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No

P.L. 2004, CHAPTER 57, *approved June 29, 2004*  
Assembly, No. 3130 (*First Reprint*)

1 **AN ACT** expanding the program of business registration for  
2 contractors with government agencies and requiring certain  
3 government agency contractors and their affiliates to collect State  
4 use tax, amending P.L.1999, c.39, the Title and text of P.L.2001,  
5 c.134 and R.S.54:50-9, repealing section 3 of P.L.2001, c.134  
6 (C.54:52-20), and supplementing Title 54 of the Revised Statutes.

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

10

11 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to read  
12 as follows

13 2. When required by the bid plans and specifications, the  
14 following requirements shall be considered mandatory items to be  
15 submitted at the time specified by the contracting unit for the receipt  
16 of the bids; the failure to submit any one of the mandatory items shall  
17 be deemed a fatal defect that shall render the bid proposal  
18 unresponsive and that cannot be cured by the governing body:

19 a. A guarantee to accompany the bid pursuant to section 21 of  
20 P.L.1971, c.198 (C.40A:11-21);

21 b. A certificate from a surety company pursuant to section 22 of  
22 P.L.1971, c.198 (C.40A:11-22);

23 c. A statement of corporate ownership pursuant to section 1 of  
24 P.L.1977, c.33 (C.52:25-24.2);

25 d. A listing of subcontractors pursuant to section 16 of P.L.1971,  
26 c.198 (C.40A:11-16); **[and]**

27 e. A document provided by the contracting agent in the bid plans,  
28 specifications, or bid proposal documents for the bidder to  
29 acknowledge the bidder's receipt of any notice or revisions or addenda  
30 to the advertisement or bid documents; **and**

31 f. A copy of the contractor's <sup>1,1</sup> and subcontractors' <sup>1</sup>listed  
32 pursuant to subsection d. of this section, <sup>1</sup> business registration as  
33 required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44).

34 (cf: P.L.1999, c.39, s.2)

35

36 2. The Title of P.L.2001, c.134 is amended to read as follows:

37 **AN ACT** concerning business registration for providers of goods and  
38 services to the State, State colleges and universities, county

**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 underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ABU committee amendments adopted June 21, 2004.

1 colleges, local contracting units, boards of education, water and  
2 wastewater contractors and casinos, supplementing Title 54 of the  
3 Revised Statutes and amending P.L.1977, c.110.

4  
5 3. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read  
6 as follows:

7 1. a. For the purposes of this section:

8 "Business organization" means an individual, partnership,  
9 association, joint stock company, trust, corporation, or other legal  
10 business entity or successor thereof;

11 "Business registration" means a business registration certificate  
12 issued by the Department of the Treasury or such other form or  
13 verification that a contractor or subcontractor is registered with the  
14 Department of the Treasury;

15 "Contractor" means a [person under] business organization that  
16 seeks to enter, or has entered into, a contract to provide goods or  
17 services or to construct a construction project [, or seeking to enter  
18 a contract to provide goods or services or to construct a construction  
19 project] with a contracting [State] agency;

20 "Contracting [State] agency" means the principal departments in  
21 the Executive Branch of the State Government, and any division,  
22 board, bureau, office, commission or other instrumentality within or  
23 created by such department[, the Legislature of the State and the  
24 Judicial Branch of the State and any office, board, bureau or  
25 commission within or created by the Legislative Branch or the Judicial  
26 Branch], or any independent State authority, commission,  
27 instrumentality or agency, or any State college or university, any  
28 county college, or any local unit;

29 "Local unit" means any contracting unit as defined pursuant to  
30 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education as  
31 defined pursuant to N.J.S.18A:18A-2, a private firm that has entered  
32 into a contract with a public entity for the provision of water supply  
33 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.), a private firm  
34 or public authority that has entered into a contract with a public entity  
35 for the provision of wastewater treatment service pursuant to  
36 P.L.1995, c.216 (C.58:27-19 et al.), and a duly incorporated nonprofit  
37 association that entered into a contract with the governing body of a  
38 city of the first class for the provision of wastewater treatment services  
39 pursuant to P.L.1995, c.216 (C.58:27-19 et al).

40 "Subcontractor" means any [person who enters into a contract with  
41 a contractor to supply goods and services to a contractor under a  
42 contract with a State agency] business organization that is not a  
43 contractor that knowingly provides goods or performs services for a  
44 contractor or another subcontractor in the fulfillment of a contract  
45 issued by a contracting agency.

1 b. [A contractor shall provide proof of valid business registration  
2 with the Division of Revenue in the Department of the Treasury to any  
3 contracting State agency; no] No contract shall be entered into by any  
4 contracting [State] agency unless the contractor [first] provides  
5 [proof of valid] a copy of its business registration in accordance with  
6 the following schedule:

7 (1) In response to a request for bids or a request for proposals, at  
8 the time a bid or proposal is submitted; or

9 (2) For all other transactions, before the issuance of a purchase  
10 order or other contracting document. In its sole discretion, the  
11 contracting unit may waive this requirement if a business registration  
12 has been previously provided to the contracting agency.

13 c. A subcontractor [under any contract with a contracting State  
14 agency] shall provide [proof of valid] a copy of its business  
15 registration [with the Division of Revenue] to any contractor[;  
16 verification information] who shall [be forwarded by the contractor]  
17 forward it to the contracting [State] agency. No [subcontract]  
18 contract with a subcontractor shall be entered into by any contractor  
19 under any contract with a contracting [State] agency unless the  
20 subcontractor first provides proof of valid business registration. The  
21 contracting agency shall file all business registrations received by the  
22 contracting agency with other procurement documents related to the  
23 contract.

