

LEGISLATIVE HISTORY CHECKLIST
 Compiled by the NJ State Law Library

(Small businesses, women & minority
 businesses--registry)

NJSA: 52:32-23.1

LAWS OF: 1995 **CHAPTER:** 129

BILL NO: S199

SPONSOR(S): Lipman

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: State Government; Budget

AMENDED DURING PASSAGE: Yes Amendments during passage
 First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** May 22, 1995

SENATE: February 9, 1995

DATE OF APPROVAL: June 22, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes 10-17-94 & 1-12-95

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: Yes

HEARINGS: No

Report, mentioned in sponsor's statement:

974.90 New Jersey. Governor's Study Commission on Discrimination in
 E19 Public Works.

1993b Final report...February 22, 1993, Trenton, 1993.

[see pp. 81-82--attached]

KBG:pp

[FIRST REPRINT]

SENATE, No. 199

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senator LIPMAN

1 AN ACT concerning a central registry of minority and women's
2 businesses eligible to perform set-aside contracts and
3 supplementing Title 52 of the Revised Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. The ¹[Public Contract Oversight Office, established
8 pursuant to P.L. , c. (C.) (now pending before the
9 Legislature as Assembly Bill No. 1623 (1R) or Senate Bill No.
10 756), in cooperation with the Division of Development for Small
11 Businesses and Women's and Minority Businesses,] Department of
12 Commerce and Economic Development¹ shall be responsible for
13 the operation and continued development of the central registry,
14 known as the Selective Assistance Vendor Information (SAVI II)
15 database, which lists businesses certified as eligible to perform
16 contracts under any State set-aside program. The purpose of the
17 database shall be to enable contracting agencies and persons
18 bidding on, or performing, State contracts to have ready access
19 to the names of businesses which are eligible to perform
20 set-aside contracts and to allow the ¹[Public Contract Oversight
21 Office] department¹ and contracting agencies to monitor
22 participation by these businesses in State contracting.

23 b. The ¹[Public Contract Oversight Office, in cooperation with
24 the division,] department¹ shall randomly monitor businesses
25 certified as eligible for any State set-aside program, or seeking
26 such certification, to ensure compliance with eligibility
27 requirements.

28 c. A person applying for the certification of a business as
29 eligible for participation in any State set-aside program shall
30 certify in writing that the person believes that the business meets
31 all of the requirements for eligibility for the program. Any
32 person who makes a false statement in connection therewith shall
33 be subject to the penalties provided by N.J.S.2C:28-2.

34 2. This act shall take effect ¹[upon the enactment in the law
35 of P.L. , c. (C.) (now pending before the Legislature as
36 Assembly Bill No. 1623 (1R) or Senate Bill No. 756) which creates
37 the Public Contract Oversight Office] immediately¹.

38
39
40
41

42 Provides for a central registry of businesses which are eligible to
43 participate in set-aside programs.

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:

¹ Senate SBA committee amendments adopted January 12, 1995.

SENATE, No. 199

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senator LIPMAN

1 AN ACT concerning a central registry of minority and women's
2 businesses eligible to perform set-aside contracts and
3 supplementing Title 52 of the Revised Statutes.

4
5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. a. The Public Contract Oversight Office, established
8 pursuant to P.L. , c. (C.) (now pending before the
9 Legislature as Assembly Bill No.2698), in cooperation with the
10 Division of Development for Small Businesses and Women's and
11 Minority Businesses, shall be responsible for the operation and
12 continued development of the central registry, known as the
13 Selective Assistance Vendor Information (SAVI II) database,
14 which lists businesses certified as eligible to perform contracts
15 under any State set-aside program. The purpose of the database
16 shall be to enable contracting agencies and persons bidding on, or
17 performing, State contracts to have ready access to the names of
18 businesses which are eligible to perform set-aside contracts and
19 to allow the Public Contract Oversight Office and contracting
20 agencies to monitor participation by these businesses in State
21 contracting.

22 b. The Public Contract Oversight Office, in cooperation with
23 the division, shall randomly monitor businesses certified as
24 eligible for any State set-aside program, or seeking such
25 certification, to ensure compliance with eligibility requirements.

26 c. A person applying for the certification of a business as
27 eligible for participation in any State set-aside program shall
28 certify in writing that the person believes that the business meets
29 all of the requirements for eligibility for the program. Any
30 person who makes a false statement in connection therewith shall
31 be subject to the penalties provided by N.J.S.2C:28-2.

32 2. This act shall take effect upon the enactment in the law of
33 P.L. , c. (C.) (now pending before the Legislature as Assembly
34 Bill No.2698) which creates the Public Contract Oversight Office.

