

52:32-22.1

LEGISLATIVE HISTORY CHECKLIST
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(State contracts--set-aside)

NJSA: 52:32-22.1

LAWS OF: 1995 **CHAPTER:** 39

BILL NO: A1376

SPONSOR(S): T. Smith

DATE INTRODUCED: May 12, 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: No

HEARINGS: No

Report, mentioned:
974.90 New Jersey. Governor's Study Commission on Discrimination.
E19 Report...February 22, 1993. Trenton, 1993.
1993b [see especially pp.77-82]

KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 1376
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1994

By Assemblymen T. SMITH, CATANIA and Haytaian

1 AN ACT concerning certain set-aside contracts for minority
2 businesses and women's businesses and supplementing Title 52
3 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. Whenever any obligation is imposed by law upon a
8 contracting agency to set aside a percentage of State contracts
9 awarded by that agency for minority businesses or women's
10 businesses, compliance with that requirement shall be calculated
11 based ¹, according to objective and verifiable standards as
12 promulgated pursuant to administrative regulation,¹ upon the
13 dollar value of payments actually made each year to, and
14 received by, minority businesses and women's businesses pursuant
15 to State contracts awarded by that agency, or subcontracts
16 thereto, compared to the total of all payments made to, and
17 received by, all parties awarded State contracts by that agency.

18 Compliance with any such set-aside requirement shall not be
19 calculated using statements made by bidders with respect to the
20 portion of a contract which the bidder intends to subcontract to
21 minority businesses or women's businesses.

22 b. As used in this section:

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

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

28 2. This act shall take effect immediately.

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33 Provides that State agency compliance with set-aside
34 requirements be calculated on the basis of amounts actually
35 received by minority and women's businesses.

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.

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5 BE IT ENACTED *by the Senate and General Assembly of the*
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8 contracting agency to set aside a percentage of State contracts
9 awarded by that agency for minority businesses or women's
10 businesses, compliance with that requirement shall be calculated
11 based upon the dollar value of payments actually made each year
12 to, and received by, minority businesses and women's businesses
13 pursuant to State contracts awarded by that agency, or
14 subcontracts thereto, compared to the total of all payments made
15 to, and received by, all parties awarded State contracts by that
16 agency.

17 Compliance with any such set-aside requirement shall not be
18 calculated using statements made by bidders with respect to the
19 portion of a contract which the bidder intends to subcontract to
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26 part, with or out of State funds.

27 2. This act shall take effect immediately.

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30 STATEMENT

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32 This bill would implement one of the recommendations made by
33 the Governor's Study Commission on Discrimination in Public
34 Works Procurement and Construction Contracts in its report of
35 February 22, 1993. It would provide that whenever a State
36 agency is required by law to set aside a percentage of its
37 contracts for minority or women's businesses, compliance with
38 that requirement will be calculated on the basis of amounts
39 actually paid to, and received by, these businesses through
40 contracts and subcontracts. It would prohibit the calculation of
41 compliance based upon statements made by a bidder with respect
42 to the portion of a contract the bidder intends to subcontract to
43 minority businesses or women's businesses. This policy would
44 provide a more accurate assessment of the amount of business
45 actually received by minority and women's businesses than is
46 currently available. The commission found that prime
47 contractors often name minority businesses and women's

1 businesses as subcontractors when submitting a bid to increase
2 the chances of receiving the contract. After a contract is
3 awarded, different subcontractors are substituted for those
4 named in the bid. This practice not only unfairly deprives
5 minority businesses and women's businesses of work but also
6 leads to inaccurate estimates of the amount of business received
7 by them under set-aside programs.

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12 Provides that State agency compliance with set-aside
13 requirements be calculated on the basis of amounts actually
14 received by minority and women's businesses.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1376

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Assembly State Government Committee reports favorably Assembly Bill No. 1376.

This bill provides that whenever a State contracting agency is required by law to set aside a percentage of its contracts for minority or women's businesses, compliance with that requirement is to be calculated on the basis of amounts actually paid each year to and received by these businesses under contracts awarded by the agency and subcontracts under those contracts, as compared with the total of all payments made to and received by all parties awarded State contracts by the particular agency. The bill would prohibit the calculation of compliance based upon statements made by a bidder with respect to the portion of a contract the bidder intends to subcontract to minority businesses or women's businesses.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1376

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 6, 1994

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1376, with committee amendments.

Assembly Bill No. 1376, as amended, specifies the manner for determining State agency compliance with State set-aside laws. The bill provides that whenever a State contracting agency is required by law to set aside a percentage of its contracts for minority or women's businesses, compliance with that requirement is to be calculated on the basis of amounts actually paid each year to and received by minority or women's businesses under contracts and subcontracts awarded by the agency compared with the total of all payments made to and received by all parties awarded State contracts by the particular agency. The bill prohibits the calculation of compliance based upon statements made by a bidder with respect to the portion of a contract the bidder intends to subcontract to minority or women's businesses.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note; however, to the extent that the new compliance assessment standard increases State compliance costs the bill directly increases State costs and to the extent that the new compliance assessment standard increases bidder compliance costs it indirectly increases State costs.

COMMITTEE AMENDMENTS:

The committee amendments clarify that the set-aside obligations should be calculated pursuant to standards adopted by administrative regulation.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1376

STATE OF NEW JERSEY

DATED: DECEMBER 1, 1994

The Senate State Government Committee reports favorably Assembly, No. 1376(1R).

This bill specifies the manner for determining State agency compliance with State set-aside laws. The bill provides that whenever a State contracting agency is required by law to set aside a percentage of its contracts for minority or women's businesses, compliance with that requirement is to be calculated on the basis of amounts actually paid each year to and received by minority or women's businesses under contracts and subcontracts awarded by the agency compared with the total of all payments made to and received by all parties awarded State contracts by the particular agency. The bill prohibits the calculation of compliance based upon statements made by a bidder with respect to the portion of a contract the bidder intends to subcontract to minority or women's businesses.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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TRENTON, N.J. 08625

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.