bill 3213, as amended and reported by this committee on February 3, 2003.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 75

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2002

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably and with committee amendments Senate Bill No. 75.

This bill, as amended by the committee, establishes applicant status procedures and the respective documentation requirements for businesses who wish to be certified as a minority or women's business in order to qualify for certain State programs. Specifically, the bill sets forth the documentation necessary to determine a first-time applicant's eligibility for certification as a minority or women's business. Such documentation may include, but not be limited to: 1) the names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership; 2) the names and addresses of members of the board of directors, in the case of corporations; 3) the names and addresses of the officers of the business; 4) the number of shares of stock issued and outstanding, in the case of a corporation; 5) the articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable; 6) organizational charts; 7) an applicant's certificate of birth and motor vehicle driver's license; and 8) an affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L.1986, c.195 (C.52:27H-21.18). A first-time applicant is not required to provide any personal federal or personal State income tax returns.

The amended bill allows a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. In addition to the documentation provided by a first-time applicant, additional documentation necessary to determine the applicant's eligibility for recertification may include, but not be limited to: 1) the names and addresses of capital investors; 2) the capacity of the business to be bonded; 3) the affiliation of the business or any of its owners, officers or directors with any other business entity; 4) a representative list of prior and current clients; 5) major real and personal property holdings

of the business; 6) financial statements and balance sheets; 7) banking institutions with which the business is affiliated; 8) personal or corporate federal or State income tax returns; and 9) any other information deemed necessary to effectuate the purposes of the bill.

The amended bill requires that after a minority business or women's business has been recertified after first receiving initial certification, the certified minority business or certified women's business shall apply for recertification every five years and shall submit the same documentation required of first-time applicants who apply for recertification as a minority business or women's business one year after the original certification was issued.

The amended bill provides that where it is determined that a business has been certified as a minority business or women's business on the basis of false information knowingly supplied by the business and has been awarded a contract to which the business would not otherwise have been entitled under the State certification program, the State shall: 1) assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of the bill; 2) in addition to the amount due to the State, assess the business a penalty in an amount of not more than 10% of the amount of the contract involved; 3) order the business ineligible to transact any business with the State for a period of not less than 24 months; and 4) prior to any final determination, assessment or order under the certification program, afford the business an opportunity for a contested case hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bill further requires that all payments to the State required pursuant to this bill shall be deposited in the fund out of which the contract involved was awarded and that all payments to the State pursuant to the bill shall be deposited in the General Fund.

The committee amended the bill to: 1) establish the procedures for the submission of appropriate documents for first-time applicants, first-time applicants applying for recertification one year after the original certification, and businesses who were recertified after receiving initial certification and who apply for recertification every five years; 2) provide penalty procedures and penalties for businesses who knowingly supply false information in order to be certified under the State certification program; 3) provide that all payments required to be made to the State concerning the difference between the contract amount and what the State's cost would have been if the contract had not been awarded shall be deposited in the fund out of which the contract involved was awarded; and 4) provide that all penalty payments to the State assessed pursuant to the bill shall be deposited in the General Fund.

This bill was prefiled for introduction in the 2002-2003 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

STATEMENT TO

[Second Reprint]
SENATE, No. 75

with Assembly Floor Amendments
(Proposed By Assemblyman CHIVUKULA)

ADOPTED: MARCH 13, 2003

These Assembly amendments would prohibit the Commerce and Economic Growth Commission from requiring applicants for minority or women's business status to submit personal federal or State income tax returns.

ASSEMBLY, No. 3213

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED FEBRUARY 3, 2003

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblyman Tucker

SYNOPSIS

Changes certain documentation required for certification as minority or woman's business for certain State programs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/5/2003)

A3213 CHIVUKULA

2

1 AN ACT concerning documentation required from business seeking
2 certification as minority or women's business for certain State
3 programs and amending and supplementing P.L.1986, c.195
4 (C.52:27H-21.17 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is amended to
10 read as follows:

11 2. As used in this act:

12 a. "Control" means authority over the affairs of a business,
13 including, but not limited to, capital investment, property acquisition,
14 employee hiring, contract negotiations, legal matters, officer and
15 director selection, operating responsibility, financial transactions and
16 the rights of other shareholders or joint partners; except that control
17 shall not include absentee ownership, nor shall it be deemed to exist
18 where an owner or employee who is not a minority, in the case of a
19 minority business; or a male owner or employee, in the case of a
20 women's business, is disproportionately responsible for the operation
21 of the business or for policy and contractual decisions.

22 b. "Commissioner" means the Commissioner of the Department of
23 Commerce and Economic Development, or any successor public
24 agency.

