

LEGISLATIVE HISTORY CHECKLIST
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(Public contracts--requirements)

A: 2A:44-143

LAWS OF: 1995 **CHAPTER:** 38

BILL NO: A1374

SPONSOR(S): T. Smith and others

DATE INTRODUCED: February 28, 1994

COMMITTEE: **ASSEMBLY:** State Government; Appropriations
SENATE: State Government

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

DATE OF PASSAGE: **ASSEMBLY:** October 20, 1994
SENATE: January 19, 1995

DATE OF APPROVAL: March 7, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 5-12-94 & 10-6-94
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

974.90 New Jersey. Governor's Study Commission on Discrimination in
E19 Public Works.
1993b Report...February 22, 1993. Trenton, 1993.
[see especially p.ii--Recommendation 7,
p.84--Recommendation IV]

See newspaper clippings attached:
"New laws aim to expand access of minorities...", 3-8-95, Star Ledger.
"New laws favor minorities, comen," 3-8-95, Asbury Park Press.

KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 1374
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1994

By Assemblymen T. SMITH, HAYTAIAN and Catania

1 AN ACT concerning State contract bonding requirements,
2 amending N.J.S.2A:44-143, and supplementing Title 52 of the
3 Revised Statutes.

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

7 1. (New section) The amount of any bond required under a
8 State contract may be established at any percentage, not
9 exceeding 100%, of the amount bid, based upon the contracting
10 agency's assessment of the risk presented to the State by the
11 type of contract ¹[, past experience with the party to the
12 contract]¹ and other relevant factors, ¹[except that no bond shall
13 be required of any party] and the contracting agency may waive
14 the bond requirement of this section entirely¹ if the contract is
15 for a sum not exceeding \$200,000. ¹The bond percentage
16 required shall be identified in the State contract bid documents
17 prior to the contract bidding date.¹

18 As used in this section:

19 "contracting agency" means the State or any board,
20 commission, committee, authority or agency of the State; and

21 "State contract" means any purchase, contract or agreement
22 the cost or contract price of which is to be paid, in whole or in
23 part, with or out of State funds.

24 2. N.J.S.2A:44-143 is amended to read as follows:

25 2A:44-143. a. When public buildings or other public works or
26 improvements are about to be constructed, erected, altered or
27 repaired under contract, at the expense of the State or any
28 county, municipality or school district thereof, the board, officer
29 or agent contracting on behalf of the State, county, municipality
30 or school district, shall require the usual bond, as provided for by
31 law, with good and sufficient sureties, with an additional
32 obligation for the payment by the contractor, and by all
33 subcontractors, for all labor performed or materials, provisions,
34 provender or other supplies, teams, fuels, oils, implements or
35 machinery used or consumed in, upon, for or about the
36 construction, erection, alteration or repair of such buildings,
37 works or improvements.

38 ¹b.¹ When such contract is to be performed at the expense of
39 the State and is entered into by the Director of the Division of
40 Building and Construction or State departments designated by the
41 Director of the Division of Building and Construction, the
42 director or the State departments may [: (1)]¹ : (1)¹ establish for

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 Assembly, AAP committee amendments adopted October 6, 1994.

1 that contract the amount of the bond at any percentage, not
2 exceeding 100%, of the amount bid, based upon the director's or
3 department's assessment of the risk presented to the State by
4 the type of contract ¹[, past experience with a particular
5 contractor]¹ and other relevant factors, and [(2)] ¹[shall] : (2)¹
6 waive the bond requirement of this section entirely if the
7 contract is for a sum not exceeding [\$100,000] \$200,000.