35

36

37

STATEMENT

38

39 This bill would implement one of the recommendations made by
40 the Governor's Study Commission on Discrimination in Public
41 Works Procurement and Construction Contracts in its report of
42 February 22, 1993. It provides that the Public Contract
43 Oversight Office, created by separate legislation, would be
44 responsible, in cooperation with the Division of Development for
45 Small Businesses and Women's and Minority Businesses, for the

1 continuation, operation and development of the Selective
2 Assistance Vendor Information (SAVI II) database, a central
3 registry of businesses which are certified as eligible to
4 participate in State public contract set-aside programs. The
5 purpose of the database is to enable contracting agencies and
6 contractors to have ready access to the names of businesses
7 which are eligible to perform set-aside contracts. It will also
8 allow the Public Contract Oversight Office and contracting
9 agencies to monitor participation by these businesses in State
10 contracting.

11 The bill directs the office to randomly monitor the eligibility
12 of businesses certified as eligible under a set-aside program or
13 seeking such certification. It also provides that any person
14 making a a false statement in connection an application for
15 certification would be subject to the penalties provided in
16 N.J.S.26:28-2 for false swearing.

17

18

19

20

21 Provides for a central registry of businesses which are eligible to
22 participate in set-aside programs.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 199

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1995

The Assembly Appropriations Committee reports favorably Senate Bill No. 199 (1R).

Senate Bill No. 199 (1R) requires the Department of Commerce and Economic Development to operate and continue development of the central registry of businesses that are certified as eligible to participate in State public contract set-aside programs. The registry is known as the Selective Assistance Vendor Information (SAV II) database. The registry (1) enables contracting agencies and persons bidding for or performing under State contracts to identify businesses eligible to perform set-aside contracts, and (2) facilitates the monitoring of participation in State contracts by those businesses.

This bill is identical to Assembly Bill No. 1413, as amended by this committee.

FISCAL IMPACT:

In a fiscal note prepared by the Office of Legislative Services (OLS), the Department of the Treasury stated that the enactment of this bill will not result in additional State costs. The department notes that a database of approved small businesses, minority businesses and women-owned business vendors does currently exist and is located in the Department of Commerce and Economic Development.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 199

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 12, 1995

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 199, with amendments.

Senate Bill No. 199, as amended, requires the Department of Commerce and Economic Development to operate and continue development of the central registry of businesses that are certified as eligible to participate in State public contract set-aside programs. The registry is known as the Selective Assistance Vendor Information (SAV II) database. The registry (1) enables contracting agencies and persons bidding for or performing under State contracts to identify businesses eligible to perform set-aside contracts, and (2) facilitates the monitoring of participation in State contracts by those businesses.

COMMITTEE AMENDMENTS

The committee amended the bill at the sponsor's request to remove the responsibility for the registry from the Public Contract Oversight Office because that office has not yet been established. Legislation to establish the office is still pending before the Legislature.

FISCAL IMPACT

In a fiscal note prepared by the Office of Legislative Services (OLS), the Department of the Treasury stated that the enactment of this bill will not result in additional State costs. The department notes that a database of approved small businesses, minority businesses and women-owned business vendors does currently exist and is located in the Department of Commerce and Economic Development.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 199

STATE OF NEW JERSEY

DATED: OCTOBER 17, 1994

The Senate State Government Committee reports favorably Senate, No. 199.

This bill provides for the maintenance and development of a central registry, known as the Selective Assistance Vendor Information (SAVI II) database, listing businesses certified as eligible to perform contracts under a State set-aside program. The purpose of this registry would be (1) to enable contracting agencies and persons bidding for or performing under State contracts to identify businesses eligible to perform set-aside contracts, and (2) to facilitate the monitoring of participation in State contracting by those businesses.

The bill assigns responsibility for maintenance and development of this registry to the Public Contract Oversight Office, established under pending legislation, in cooperation with Division of Development for Small Businesses and Women's and Minority Businesses. The Oversight Office, in cooperation with the Division, is to monitor on a random basis those businesses certified, or seeking certification, as eligible for a State set-aside program to ensure compliance with eligibility requirements.

The bill requires a person applying for the certification of a business as eligible for participation in any State set-aside program to certify in writing that the person believes that the business meets all of the requirements for eligibility for the program. Any person who makes a false statement in connection therewith shall be subject to the penalties provided by N.J.S.2C:28-2, which provides that the making of a false statement under oath or equivalent affirmation constitutes a crime of the fourth degree.

The bill is to take effect upon enactment of the legislation creating the Public Contract Oversight Office.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

NEW JERSEY STATE LIBRARY



3 3009 00571 0563

FINAL REPORT

STATE OF NEW JERSEY
GOVERNOR'S STUDY COMMISSION ON
DISCRIMINATION IN
PUBLIC WORKS PROCUREMENT AND
CONSTRUCTION CONTRACTS



February 22, 1993

974.90
E19
1993b
c.2

II. AN OVERSIGHT COMMITTEE WITH DIRECT ACCESS TO THE GOVERNOR SHOULD BE ESTABLISHED IMMEDIATELY TO ASSURE THAT ALL UNITS OF STATE GOVERNMENT EFFECTUATE THE CONSTITUTIONAL AND LEGISLATIVE POLICIES DISCUSSED IN THIS REPORT

A. OVERSIGHT COMMITTEE: An oversight committee should be appointed to monitor and advise the Centralized Oversight Agency recommended herein. This committee should be composed of private citizens who may be drawn from existing Minority and Women Business Advisory Councils.