24 d. A contract entered into by a contracting [State] agency with a  
25 [provider of goods or services or a] contractor [or subcontractor of  
26 a construction project] shall [contain a notice of the provisions  
27 in] include provisions under subsection b. of this section and this  
28 subsection for the contractor to comply with, and for the contractor  
29 to notify subcontractors by written notice to comply with subsection  
30 c. of this section. A contracting agency shall not be responsible for a  
31 contractor's failure to comply with this section. The contractor shall  
32 maintain and submit to the contracting agency a list of subcontractors  
33 and their addresses that may be updated from time to time during the  
34 course of the contract performance. A complete and accurate list shall  
35 to be submitted before final payment is made for goods provided or  
36 services rendered or for construction of a construction project under  
37 the contract.

38 e. Notice of the provisions of this section shall be included by the  
39 contracting agency in any bid specification, requests for proposals, or  
40 other documents notifying potential contractors of opportunities to  
41 provide goods or perform services for a contracting agency.

42 f. Nothing in this section shall in any way alter the provisions or  
43 change the responsibilities or obligations of casino industry licensees  
44 as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

45 g. (1) A contractor or a contractor with a subcontractor that has

1 entered into a contract with a contracting agency, and each of their  
2 affiliates, shall collect and remit to the Director of the Division of  
3 Taxation in the Department of the Treasury the use tax due pursuant  
4 to the "Sales and Use Tax Act, P.L.1966, c.30 (C.54:32B-1 et seq.) on  
5 all their sales of tangible personal property delivered into this State.

6 (2) A contracting agency entering into a contract with a contractor,  
7 or a contractor with a subcontractor, shall include in its contract to  
8 provide goods or perform services or to construct a construction  
9 project with that contractor, or a contractor with a subcontractor, for  
10 the term of the contract, a requirement that the contractor or  
11 subcontractor and each of their affiliates shall collect and remit to the  
12 Director of the Division of Taxation in the Department of the Treasury  
13 the use tax due pursuant to the "Sales and Use Tax Act, P.L.1966,  
14 c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal  
15 property delivered into this State.

16 (3) For the purposes of this subsection, "affiliate" means any entity  
17 that (1) directly, indirectly, or constructively controls another entity,  
18 (2) is directly, indirectly, or constructively controlled by another  
19 entity, or (3) is subject to the control of a common entity. For  
20 purposes of this subsection an entity controls another entity if it owns,  
21 directly or individually, more than 50% of the ownership interest in  
22 that entity.

23 h. The State Treasurer may adopt regulations pursuant to the  
24 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.)  
25 as are necessary to administer the provisions of this act.

26 (cf: P.L.2001, c.134, s.1)

27  
28 4. R.S.54:50-9 is amended to read as follows:

29 54:50-9. Nothing herein contained shall be construed to prevent:

30 a. The delivery to a taxpayer or the taxpayer's duly authorized  
31 representative of a copy of any report or any other paper filed by the  
32 taxpayer pursuant to the provisions of this subtitle or of any such State  
33 tax law;

34 b. The publication of statistics so classified as to prevent the  
35 identification of a particular report and the items thereof;

36 c. The director, in the director's discretion and subject to  
37 reasonable conditions imposed by the director, from disclosing the  
38 name and address of any licensee under any State tax law, unless  
39 expressly prohibited by such State tax law;

40 d. The inspection by the Attorney General or other legal  
41 representative of this State of the reports or files relating to the claim  
42 of any taxpayer who shall bring an action to review or set aside any  
43 tax imposed under any State tax law or against whom an action or  
44 proceeding has been instituted in accordance with the provisions  
45 thereof;

46 e. The examination of said records and files by the Comptroller,

- 1 State Auditor or State Commissioner of Finance, or by their respective  
2 duly authorized agents;
- 3 f. The furnishing, at the discretion of the director, of any  
4 information contained in tax reports or returns or any audit thereof or  
5 the report of any investigation made with respect thereto, filed  
6 pursuant to the tax laws, to the taxing officials of any other state, the  
7 District of Columbia, the United States and the territories thereof,  
8 providing said jurisdictions grant like privileges to this State and  
9 providing such information is to be used for tax purposes only;
- 10 g. The furnishing, at the discretion of the director, of any material  
11 information disclosed by the records or files to any law enforcing  
12 authority of this State who shall be charged with the investigation or  
13 prosecution of any violation of the criminal provisions of this subtitle  
14 or of any State tax law;
- 15 h. The furnishing by the director to the State agency responsible  
16 for administering the Child Support Enforcement program pursuant to  
17 Title IV-D of the federal Social Security Act, Pub. L.93-647 (42  
18 U.S.C. s.51 et seq.), with the names, home addresses, social security  
19 numbers and sources of income and assets of all absent parents who  
20 are certified by that agency as being required to pay child support,  
21 upon request by the State agency and pursuant to procedures and in  
22 a form prescribed by the director;
- 23 i. The furnishing by the director to the Board of Public Utilities any  
24 information contained in tax information statements, reports or returns  
25 or any audit thereof or a report of any investigation made with respect  
26 thereto, as may be necessary for the administration of P.L.1991, c.184  
27 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-3 et al.);
- 28 j. The furnishing by the director to the Director of the Division of  
29 Alcoholic Beverage Control in the Department of Law and Public  
30 Safety any information contained in tax information statements,  
31 reports or returns or any audit thereof or a report of any investigation  
32 made with respect thereto, as may be relevant, in the discretion of the  
33 director, in any proceeding conducted for the issuance, suspension or  
34 revocation of any license authorized pursuant to Title 33 of the  
35 Revised Statutes;
- 36 k. The inspection by the Attorney General or other legal  
37 representative of this State of the reports or files of any tobacco  
38 product manufacturer, as defined in section 2 of P.L.1999, c.148  
39 (C.52:4D-2), for any period in which that tobacco product  
40 manufacturer was not or is not in compliance with subsection a. of  
41 section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed  
42 distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2),  
43 for the purpose of facilitating the administration of the provisions of  
44 P.L.1999, c.148 (C.52:4D-1 et seq.);
- 45 l. The furnishing, at the discretion of the director, of information  
46 as to whether a contractor or subcontractor holds a valid business