25 c. "Director" means the Director of the Division of Development
26 for Small Businesses and Women's and Minority Businesses in the
27 Department of Commerce and Economic Development, created
28 pursuant to [P.L. , c. (C.), (now pending before the
29 Legislature as Senate Bill No. 1709 of 1986)] P.L.1987, c.55
30 (C.52:27H-21.7 et seq.), or any successor public agency.

31 d. "Division" means the Division of Development for Small
32 Businesses and Women's and Minority Businesses in the Department
33 of Commerce and Economic Development, created pursuant to
34 [P.L. , c. (C.), (now pending before the Legislature as
35 Senate Bill No. 1709 of 1986)] P.L.1987, c.55 (C.52:27H-21.7 et
36 seq.), or any successor public agency.

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

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

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

A3213 CHIVUKULA

1 (3) Asian-American, which is a person having origins in any of the
2 original peoples of the Far East, Southeast Asia, Indian subcontinent,
3 Hawaii, or the Pacific Islands; or

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

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

7 (1) A sole proprietorship owned and controlled by a minority;

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

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

17 g. "Public agency" means the State or any department, division,
18 agency, authority, board, commission or committee thereof.

19 h. "Woman" or "women" means a female or females, regardless of
20 race.

21 i. "Women's business" means a business which is:

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

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

27 (3) A corporation or other entity whose management and daily
28 business operations are controlled by one or more women who own it,
29 and which is at least 51% owned by women, or, if stock is issued, at
30 least 51% of the stock is owned by one or more women.

31 j. "Applicant" means an individual or individuals, a sole proprietor,
32 partnership, joint venture or corporation that applies for certification
33 as a minority business or women's business, in accordance with the
34 provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).

35 (cf: P.L.1986, c.195, s.2)

36

37 2. Section 6 of P.L.1986, c.195 (C.52:27H-21.22) is amended to
38 read as follows:

39 6. [The director may require of an applicant for certification as a
40 minority business or women's business any information or documents
41 he deems necessary to determine the applicant's eligibility for
42 certification, including, but not limited to:

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

45 b. Names and addresses of members of the board of directors, in
46 the case of corporations;

A3213 CHIVUKULA

- 1 c. Names and addresses of the officers of the business;
- 2 d. Names and addresses of capital investors;
- 3 e. Number of shares of stock issued and outstanding, in the case of
- 4 a corporation;
- 5 f. Articles of incorporation, bylaws, partnership agreements, or
- 6 joint venture agreements, as applicable;
- 7 g. The capacity of the business to be bonded;
- 8 h. The affiliation of the business or any of its owners, officers or
- 9 directors with any other business entity;
- 10 i. A representative list of prior and current clients;
- 11 j. Major real and personal property holdings of the business;
- 12 k. Financial statements and balance sheets;
- 13 l. Banking institutions with which the business is affiliated; and
- 14 m. Any other information he deems necessary to effectuate the
- 15 purposes of this act]

16 The director may require of a first-time applicant for certification
17 as a minority business or women's business the documentation that is
18 necessary to determine the applicant's eligibility for certification. Such
19 documentation may include, but not be limited to:

- 20 a. Names and addresses of the owner, partners or shareholders, as
- 21 applicable, and their representative shares of ownership;
- 22 b. Names and addresses of members of the board of directors, in
- 23 the case of corporations;
- 24 c. Names and addresses of the officers of the business;
- 25 d. Number of shares of stock issued and outstanding, in the case
- 26 of a corporation;
- 27 e. Articles of incorporation, bylaws, partnership agreements, or
- 28 joint venture agreements, as applicable;
- 29 f. Organizational charts;
- 30 g. An applicant's certificate of birth and motor vehicle driver's
- 31 license; and
- 32 h. An affidavit certifying that the applicant is a minority business
- 33 or women's business, as defined pursuant to section 2 of P.L.1986,
- 34 c.195 (C.52:27H-21.18).

35 The director shall not require an applicant to provide any personal
36 federal or personal State income tax returns.

37 (cf: P.L.1986, c.195, s.6)

38

39 3. (New section) The director shall require a first-time applicant
40 to apply for recertification as a minority business or women's business
41 one year after the original certification was issued. The director may
42 require of the applicant the documentation that is necessary to
43 determine the applicant's eligibility for recertification, including but not
44 limited to:

- 45 a. Names and addresses of the owner, partners or shareholders, as
- 46 applicable, and their representative shares of ownership;