B. OVERSIGHT AGENCY: The authority to monitor and enforce these recommendations must be vested in a single office with direct access to the Governor. The chief mission of the office should be the elimination of discrimination in contracting and the inclusion of minority- and women-owned firms in the economic life of the State. In order to ensure consistency in reporting and monitoring, this proposed oversight agency should receive reports from all nineteen state departments as well as the independent authorities, commissions, and state colleges. Failure to require such reports will result in fragmentation of the program rather than consistency across contracting lines. The agency should, in addition to the functions noted below, continue to review laws and procurement processes that directly or inadvertently continue discrimination or exclusion. The oversight agency should also serve as a resource to county and local government contracting offices in the development and/or operation of their M/WBE and small business programs. This agency should determine availability of M/WBEs, set annual goals, and determine how and when the programs recommended should be modified and when they should be terminated. Contracting offices should be required to keep uniform records of prime and subcontracts by race, ethnicity, and gender of the business owners and to report this information to the oversight agency.

In summary, the oversight agency should be able to identify accurately what percentage of overall spending by the State is being received by M/WBEs. Moreover, based on the data provided, the oversight agency should be able to identify specific ethnic groups participating in the set-aside programs and modify the program consistent with the evidence received. The State, through this centralized agency, should also:

1. In conjunction with the SWMB Division of the Department of Commerce or a comparable agency, establish a method of determining the availability of M/WBEs to provide specified types of goods, services, and products for purposes of race- and gender-based set-asides and for race- and gender-neutral programs. This information should be made available to both private contractors and contracting units throughout the State to be used in developing their purchasing plans.

2. Set overall State goals for M/WBE participation based on availability. Current and depressed availability should be considered in developing both short- and long-term goals.

3. Review, modify, approve, and monitor the purchasing plans and proposed goals of each State contracting unit.

4. In conjunction with the SWMB Division, continue development and expansion of the SAVI II database. Those who seek to register should be randomly monitored for compliance with the criteria for certified M/WBEs. Registrants should be penalized for false statements made during the registration process.

5. Circulate, by electronic bulletin board or other means, the SAVI II register to State and local government contracting agencies and State contractors in order to assist those agencies and contractors in identifying, recruiting and utilizing M/WBEs.

6. Develop and monitor a uniform reporting system covering all nineteen state departments, and all independent authorities and state colleges in order to monitor State uti-

lization of M/WBEs. Reporting should include both prime and subcontracts by race, gender, and minority ethnic status,² so that programs can be modified as additional evidence is received.

7. Develop and monitor the uniform reporting systems recommended herein for state contractors, sureties and financial institutions, grant/benefit and state assisted programs and others.

8. Develop and implement procedures to certify to appropriate contracting units a bidder's compliance with equal contracting opportunity requirements and *N.J.S.A. 10:5-12(1)*.

9. Serve as a resource to county and local government contracting offices in the development and/or operation of their M/WBE and small business programs.

10. Develop guidelines, regulations, procedures and sanctions to implement and enforce the Commission's recommendations.

11. Oversee and be ultimately responsible for technical assistance programs for M/WBEs.

12. Coordinate and assume responsibility for the implementation, monitoring, and enforcement of any Commission recommendation or related program for which authority or jurisdiction is shared or has been delegated.

III. THE STATE SHOULD ESTABLISH A UNIFORM CERTIFICATION PROCESS FOR MINORITY- AND WOMAN-OWNED BUSINESSES

The State should continue and strengthen its process of certifying that a business is minority- or woman-owned and controlled. Additionally, efforts to expand the voluntary registry of eligible firms should receive support. This should include the means to enable the State to conduct a random sampling of firms which have identified themselves on the voluntary registry as M/WBEs to ascertain whether such firms are bona fide. There should be severe penalties for false statements made in connection with either the certification process or the registration process. Moreover, although a uniform certification process has recently been established in the Department of Commerce which will apply to all state agencies, this uniform certification process should be expanded to include as its using agencies, the independent authorities operating within the state and other institutions. Sufficient staff must be allocated to this office to make the process effective, including the ability to investigate and aggressively prosecute "fronts." The certifying agency should have authority to enter into reciprocal agreements for certification with institutions in other states and localities and with the federal government despite minor differences in definitions or language.

A. THE STATE MUST HAVE AND UTILIZE STRONG SANCTIONS AGAINST CONTRACTORS FOR WHICH THERE IS EVIDENCE OF NONCOMPLIANCE WITH M/WBE UTILIZATION GOALS AND UNDERUTILIZATION OF AVAILABLE M/WBEs.

1. Types of Sanctions

The overall success of any proactive program to prevent and eliminate discrimination in contracting will be dependent upon the State's ability to take action against contractors who do not comply with the requirements of the programs which the State has implemented. Therefore, the State, through each contracting agency or the centralized oversight agency, as

²This should include all minority groups previously identified in the set-aside statutes, whether or not it is determined that sufficient evidence currently exists to merit inclusion in remedial programs recommended herein.