1 registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44).  
2 (cf: P.L.2001, c.358, s.1)

3

4 5. (New section) A business organization that fails to provide a  
5 copy of a business registration as required pursuant to section 1 of  
6 P.L.2001, c.134 (C.52:32-44 et al.) or subsections e. or f. of section  
7 92 of P.L.1977, c.110 (C.5:12:92), or that provides false information  
8 of business registration under the requirements of either of those  
9 sections, shall be liable for a penalty of \$25 for each day of violation,  
10 not to exceed \$50,000 for each business registration copy not properly  
11 provided under a contract with a contracting agency or under a casino  
12 service industry contract.

13

14 6. Section 3 of P.L.2001, c.134 (C.54:52-20) is repealed.

15

16 7. This act shall take effect immediately, provided however that  
17 sections 1 through 6 shall remain inoperative until the first day of the  
18 third month following enactment.

19

20

21

22

23 Expands State contractor business registration program to local  
24 government contracts, replaces noncompliance penalty, requires  
25 contractors and their affiliates to collect State use tax.



# ASSEMBLY, No. 3130

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**SYNOPSIS**

Expands State contractor business registration program to local government contracts, replaces noncompliance penalty, requires contractors and their affiliates to collect State use tax.

**CURRENT VERSION OF TEXT**

As introduced.



A3130 MCKEON

2

1 AN ACT expanding the program of business registration for  
2 contractors with government agencies and requiring certain  
3 government agency contractors and their affiliates to collect State  
4 use tax, amending P.L.1999, c.39, the Title and text of P.L.2001,  
5 c.134 and R.S.54:50-9, repealing section 3 of P.L.2001, c.134  
6 (C.54:52-20), and supplementing Title 54 of the Revised Statutes.

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

10  
11 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to read  
12 as follows

13 2. When required by the bid plans and specifications, the following  
14 requirements shall be considered mandatory items to be submitted at  
15 the time specified by the contracting unit for the receipt of the bids;  
16 the failure to submit any one of the mandatory items shall be deemed  
17 a fatal defect that shall render the bid proposal unresponsive and that  
18 cannot be cured by the governing body:

19 a. A guarantee to accompany the bid pursuant to section 21 of  
20 P.L.1971, c.198 (C.40A:11-21);

21 b. A certificate from a surety company pursuant to section 22 of  
22 P.L.1971, c.198 (C.40A:11-22);

23 c. A statement of corporate ownership pursuant to section 1 of  
24 P.L.1977, c.33 (C.52:25-24.2);

25 d. A listing of subcontractors pursuant to section 16 of P.L.1971,  
26 c.198 (C.40A:11-16); [and]

27 e. A document provided by the contracting agent in the bid plans,  
28 specifications, or bid proposal documents for the bidder to  
29 acknowledge the bidder's receipt of any notice or revisions or addenda  
30 to the advertisement or bid documents; and

31 f. A copy of the contractor's and subcontractors' business  
32 registration as required pursuant to section 1 of P.L.2001, c.134  
33 (C.52:32-44).

34 (cf: P.L.1999, c.39, s.2)

35

36 2. The Title of P.L.2001, c.134 is amended to read as follows:

37 **AN ACT** concerning business registration for providers of goods and  
38 services to the State, State colleges and universities, county  
39 colleges, local contracting units, boards of education, water and  
40 wastewater contractors and casinos, supplementing Title 54 of the  
41 Revised Statutes and amending P.L.1977, c.110.

42

43 3. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read

**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 underlined thus is new matter.**

1 as follows:

2 1. a. For the purposes of this section:

3 "Business organization" means an individual, partnership,  
4 association, joint stock company, trust, corporation, or other legal  
5 business entity or successor thereof;

6 "Business registration" means a business registration certificate  
7 issued by the Department of the Treasury or such other form or  
8 verification that a contractor or subcontractor is registered with the  
9 Department of the Treasury;

10 "Contractor" means a [person under] business organization that  
11 seeks to enter, or has entered into, a contract to provide goods or  
12 services or to construct a construction project [, or seeking to enter  
13 a contract to provide goods or services or to construct a construction  
14 project] with a contracting [State] agency;

15 "Contracting [State] agency" means the principal departments in  
16 the Executive Branch of the State Government, and any division,  
17 board, bureau, office, commission or other instrumentality within or  
18 created by such department[, the Legislature of the State and the  
19 Judicial Branch of the State and any office, board, bureau or  
20 commission within or created by the Legislative Branch or the Judicial  
21 Branch], or any independent State authority, commission,  
22 instrumentality or agency, or any State college or university, any  
23 county college, or any local unit;

24 "Local unit" means any contracting unit as defined pursuant to  
25 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education as  
26 defined pursuant to N.J.S.18A:18A-2, a private firm that has entered  
27 into a contract with a public entity for the provision of water supply  
28 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.), a private firm  
29 or public authority that has entered into a contract with a public entity  
30 for the provision of wastewater treatment service pursuant to  
31 P.L.1995, c.216 (C.58:27-19 et al.), and a duly incorporated nonprofit  
32 association that entered into a contract with the governing body of a  
33 city of the first class for the provision of wastewater treatment services  
34 pursuant to P.L.1995, c.216 (C.58:27-19 et al).