8 ¹c. When such a contract is to be performed at the expense of
9 a county, municipality or school district, the board, officer or
10 agent contracting on behalf of the county, municipality or school
11 district may: (1) establish for that contract the amount of the
12 bond at any percentage, not exceeding 100%, of the amount bid,
13 based upon the board's, officer's or agent's assessment of the
14 risk presented to the county, municipality or school district by
15 the type of contract and other relevant factors, and (2) waive the
16 bond requirement of this section entirely if the contract is for a
17 sum not exceeding \$100,000.¹

18 ¹[b.] d.¹ A surety's obligation shall not extend to any claim
19 for damages based upon alleged negligence that resulted in
20 personal injury, wrongful death, or damage to real or personal
21 property, and no bond shall in any way be construed as a liability
22 insurance policy. Nothing herein shall relieve the surety's
23 obligation to guarantee the contractor's performance of all
24 conditions of the contract, including the maintenance of liability
25 insurance if and as required by the contract. Only the obligee
26 named on the bond, and any subcontractor performing labor or
27 any subcontractor or materialman providing materials for the
28 construction, erection, alteration or repair of the public building,
29 work or improvement for which the bond is required pursuant to
30 this section, shall have any claim against the surety under the
31 bond.

32 (cf: P.L.1991, c.454, s.1)

33 3. This act shall take effect immediately.

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Concerns State contract bonding requirements.

1 requirement of this section entirely if the contract is for a sum
2 not exceeding [\$100,000] \$200,000.

3 b. A surety's obligation shall not extend to any claim for
4 damages based upon alleged negligence that resulted in personal
5 injury, wrongful death, or damage to real or personal property,
6 and no bond shall in any way be construed as a liability insurance
7 policy. Nothing herein shall relieve the surety's obligation to
8 guarantee the contractor's performance of all conditions of the
9 contract, including the maintenance of liability insurance if and
10 as required by the contract. Only the obligee named on the bond,
11 and any subcontractor performing labor or any subcontractor or
12 materialman providing materials for the construction, erection,
13 alteration or repair of the public building, work or improvement
14 for which the bond is required pursuant to this section, shall have
15 any claim against the surety under the bond.

16 (cf: P.L.1991, c.454, s.1)

17 3. This act shall take effect immediately.

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STATEMENT

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22 This bill would implement one of the recommendations made by
23 the Governor's Study Commission on Discrimination in Public
24 Works Procurement and Construction Contracts in its report of
25 February 22, 1993. The bill would alleviate one obstacle to fuller
26 participation of small businesses and minority and women's
27 businesses in State contracting by liberalizing bonding
28 requirements. It would waive the bond requirement entirely for
29 all contracts worth less than \$200,000. For contracts of greater
30 value, it would allow a contracting agency to establish the
31 amount of the bond at any percentage (less than 100%) of the
32 amount bid based upon the risk to the State, past experience with
33 the bidder and other relevant factors.

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38 Concerns State contract bonding requirements.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1374

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Assembly State Government Committee reports favorably Assembly Bill No. 1374.

This bill amends the statute (N.J.S.2A:44-143) providing that the contracting agent for a public entity that is financing a public works construction project shall require bonds for others' performance, in connection with the project, of their obligations to the public entity and to subcontractors, laborers, suppliers, and so on.

In the case of State-funded construction contracts that are entered into by the Director of the Division of Building and Construction in the Department of the Treasury or State departments designated by the director, the director or the departments may establish the amount of the bond at up to 100% of the amount bid, based on an assessment of the risk posed to the State. Currently, the statute permits the director or department to waive the bond if the value of the contract does not exceed \$100,000. Under the bill, the waiver is to be mandatory for all contracts not exceeding \$200,000 in value.

In addition, the bill would enact a new but essentially similar provision with respect to all State contracts (not only contracts for construction) permitting the establishment in connection with such contracts of bonds for up to 100% of the value of the contract, but limiting such bonds to contracts having a value exceeding \$200,000.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1374

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 6, 1994

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1374, with committee amendments.

Assembly Bill No. 1374, as amended, allows the bonding requirement for State-funded contracts to be waived if the value of the contract does not exceed \$200,000 and allows the bonding requirement for county, municipal and school district construction contracts to be waived if the value of the contract does not exceed \$100,000.