A3213 CHIVUKULA

- 1 b. Names and addresses of members of the board of directors, in
- 2 the case of corporations;
- 3 c. Names and addresses of the officers of the business;
- 4 d. Names and addresses of capital investors;
- 5 e. Number of shares of stock issued and outstanding, in the case of
- 6 a corporation;
- 7 f. Articles of incorporation, bylaws, partnership agreements, or
- 8 joint venture agreements, as applicable;
- 9 g. The capacity of the business to be bonded;
- 10 h. The affiliation of the business or any of its owners, officers or
- 11 directors with any other business entity;
- 12 i. A representative list of prior and current clients;
- 13 j. Major real and personal property holdings of the business;
- 14 k. Financial statements and balance sheets;
- 15 l. Banking institutions with which the business is affiliated; and
- 16 m. Organizational charts;
- 17 n. An applicant's certificate of birth and motor vehicle driver's
- 18 license;
- 19 o. Personal or corporate federal or State income tax returns;
- 20 p. An affidavit certifying that the applicant is a minority business
- 21 or women's business, as defined in section 2 of P.L.1986, c.195
- 22 (C.52:27H-21.18); and
- 23 q. Any other information the director deems necessary to effectuate
- 24 the purposes of this act.
- 25
- 26 4. (New section) After a minority business or women's business
- 27 has been recertified after first receiving initial certification, the director
- 28 shall require the certified minority business or certified women's
- 29 business to apply for recertification every five years. The director may
- 30 require of the applicant the documentation that is necessary to
- 31 determine the applicant's eligibility for recertification, including but not
- 32 limited to:
- 33 a. Names and addresses of the owner, partners or shareholders, as
- 34 applicable, and their representative shares of ownership;
- 35 b. Names and addresses of members of the board of directors, in
- 36 the case of corporations;
- 37 c. Names and addresses of the officers of the business;
- 38 d. Names and addresses of capital investors;
- 39 e. Number of shares of stock issued and outstanding, in the case of
- 40 a corporation;
- 41 f. Articles of incorporation, bylaws, partnership agreements, or
- 42 joint venture agreements, as applicable;
- 43 g. The capacity of the business to be bonded;
- 44 h. The affiliation of the business or any of its owners, officers or
- 45 directors with any other business entity;

- 1 i. A representative list of prior and current clients;
- 2 j. Major real and personal property holdings of the business;
- 3 k. Financial statements and balance sheets;
- 4 l. Banking institutions with which the business is affiliated; and
- 5 m. Organizational charts;
- 6 n. An applicant's certificate of birth and motor vehicle driver's
- 7 license;
- 8 o. Personal or corporate federal or State income tax returns;
- 9 p. An affidavit certifying that the applicant is a minority business
- 10 or women's business, as defined in section 2 of P.L.1986, c.195
- 11 (C.52:27H-21.18); and
- 12 q. Any other information the director deems necessary to effectuate
- 13 the purposes of this act.

14

15 5. (New section) Where the director determines that a business has
16 been certified as a minority business or women's business on the basis
17 of false information knowingly supplied by the business and has been
18 awarded a contract to which the business would not otherwise have
19 been entitled under this act, the director shall:

- 20 a. Assess the business any difference between the contract amount
- 21 and what the State's cost would have been if the contract had not been
- 22 awarded in accordance with the provisions of this act;
- 23 b. In addition to the amount due under subsection a., assess the
- 24 business a penalty in an amount of not more than 10 percent of the
- 25 amount of the contract involved;
- 26 c. Order the business ineligible to transact any business with the
- 27 State for a period of not less than 24 months; and
- 28 d. Prior to any final determination, assessment or order under this
- 29 section, afford the business an opportunity for a contested case hearing
- 30 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
- 31 (C.52:14B-1 et seq.).

32 All payments to the State pursuant to subsection a. of this section
33 shall be deposited in the fund out of which the contract involved was
34 awarded. All payments to the State pursuant to subsection b. of this
35 section shall be deposited in the General Fund.

36

37 6. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill establishes applicant status procedures and the respective
43 documentation requirements for businesses who wish to be certified as
44 a minority or women's business in order to qualify for certain State
45 programs. Specifically, the bill sets forth the documentation necessary
46 to determine a first-time applicant's eligibility for certification as a

1 minority or women's business. Such documentation may include, but
2 not be limited to: 1) the names and addresses of the owner, partners
3 or shareholders, as applicable, and their representative shares of
4 ownership; 2) the names and addresses of members of the board of
5 directors, in the case of corporations; 3) the names and addresses of
6 the officers of the business; 4) the number of shares of stock issued
7 and outstanding, in the case of a corporation; 5) the articles of
8 incorporation, bylaws, partnership agreements, or joint venture
9 agreements, as applicable; 6) organizational charts; 7) an applicant's
10 certificate of birth and motor vehicle driver's license; and 8) an
11 affidavit certifying that the applicant is a minority business or women's
12 business, as defined pursuant to section 2 of P.L.1986, c.195
13 (C.52:27H-21.18). A first-time applicant is not required to provide
14 any personal federal or personal State income tax returns.