35 "Subcontractor" means any [person who enters into a contract with  
36 a contractor to supply goods and services to a contractor under a  
37 contract with a State agency] business organization that is not a  
38 contractor that knowingly provides goods or performs services for a  
39 contractor or another subcontractor in the fulfillment of a contract  
40 issued by a contracting agency.

41 b. [A contractor shall provide proof of valid business registration  
42 with the Division of Revenue in the Department of the Treasury to any  
43 contracting State agency; no] No contract shall be entered into by any  
44 contracting [State] agency unless the contractor [first] provides  
45 [proof of valid] a copy of its business registration in accordance with

1 the following schedule:

2 (1) In response to a request for bids or a request for proposals, at  
3 the time a bid or proposal is submitted; or

4 (2) For all other transactions, before the issuance of a purchase  
5 order or other contracting document. In its sole discretion, the  
6 contracting unit may waive this requirement if a business registration  
7 has been previously provided to the contracting agency.

8 c. A subcontractor [under any contract with a contracting State  
9 agency] shall provide [proof of valid] a copy of its business  
10 registration [with the Division of Revenue] to any contractor[;  
11 verification information] who shall [be forwarded by the contractor]  
12 forward it to the contracting [State] agency. No [subcontract]  
13 contract with a subcontractor shall be entered into by any contractor  
14 under any contract with a contracting [State] agency unless the  
15 subcontractor first provides proof of valid business registration. The  
16 contracting agency shall file all business registrations received by the  
17 contracting agency with other procurement documents related to the  
18 contract.

19 d. A contract entered into by a contracting [State] agency with a  
20 [provider of goods or services or a] contractor [or subcontractor of  
21 a construction project] shall [contain a notice of the provisions  
22 in]include provisions under subsection b. of this section and this  
23 subsection for the contractor to comply with, and for the contractor  
24 to notify subcontractors by written notice to comply with subsection  
25 c. of this section. A contracting agency shall not be responsible for a  
26 contractor's failure to comply with this section. The contractor shall  
27 maintain and submit to the contracting agency a list of subcontractors  
28 and their addresses that may be updated from time to time during the  
29 course of the contract performance. A complete and accurate list shall  
30 to be submitted before final payment is made for goods provided or  
31 services rendered or for construction of a construction project under  
32 the contract.

33 e. Notice of the provisions of this section shall be included by the  
34 contracting agency in any bid specification, requests for proposals, or  
35 other documents notifying potential contractors of opportunities to  
36 provide goods or perform services for a contracting agency.

37 f. Nothing in this section shall in any way alter the provisions or  
38 change the responsibilities or obligations of casino industry licensees  
39 as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

40 g. (1) A contractor or a contractor with a subcontractor that has  
41 entered into a contract with a contracting agency, and each of their  
42 affiliates, shall collect and remit to the Director of the Division of  
43 Taxation in the Department of the Treasury the use tax due pursuant  
44 to the "Sales and Use Tax Act, P.L.1966, c.30 (C.54:32B-1 et seq.) on  
45 all their sales of tangible personal property delivered into this State.

1       (2) A contracting agency entering into a contract with a contractor,  
2 or a contractor with a subcontractor, shall include in its contract to  
3 provide goods or perform services or to construct a construction  
4 project with that contractor, or a contractor with a subcontractor, for  
5 the term of the contract, a requirement that the contractor or  
6 subcontractor and each of their affiliates shall collect and remit to the  
7 Director of the Division of Taxation in the Department of the Treasury  
8 the use tax due pursuant to the "Sales and Use Tax Act, P.L.1966,  
9 c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal  
10 property delivered into this State.

11       (3) For the purposes of this subsection, "affiliate" means any entity  
12 that (1) directly, indirectly, or constructively controls another entity,  
13 (2) is directly, indirectly, or constructively controlled by another  
14 entity, or (3) is subject to the control of a common entity. For  
15 purposes of this subsection an entity controls another entity if it owns,  
16 directly or individually, more than 50% of the ownership interest in  
17 that entity.

18       h. The State Treasurer may adopt regulations pursuant to the  
19 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.)  
20 as are necessary to administer the provisions of this act.  
21 (cf: P.L.2001, c.134, s.1)

22

23       4. R.S. 54:50-9 is amended to read as follows:

24       54:50-9. Nothing herein contained shall be construed to prevent:

25       a. The delivery to a taxpayer or the taxpayer's duly authorized  
26 representative of a copy of any report or any other paper filed by the  
27 taxpayer pursuant to the provisions of this subtitle or of any such State  
28 tax law;

29       b. The publication of statistics so classified as to prevent the  
30 identification of a particular report and the items thereof;

31       c. The director, in the director's discretion and subject to  
32 reasonable conditions imposed by the director, from disclosing the  
33 name and address of any licensee under any State tax law, unless  
34 expressly prohibited by such State tax law;

35       d. The inspection by the Attorney General or other legal  
36 representative of this State of the reports or files relating to the claim  
37 of any taxpayer who shall bring an action to review or set aside any  
38 tax imposed under any State tax law or against whom an action or  
39 proceeding has been instituted in accordance with the provisions  
40 thereof;

41       e. The examination of said records and files by the Comptroller,  
42 State Auditor or State Commissioner of Finance, or by their respective  
43 duly authorized agents;