Currently, in the case of State-funded construction contracts that are entered into by the Director of the Division of Building and Construction in the Department of the Treasury or State departments designated by the director, the contractor may be required to post a bond for the contractor's and subcontractor's performance of its contract obligations to the State, its subcontractors, employees, and suppliers. The director or the departments may establish the amount of the bond at up to 100% of the amount bid, based on an assessment of the risk posed to the State. The director or department may waive the bond requirement if the value of the contract does not exceed \$100,000.

Under the bill, the director or department may waive the bond requirement if the value of the contract does not exceed \$200,000. The bill allows counties, municipalities and school districts to waive the bond requirement if the value of the contract is for a sum not exceeding \$100,000. Also, the bill provides a similar provision for all State contracts (not only contracts for construction) that permits a bond to be required of all contractors for up to 100% of the value of the contract, and allows the bond requirement to be waived if the value of the contract does not exceed \$200,000.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The committee amendments make the waiver of the bonding requirements for contracts not exceeding \$200,000 discretionary instead of mandatory; clarify that any bonding requirement must be identified in the State contract bid documents before the contract bidding date; provide for the waiver of the bonding requirement by counties, municipalities and school districts for contracts not exceeding \$100,000; and clarify that in setting bond for a county, municipal or school district contract the contracting agent may not establish the amount of the bond at more than 100% of the amount bid on the contract.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1374

STATE OF NEW JERSEY

DATED: DECEMBER 1, 1994

The Senate State Government Committee reports without recommendation Assembly, No. 1374(1R).

This bill allows the bonding requirement for State-funded contracts to be waived if the value of the contract does not exceed \$200,000 and allows the bonding requirement for county, municipal and school district construction contracts to be waived if the value of the contract does not exceed \$100,000.

Currently, in the case of State-funded construction contracts that are entered into by the Director of the Division of Building and Construction in the Department of the Treasury or State departments designated by the director, the contractor may be required to post a bond for the contractor's and subcontractor's performance of its contract obligations to the State, its subcontractors, employees, and suppliers. The director or the departments may establish the amount of the bond at up to 100% of the amount bid, based on an assessment of the risk posed to the State. The director or department may waive the bond requirement if the value of the contract does not exceed \$100,000.

Under the bill, the director or department may waive the bond requirement if the value of the contract does not exceed \$200,000. The bill allows counties, municipalities and school districts to waive the bond requirement if the value of the contract is for a sum not exceeding \$100,000. Also, the bill provides a similar provision for all State contracts (not only contracts for construction) that permits a bond to be required of all contractors for up to 100% of the value of the contract, and allows the bond requirement to be waived if the value of the contract does not exceed \$200,000.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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Release: IMMEDIATE
MARCH 7, 1995

Gov. Christie Whitman today signed legislation to amend the manner in which the state calculates compliance with set-aside goals for minority-owned and women-owned businesses.

The legislation provides that state agencies use the dollar amounts actually paid to minority or women-owned businesses through contracts and subcontracts and then compare that total with the amount paid to all parties awarded contracts by that state agency.

The current method of calculation involves counting the number of contracts projected to be awarded to minority or women-owned businesses based on information provided in bid proposals.

The legislation, A-1376, was sponsored by Assemblyman Thomas Smith, R-Monmouth, and former Assemblyman Frank Catania, R-Passaic.

Other bills signed today by the Governor are:

A-1374, sponsored by Assemblyman Thomas Smith, R-Monmouth, and Assembly Speaker Garabed Haytaian, R-Warren, to permit state contracting agencies to establish the amount of a contract bond to any percentage of the amount bid, but not to exceed 100 per cent.

A-646, sponsored by Assemblyman George Geist, R-Camden, and former Assemblyman Frank Catania, R-Passaic, to permit an identification card for emergency warning lights issued to a volunteer to be used for any vehicle driven by the volunteer.

A-511, sponsored by Assemblyman David Wolfe, R-Ocean, and former Assemblywoman Virginia Haines, R-Ocean, to amend the current law governing the licensing of professional engineers and land surveyors to create a retired license status.