15 The bill allows a first-time applicant to apply for recertification as
16 a minority business or women's business one year after the original
17 certification was issued. In addition to the documentation provided by
18 a first-time applicant, additional documentation necessary to determine
19 the applicant's eligibility for recertification may include, but not be
20 limited to: 1) the names and addresses of capital investors; 2) the
21 capacity of the business to be bonded; 3) the affiliation of the business
22 or any of its owners, officers or directors with any other business
23 entity; 4) a representative list of prior and current clients; 5) major real
24 and personal property holdings of the business; 6) financial statements
25 and balance sheets; 7) banking institutions with which the business is
26 affiliated; 8) personal or corporate federal or State income tax returns;
27 and 9) any other information deemed necessary to effectuate the
28 purposes of the bill.

29 The bill requires that after a minority business or women's business
30 has been recertified after first receiving initial certification, the
31 certified minority business or certified women's business shall apply for
32 recertification every five years and shall submit the same
33 documentation required of first-time applicants who apply for
34 recertification as a minority business or women's business one year
35 after the original certification was issued.

36 The bill provides that where it is determined that a business has
37 been certified as a minority business or women's business on the basis
38 of false information knowingly supplied by the business and has been
39 awarded a contract to which the business would not otherwise have
40 been entitled under the State certification program, the State shall: 1)
41 assess the business any difference between the contract amount and
42 what the State's cost would have been if the contract had not been
43 awarded in accordance with the provisions of the bill; 2) in addition to
44 the amount due to the State, assess the business a penalty in an amount
45 of not more than 10% of the amount of the contract involved; 3) order
46 the business ineligible to transact any business with the State for a

A3213 CHIVUKULA

8

1 period of not less than 24 months; and 4) prior to any final
2 determination, assessment or order under the certification program,
3 afford the business an opportunity for a contested case hearing
4 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
5 (C.52:14B-1 et seq.). The bill further requires that all payments to the
6 State required pursuant to this bill shall be deposited in the fund out
7 of which the contract involved was awarded and that all payments to
8 the State pursuant to the bill shall be deposited in the General Fund.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3213

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 3213.

Assembly Bill No. 3213, as amended, establishes applicant status procedures and the respective documentation requirements for businesses who wish to be certified as a minority or women's business in order to qualify for certain State programs.

Specifically, the bill sets forth the documentation necessary to determine a first-time applicant's eligibility for certification as a minority or women's business. Such documentation may include, but not be limited to: 1) the names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership; 2) the names and addresses of members of the board of directors, in the case of corporations; 3) the names and addresses of the officers of the business; 4) the number of shares of stock issued and outstanding, in the case of a corporation; 5) the articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable; 6) organizational charts; 7) an applicant's certificate of birth and motor vehicle driver's license; and 8) an affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L.1986, c.195 (C.52:27H-21.18). A first-time applicant may be required to provide any personal federal or personal State income tax returns.

The bill, as amended, allows a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. In addition to the documentation provided by a first-time applicant, additional documentation necessary to determine the applicant's eligibility for recertification may include, but not be limited to: 1) the names and addresses of capital investors; 2) the capacity of the business to be bonded; 3) the affiliation of the business or any of its owners, officers or directors with any other business entity; 4) a representative list of prior and current clients; 5) major real and personal property holdings

of the business; 6) financial statements and balance sheets; 7) banking institutions with which the business is affiliated; 8) personal or corporate federal or State income tax returns; and 9) any other information deemed necessary to effectuate the purposes of the bill.

The bill, as amended, requires that after a minority business or women's business has been recertified after first receiving initial certification, the certified minority business or certified women's business shall apply for recertification every five years and shall submit the same documentation required of first-time applicants who apply for recertification as a minority business or women's business one year after the original certification was issued.

The bill, as amended, establishes that if any applicant knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled in the absence of that false information, that applicant shall, upon conviction, be guilty of a crime of the fourth degree.

COMMITTEE AMENDMENTS

Under current law, the Division of Development for Small Businesses and Women's and Minority Businesses is granted the power to exercise exclusive authority to establish a uniform procedure for State departments, agencies and authorities to certify the eligibility of minority or women's businesses to bid on contracts under any program of the State for which that certification is required. The committee amended the bill to delete the language limiting this power to any program of the State for which that certification is required.