44       f. The furnishing, at the discretion of the director, of any  
45 information contained in tax reports or returns or any audit thereof or  
46 the report of any investigation made with respect thereto, filed

1 pursuant to the tax laws, to the taxing officials of any other state, the  
2 District of Columbia, the United States and the territories thereof,  
3 providing said jurisdictions grant like privileges to this State and  
4 providing such information is to be used for tax purposes only;

5 g. The furnishing, at the discretion of the director, of any material  
6 information disclosed by the records or files to any law enforcing  
7 authority of this State who shall be charged with the investigation or  
8 prosecution of any violation of the criminal provisions of this subtitle  
9 or of any State tax law;

10 h. The furnishing by the director to the State agency responsible  
11 for administering the Child Support Enforcement program pursuant to  
12 Title IV-D of the federal Social Security Act, Pub. L.93-647 (42  
13 U.S.C. s.51 et seq.), with the names, home addresses, social security  
14 numbers and sources of income and assets of all absent parents who  
15 are certified by that agency as being required to pay child support,  
16 upon request by the State agency and pursuant to procedures and in  
17 a form prescribed by the director;

18 i. The furnishing by the director to the Board of Public Utilities any  
19 information contained in tax information statements, reports or returns  
20 or any audit thereof or a report of any investigation made with respect  
21 thereto, as may be necessary for the administration of P.L.1991, c.184  
22 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-3 et al.);

23 j. The furnishing by the director to the Director of the Division of  
24 Alcoholic Beverage Control in the Department of Law and Public  
25 Safety any information contained in tax information statements,  
26 reports or returns or any audit thereof or a report of any investigation  
27 made with respect thereto, as may be relevant, in the discretion of the  
28 director, in any proceeding conducted for the issuance, suspension or  
29 revocation of any license authorized pursuant to Title 33 of the  
30 Revised Statutes;

31 k. The inspection by the Attorney General or other legal  
32 representative of this State of the reports or files of any tobacco  
33 product manufacturer, as defined in section 2 of P.L.1999, c.148  
34 (C.52:4D-2), for any period in which that tobacco product  
35 manufacturer was not or is not in compliance with subsection a. of  
36 section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed  
37 distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2),  
38 for the purpose of facilitating the administration of the provisions of  
39 P.L.1999, c.148 (C.52:4D-1 et seq.);

40 l. The furnishing, at the discretion of the director, of information  
41 as to whether a contractor or subcontractor holds a valid business  
42 registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44).  
43 (cf: P.L.2001, c.358, s.1)

44

45 5. (New section) A business organization that fails to provide a  
46 copy of a business registration as required pursuant to section 1 of

1 P.L.2001, c.134 (C.52:32-44 et al.) or subsections e. or f. of section  
2 92 of P.L.1977, c.110 (C.5:12:92), or that provides false information  
3 of business registration under the requirements of either of those  
4 sections, shall be liable for a penalty of \$25 for each day of violation,  
5 not to exceed \$50,000 for each business registration copy not properly  
6 provided under a contract with a contracting agency or under a casino  
7 service industry contract.

8  
9 6. Section 3 of P.L.2001, c.134 (C.54:52-20) is repealed.

10  
11 7. This act shall take effect immediately, provided however that  
12 sections 1 through 6 shall remain inoperative until the first day of the  
13 third month following enactment.

14  
15  
16 STATEMENT

17  
18 This bill revises and expands the program of verifying registration  
19 of contractors doing business with the State of New Jersey that was  
20 first implemented in 2001.

21 All businesses transacting business in New Jersey are already  
22 required under various laws to have registered with the State (for  
23 example, the corporate registration laws for incorporated business, the  
24 gross income tax for unincorporated businesses, the sales and use tax  
25 law for businesses dealing in tangible property and taxable services,  
26 and the labor laws for businesses with employees) and these functions  
27 have been consolidated in a single registration process.

28 This bill formalizes some of the procedures. Under the bill, a  
29 contractor or subcontractor will provide a copy of its business  
30 registration in response to a request for bids, at the time a bid proposal  
31 is submitted, or before the issuance of a purchase order or other  
32 contracting document. The bill provides for extensive notice to  
33 contractors and subcontractors of the requirements to provide a copy  
34 of the business registration through documents notifying potential  
35 contractors of opportunities.

36 The bill extends the program beyond business registration for  
37 providers of goods and services to State agencies and casinos to  
38 include contractors and subcontractors with State colleges and  
39 universities, county colleges, local government units, boards of  
40 education, and certain municipal water and wastewater contractors.  
41 The bill adds a copy of a contractor's or subcontractor's business  
42 registration to the documents that are mandatory items submitted  
43 under the "Local Public Contracts Law."

44 The bill provides an additional exception to the confidentiality of  
45 State tax information so that the Director of the Division of Taxation  
46 may verify whether a contractor or subcontractor holds a valid State

**A3130 MCKEON**

1 business registration.

2 The bill also adds a new requirement for entry into a contract with  
3 a State agency, State colleges and universities, county colleges, local  
4 government units, boards of education, and certain municipal water  
5 and wastewater contractors. The contractor or subcontractor, and any  
6 affiliate of the subcontractor or subcontractor, must collect New  
7 Jersey use tax on any sales of goods delivered into the State.

8 The bill also repeals a law that makes failure to properly provide a  
9 business registration under a State contract a crime, and instead  
10 provides a \$25 per day administrative penalty for a contractor's or  
11 subcontractor's failure to properly provide a business registration  
12 under the contractor business registration program.



# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3130**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3130 with committee amendments.

Assembly Bill No. 3130, as amended, revises and expands the program of verifying registration of contractors doing business with the State of New Jersey that was first implemented in 2001.

All businesses transacting business in New Jersey are already required under various laws to have registered with the State (for example, the corporate registration laws for incorporated business, the gross income tax for unincorporated businesses, the sales and use tax law for businesses dealing in tangible property and taxable services, and the labor laws for businesses with employees) and these functions have been consolidated in a single registration process.

This bill formalizes some of the procedures. Under the bill, a contractor or subcontractor will provide a copy of its business registration in response to a request for bids, at the time a bid proposal is submitted, or before the issuance of a purchase order or other contracting document. The bill provides for extensive notice to contractors and subcontractors of the requirements to provide a copy of the business registration through documents notifying potential contractors of opportunities.

The bill extends the program beyond business registration for providers of goods and services to State agencies and casinos to include contractors and subcontractors with State colleges and universities, county colleges, local government units, boards of education, and certain municipal water and wastewater contractors. The bill adds a copy of a contractor's or subcontractor's business registration to the documents that are mandatory items submitted under the "Local Public Contracts Law."

The bill provides an additional exception to the confidentiality of State tax information so that the Director of the Division of Taxation may verify whether a contractor or subcontractor holds a valid State business registration.

The bill also adds a new requirement for entry into a contract with a State agency, State colleges and universities, county colleges, local government units, boards of education, and certain municipal water

and wastewater contractors. The contractor or subcontractor, and any affiliate of the subcontractor or subcontractor, must collect New Jersey use tax on any sales of goods delivered into the State.

The bill also repeals a law that makes failure to properly provide a business registration under a State contract a crime, and replaces that criminal law provision with a \$25 per day administrative penalty for a contractor's or subcontractor's failure to properly provide a business registration under the contractor business registration program or the casino service provider registration provision.

FISCAL IMPACT:

At this time, the Executive branch has not provided any information concerning the fiscal impact of the provisions of this bill.

COMMITTEE AMENDMENTS:

The amendments clarify that the subcontractors whose business registrations are to become mandatory items submitted under a contract bid under the "Local Public Contracts Law" are the subcontractors to the contract being bid.

**SENATE, No. 1778**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 17, 2004

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Expands State contractor business registration program to local government contracts, replaces noncompliance penalty, requires contractors and their affiliates to collect State use tax.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT expanding the program of business registration for  
2 contractors with government agencies and requiring certain  
3 government agency contractors and their affiliates to collect State  
4 use tax, amending P.L.1999, c.39, the Title and text of P.L.2001,  
5 c.134, and R.S.54:50-9, repealing section 3 of P.L.2001, c.134  
6 (C.54:52-20), and supplementing Title 54 of the Revised Statutes.

7

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

10

11 1. Section 2 of P.L.1999, c.39 (C.40A:11-23.2) is amended to read  
12 as follows

13 2. When required by the bid plans and specifications, the following  
14 requirements shall be considered mandatory items to be submitted at  
15 the time specified by the contracting unit for the receipt of the bids;  
16 the failure to submit any one of the mandatory items shall be deemed  
17 a fatal defect that shall render the bid proposal unresponsive and that  
18 cannot be cured by the governing body:

19 a. A guarantee to accompany the bid pursuant to section 21 of  
20 P.L.1971, c.198 (C.40A:11-21);

21 b. A certificate from a surety company pursuant to section 22 of  
22 P.L.1971, c.198 (C.40A:11-22);

23 c. A statement of corporate ownership pursuant to section 1 of  
24 P.L.1977, c.33 (C.52:25-24.2);

25 d. A listing of subcontractors pursuant to section 16 of P.L.1971,  
26 c.198 (C.40A:11-16); [and]

27 e. A document provided by the contracting agent in the bid plans,  
28 specifications, or bid proposal documents for the bidder to  
29 acknowledge the bidder's receipt of any notice or revisions or addenda  
30 to the advertisement or bid documents; and

31 f. A copy of the contractor's and subcontractors' business  
32 registration as required pursuant to section 1 of P.L.2001, c.134  
33 (C.52:32-44).

34 (cf: P.L.1999, c.39, s.2)

35

36 2. The Title of P.L.2001, c.134 is amended to read as follows:

37 **AN ACT** concerning business registration for providers of goods and  
38 services to the State, State colleges and universities, county  
39 colleges, local contracting units, boards of education, water and  
40 wastewater contractors and casinos, supplementing Title 54 of the  
41 Revised Statutes and amending P.L.1977, c.110.

42

43 3. Section 1 of P.L.2001, c.134 (C.52:32-44) is amended to read

**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 underlined thus is new matter.**

1 as follows:

2 1. a. For the purposes of this section:

3 "Business organization" means an individual, partnership,  
4 association, joint stock company, trust, corporation, or other legal  
5 business entity or successor thereof;

6 "Business registration" means a business registration certificate  
7 issued by the Department of the Treasury or such other form or  
8 verification that a contractor or subcontractor is registered with the  
9 Department of the Treasury;

10 "Contractor" means a [person under] business organization that  
11 seeks to enter, or has entered into, a contract to provide goods or  
12 services or to construct a construction project [, or seeking to enter  
13 a contract to provide goods or services or to construct a construction  
14 project] with a contracting [State] agency;

15 "Contracting [State] agency" means the principal departments in  
16 the Executive Branch of the State Government, and any division,  
17 board, bureau, office, commission or other instrumentality within or  
18 created by such department, the Legislature of the State and the  
19 Judicial Branch of the State and any office, board, bureau or  
20 commission within or created by the Legislative Branch or the Judicial  
21 Branch, or any independent State authority, commission,  
22 instrumentality or agency, or any State college or university, any  
23 county college, or any local unit;

24 "Local unit" means any contracting unit as defined pursuant to  
25 section 2 of P.L.1971, c.198 (C.40A:11-2), any board of education as  
26 defined pursuant to N.J.S.18A:18A-2, a private firm that has entered  
27 into a contract with a public entity for the provision of water supply  
28 services pursuant to P.L.1995, c.101 (C.58:26-19 et al.), a private firm  
29 or public authority that has entered into a contract with a public entity  
30 for the provision of wastewater treatment service pursuant to  
31 P.L.1995, c.216 (C.58:27-19 et al.), and a duly incorporated nonprofit  
32 association that entered into a contract with the governing body of a  
33 city of the first class for the provision of wastewater treatment services  
34 pursuant to P.L.1995, c.216 (C.58:27-19 et al).