The committee amendments remove the reference in the underlying law to the Commissioner of Commerce and Economic Development and to the former department in order to conform the law to changes enacted under P.L.1998, c.44 which established the New Jersey Commerce and Economic Growth Commission.

The committee amendments authorize the Director of the Division of Development for Small Businesses and Women's and Minority Businesses to require an applicant to provide personal federal or State income tax returns as part of the original application for designation as a women's or minority business. As introduced, the bill forbade the director from requiring an applicant to produce this information.

The committee amendments make it a crime of the fourth degree for an applicant to knowingly supply false information or be awarded a contract to which the business would not otherwise have been entitled in the absence of that false information. As originally introduced, the bill provided that where it is determined that a business has been certified as a minority business or women's business on the basis of false information knowingly supplied by the business and has been awarded a contract to which the business would not otherwise have been entitled under the State certification program, the State would have been required to: 1) assess the business any difference between the contract amount and what the State's cost would have

been if the contract had not been awarded in accordance with the provisions of the bill; 2) in addition to the amount due to the State, assess the business a penalty in an amount of not more than 10% of the amount of the contract involved; 3) order the business ineligible to transact any business with the State for a period of not less than 24 months; and 4) prior to any final determination, assessment or order under the certification program, afford the business an opportunity for a contested case hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bill would have further required that all payments to the State would have to be deposited in the fund out of which the contract involved was awarded and that all payments to the State pursuant to the bill would have to be deposited in the General Fund.

With the committee amendments, Assembly Bill 3213 is identical to Senate Bill 75 (1R) with committee amendments, also reported by this committee on February 3, 2003.

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Press Releases

PO BOX 004
TRENTON, NJ 08625

Contact: Micah Rasmussen
609-777-2600

RELEASE: October 02, 2003

[Previous Screen](#)

McGreevey Signs Bill to Encourage Participation of Minority and Women Owned Businesses

(CHERRY HILL)—Furthering his commitment to increase the number of minority and women owned businesses in the State, Governor James E. McGreevey signed S-75 into law at the 21st annual Black Issues Convention.

“I am committed to making sure all New Jersey businesses can participate in state contracts,” said McGreevey. “The future of our State depends upon a strong partnership between government and the business community. The role of New Jersey’s minority-owned businesses will be critical to our success in the new economy. We are working closely with minority and women business owners to provide support and assistance through a number of programs and agencies.”

The new legislation, sponsored by Senator Ronald L. Rice, Assemblyman Upendra J. Chivukula and Assemblyman Willis Edwards, will reduce the documentation requirements that a first time applicant must provide to be qualified for certification as a minority or woman owned business in the State of New Jersey. The legislation also seeks to promote participation of minority and woman owned businesses in a number of business assistance programs and services for certified businesses.

“The signing of this bill today is a victory for minorities and women who own businesses in the Garden State and is a victory for State Government as a whole,” said Rice (D-Essex), the Democratic Chairman of the Senate Community and Urban Affairs Committee. “When the program to aid minority and women business owners was first brought into the State, the intention was to help these business-owners be competitive in a white, male-dominated marketplace. Now, by easing the documentation required to apply for the program, we will increase participation and help even more businesses succeed in New Jersey.”

“The state encourages women- and minority-business owners to seek certification and participate in state start-up programs,” said Chivukula (D-Middlesex, Somerset). “This new law will make the current application process for state programs more user-friendly.”

“It is essential that women-and minority-owned businesses receive state support in their

entrepreneurial efforts,” said Edwards (D-Essex). “This measure ensures that the dream of owning a business will not be stifled by bureaucratic red-tape.”

The Governor also signed an Executive Order, which increases small business set-asides from 15% to 25%. Changes have also been made in categorizing small businesses to focus on gross revenue, so that companies are bidding against their peers, not larger companies. Secretary of Commerce, William D. Watley, has automatically re-certified all minority businesses as small businesses.

Today’s announcement compliments the Governor’s aggressive push to create new jobs and business incentives. The Governor is strengthening our economy by investing in job creation programs, like the enhanced BEIP he signed into law, and by focusing on training our workforce to compete in the new economy. Last month, the Governor unveiled his aggressive goals for job creation and economic strength, to be reached within the next five years: Create 200,000 new jobs; Train 150,000 workers for the jobs of tomorrow; Relocate or expand 500 businesses in New Jersey; Help 300,000 businesses get started; Attract \$6 Billion in new public/private investments.

Already the Governor’s fiscally responsible investments, like providing billions for infrastructure improvements and school construction, are paying off. While over 437,000 jobs across the country have been lost this year, New Jersey has created almost 20,500 jobs.



State of New Jersey Governor’s Office

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