35 "Subcontractor" means any [person who enters into a contract with  
36 a contractor to supply goods and services to a contractor under a  
37 contract with a State agency] business organization that is not a  
38 contractor that knowingly provides goods or performs services for a  
39 contractor or another subcontractor in the fulfillment of a contract  
40 issued by a contracting agency.

41 b. [A contractor shall provide proof of valid business registration  
42 with the Division of Revenue in the Department of the Treasury to any  
43 contracting State agency; no] No contract shall be entered into by any  
44 contracting [State] agency unless the contractor [first] provides  
45 [proof of valid] a copy of its business registration in accordance with

1 the following schedule:

2 (1) In response to a request for bids or a request for proposals, at  
3 the time a bid or proposal is submitted; or

4 (2) For all other transactions, before the issuance of a purchase  
5 order or other contracting document. In its sole discretion, the  
6 contracting unit may waive this requirement if a business registration  
7 has been previously provided to the contracting agency.

8 c. A subcontractor [under any contract with a contracting State  
9 agency] shall provide [proof of valid] a copy of its business  
10 registration [with the Division of Revenue] to any contractor[;  
11 verification information] who shall [be forwarded by the contractor]  
12 forward it to the contracting [State] agency. No [subcontract]  
13 contract with a subcontractor shall be entered into by any contractor  
14 under any contract with a contracting [State] agency unless the  
15 subcontractor first provides proof of valid business registration. The  
16 contracting agency shall file all business registrations received by the  
17 contracting agency with other procurement documents related to the  
18 contract.

19 d. A contract entered into by a contracting [State] agency with a  
20 [provider of goods or services or a] contractor [or subcontractor of  
21 a construction project] shall [contain a notice of the provisions  
22 in]include provisions under subsection b. of this section and this  
23 subsection for the contractor to comply with, and for the contractor  
24 to notify subcontractors by written notice to comply with subsection  
25 c. of this section. A contracting agency shall not be responsible for a  
26 contractor's failure to comply with this section. The contractor shall  
27 maintain and submit to the contracting agency a list of subcontractors  
28 and their addresses that may be updated from time to time during the  
29 course of the contract performance. A complete and accurate list shall  
30 to be submitted before final payment is made for goods provided or  
31 services rendered or for construction of a construction project under  
32 the contract.

33 e. Notice of the provisions of this section shall be included by the  
34 contracting agency in any bid specification, requests for proposals, or  
35 other documents notifying potential contractors of opportunities to  
36 provide goods or perform services for a contracting agency.

37 f. Nothing in this section shall in any way alter the provisions or  
38 change the responsibilities or obligations of casino industry licensees  
39 as set forth in section 92 of P.L.1977, c.110 (C.5:12-92).

40 g. (1) A contractor or a contractor with a subcontractor that has  
41 entered into a contract with a contracting agency, and each of their  
42 affiliates, shall collect and remit to the Director of the Division of  
43 Taxation in the Department of the Treasury the use tax due pursuant  
44 to the "Sales and Use Tax Act, P.L.1966, c.30 (C.54:32B-1 et seq.) on  
45 all their sales of tangible personal property delivered into this State.

1       (2) A contracting agency entering into a contract with a contractor,  
2 or a contractor with a subcontractor, shall include in its contract to  
3 provide goods or perform services or to construct a construction  
4 project with that contractor, or a contractor with a subcontractor, for  
5 the term of the contract, a requirement that the contractor or  
6 subcontractor and each of their affiliates shall collect and remit to the  
7 Director of the Division of Taxation in the Department of the Treasury  
8 the use tax due pursuant to the "Sales and Use Tax Act, P.L.1966,  
9 c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal  
10 property delivered into this State.

11       (3) For the purposes of this subsection, "affiliate" means any entity  
12 that (1) directly, indirectly, or constructively controls another entity,  
13 (2) is directly, indirectly, or constructively controlled by another  
14 entity, or (3) is subject to the control of a common entity. For  
15 purposes of this subsection an entity controls another entity if it owns,  
16 directly or individually, more than 50% of the ownership interest in  
17 that entity.

18       h. The State Treasurer may adopt regulations pursuant to the  
19 "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.)  
20 as are necessary to administer the provisions of this act.  
21 (cf: P.L.2001, c.134, s.1)

22

23       4. R.S. 54:50-9 is amended to read as follows:

24       54:50-9. Nothing herein contained shall be construed to prevent:

25       a. The delivery to a taxpayer or the taxpayer's duly authorized  
26 representative of a copy of any report or any other paper filed by the  
27 taxpayer pursuant to the provisions of this subtitle or of any such State  
28 tax law;

29       b. The publication of statistics so classified as to prevent the  
30 identification of a particular report and the items thereof;

31       c. The director, in the director's discretion and subject to  
32 reasonable conditions imposed by the director, from disclosing the  
33 name and address of any licensee under any State tax law, unless  
34 expressly prohibited by such State tax law;

35       d. The inspection by the Attorney General or other legal  
36 representative of this State of the reports or files relating to the claim  
37 of any taxpayer who shall bring an action to review or set aside any  
38 tax imposed under any State tax law or against whom an action or  
39 proceeding has been instituted in accordance with the provisions  
40 thereof;

41       e. The examination of said records and files by the Comptroller,  
42 State Auditor or State Commissioner of Finance, or by their respective  
43 duly authorized agents;

44       f. The furnishing, at the discretion of the director, of any  
45 information contained in tax reports or returns or any audit thereof or  
46 the report of any investigation made with respect thereto, filed

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6

1 pursuant to the tax laws, to the taxing officials of any other state, the  
2 District of Columbia, the United States and the territories thereof,  
3 providing said jurisdictions grant like privileges to this State and  
4 providing such information is to be used for tax purposes only;

5 g. The furnishing, at the discretion of the director, of any material  
6 information disclosed by the records or files to any law enforcing  
7 authority of this State who shall be charged with the investigation or  
8 prosecution of any violation of the criminal provisions of this subtitle  
9 or of any State tax law;

10 h. The furnishing by the director to the State agency responsible  
11 for administering the Child Support Enforcement program pursuant to  
12 Title IV-D of the federal Social Security Act, Pub. L.93-647 (42  
13 U.S.C. s.51 et seq.), with the names, home addresses, social security  
14 numbers and sources of income and assets of all absent parents who  
15 are certified by that agency as being required to pay child support,  
16 upon request by the State agency and pursuant to procedures and in  
17 a form prescribed by the director;

18 i. The furnishing by the director to the Board of Public Utilities any  
19 information contained in tax information statements, reports or returns  
20 or any audit thereof or a report of any investigation made with respect  
21 thereto, as may be necessary for the administration of P.L.1991, c.184  
22 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-3 et al.);

23 j. The furnishing by the director to the Director of the Division of  
24 Alcoholic Beverage Control in the Department of Law and Public  
25 Safety any information contained in tax information statements,  
26 reports or returns or any audit thereof or a report of any investigation  
27 made with respect thereto, as may be relevant, in the discretion of the  
28 director, in any proceeding conducted for the issuance, suspension or  
29 revocation of any license authorized pursuant to Title 33 of the  
30 Revised Statutes;

31 k. The inspection by the Attorney General or other legal  
32 representative of this State of the reports or files of any tobacco  
33 product manufacturer, as defined in section 2 of P.L.1999, c.148  
34 (C.52:4D-2), for any period in which that tobacco product  
35 manufacturer was not or is not in compliance with subsection a. of  
36 section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed  
37 distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2),  
38 for the purpose of facilitating the administration of the provisions of  
39 P.L.1999, c.148 (C.52:4D-1 et seq.);

40 l. The furnishing, at the discretion of the director, of information  
41 as to whether a contractor or subcontractor holds a valid business  
42 registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44).  
43 (cf: P.L.2001, c.358, s.1)

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6 provided under a contract with a contracting agency or under a casino  
7 service industry contract.

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9 6. Section 3 of P.L.2001, c.134 (C.54:52-20) is repealed.

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18 This bill revises and expands the program of verifying registration  
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25 law for businesses dealing in tangible property and taxable services,  
26 and the labor laws for businesses with employees) and these functions  
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33 contractors and subcontractors of the requirements to provide a copy  
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38 include contractors and subcontractors with State colleges and  
39 universities, county colleges, local government units, boards of  
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8 The bill also repeals a law that makes failure to properly provide a  
9 business registration under a State contract a crime, and instead  
10 provides a \$25 per day administrative penalty for a contractor's or  
11 subcontractor's failure to properly provide a business registration  
12 under the contractor business registration program.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1778**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 22, 2004

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1778.

Senate Bill No. 1778, as amended, revises and expands the program of verifying registration of contractors doing business with the State of New Jersey that was first implemented in 2001.

All businesses transacting business in New Jersey are already required under various laws to have registered with the State (for example, the corporate registration laws for incorporated business, the gross income tax for unincorporated businesses, the sales and use tax law for businesses dealing in tangible property and taxable services, and the labor laws for businesses with employees) and these functions have been consolidated in a single registration process.

This bill formalizes some of the procedures. Under the bill, a contractor or subcontractor will provide a copy of its business registration in response to a request for bids, at the time a bid proposal is submitted, or before the issuance of a purchase order or other contracting document. The bill provides for extensive notice to contractors and subcontractors of the requirements to provide a copy of the business registration through documents notifying potential contractors of opportunities.

The bill extends the program beyond business registration for providers of goods and services to State agencies and casinos to include contractors and subcontractors with State colleges and universities, county colleges, local government units, boards of education, and certain municipal water and wastewater contractors. The bill adds a copy of a contractor's or subcontractor's business registration to the documents that are mandatory items submitted under the "Local Public Contracts Law."

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The bill also repeals a law that makes failure to properly provide a business registration under a State contract a crime, and replaces that criminal law provision with a \$25 per day administrative penalty for a contractor's or subcontractor's failure to properly provide a business registration under the contractor business registration program or the casino service provider registration provision.

#### COMMITTEE AMENDMENTS

The amendments are technical and clarify that a bidder's submission of a copy of the contractor's registration is to include a list of the registration of the subcontractors that the contractor is using on the contract.

#### FISCAL IMPACT

At this time, the Executive branch has not provided any information concerning the fiscal impact of the provisions of this bill.