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LAW/RWH

[First Reprint]

**ASSEMBLY, No. 4323**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED DECEMBER 3, 2009

**Sponsored by:**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblywoman ELEASE EVANS**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

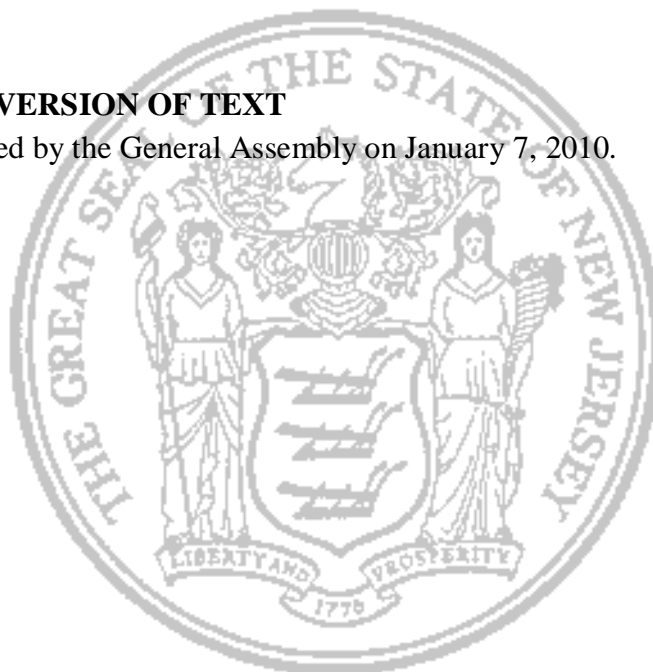
**Senators Rice, Codey, Cunningham, Gill, Ruiz and Turner**

**SYNOPSIS**

Establishes standards and requirements set forth in Executive Order No. 151 (2009) for use of funds from American Recovery and Reinvestment Act of 2009.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on January 7, 2010.



**(Sponsorship Updated As Of: 1/12/2010)**

1 AN ACT establishing certain standards and requirements for the use  
2 of funds from the federal American Recovery and Reinvestment  
3 Act of 2009 and supplementing Title 52 of the Revised Statutes.

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

7  
8 1. The Legislature finds and declares that all members of the  
9 public should be afforded the opportunity to benefit from the  
10 federal economic recovery funds provided through the American  
11 Recovery and Reinvestment Act of 2009 and associated State  
12 spending, and every public contract, whether for construction  
13 services, goods, or other services, should provide equal employment  
14 opportunities for women and minorities.

15  
16 2. For the purposes of the act, P.L. , c. (C. )(pending  
17 before the Legislature as this bill):

18 “ARRA” means the federal American Recovery and  
19 Reinvestment Act of 2009; and

20 “Reporting agencies” means the State entities whose  
21 performance is monitored by the<sup>1</sup>**【Contract Compliance and Audit  
22 Unit within the Division of Purchase and Property】 Division of  
23 Public Contracts Equal Employment Opportunity Compliance<sup>1</sup>** in  
24 the Department of the Treasury.

25  
26 3. The Commissioners of the Departments of Community  
27 Affairs, Education, Environmental Protection, and Transportation,  
28 or their designees; the President of the Board of Public Utilities, or  
29 a designee; and the Chief Executive Officers of the Schools  
30 Development Authority and the Economic Development Authority,  
31 or their designees, shall meet with representatives of the Governor’s  
32 office, the Department of the Treasury, and the United States  
33 Department of Labor’s Office of Federal Contract Compliance  
34 Programs to ensure that those departments receiving the bulk of  
35 federal economic recovery funds provide the United States  
36 Department of Labor’s Office of Federal Contract Compliance  
37 Programs their complete cooperation in complying with its  
38 mandates.

39  
40 4. The <sup>1</sup>**【Contract Compliance and Audit Unit within the  
41 Division of Purchase and Property】 Division of Public Contracts  
42 Equal Employment Opportunity Compliance<sup>1</sup>** in the Department of  
43 the Treasury shall be the entity within the Executive Branch  
44 responsible for determining whether minorities and women have

**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 floor amendments adopted January 7, 2010.

1 been offered a fair opportunity for employment on State contracts.  
2 Executive Branch departments and agencies, independent  
3 authorities, and State colleges and universities are directed to  
4 cooperate fully with the **'[Contract Compliance and Audit Unit's]**  
5 Division of Public Contracts Equal Employment Opportunity  
6 Compliance's<sup>1</sup> enforcement efforts, consistent with law, and to  
7 award public contracts only to those businesses that agree to  
8 comply with equal employment opportunity and affirmative action  
9 requirements.

10

11 5. The **'[Contract Compliance and Audit Unit]** Division of  
12 Public Contracts Equal Employment Opportunity Compliance<sup>1</sup> shall  
13 work cooperatively with the United States Department of Labor's  
14 Office of Federal Contract Compliance Programs, including sharing  
15 its workforce data to the maximum extent permitted by law, to  
16 assist the United States Department of Labor's Office of Federal  
17 Contract Compliance Programs in its enforcement efforts.

18

19 6. When not restricted by any other State or federal law, the  
20 **'[Contract Compliance and Audit Unit]** Division of Public  
21 Contracts Equal Employment Opportunity Compliance<sup>1</sup> shall  
22 determine whether each of the State entities whose performance it  
23 monitors have properly allocated and released to the Department of  
24 Labor and Workforce Development, as authorized by law, one-half  
25 of one percent of the total cost of a construction contract of  
26 \$1,000,000 or more, to be used by the department for the New  
27 Jersey Builders Utilization Initiative for Labor Diversity program to  
28 train minorities and women for employment in construction trades.  
29 This provision shall apply to those construction contracts when the  
30 funding for the contract consists entirely of appropriated funds or a  
31 combination of funds from appropriated funds and other sources.

32

33 7. All construction contracts entered into and funded, in whole  
34 or in part, by the State shall include mandatory equal employment  
35 opportunity and affirmative action contract language that requires  
36 contractors to make a good faith effort to recruit and employ  
37 minorities and women as required by the provisions of the  
38 regulations promulgated in the New Jersey Administrative Code,  
39 including but not limited to N.J.A.C.17:27-3.6 to 3.8, and 17:27-7.3  
40 and 7.4. As to the portion of each contract that is State funded, the  
41 language of the contract shall provide that payment may be  
42 withheld for failure of the contractor to demonstrate to the  
43 satisfaction of the reporting agency that the required good faith  
44 effort was made. Failure of a contractor to satisfy the good faith  
45 effort requirement of its contract may also subject it to assessments  
46 imposed pursuant to findings of the **'[Contract Compliance and**  
47 Audit Unit] Division of Public Contracts Equal Employment

1 Opportunity Compliance<sup>1</sup>, in accordance with administrative  
2 regulation N.J.A.C. 17:27-10.

3  
4 8. Except as described in subsections a. and b. of this section,  
5 each Executive Branch agency that is a recipient of federal  
6 economic recovery funds pursuant to the American Recovery and  
7 Reinvestment Act of 2009 shall include in any contract, grant, or  
8 agreement funded in whole or in part with funds from the American  
9 Recovery and Reinvestment Act of 2009 a clause requiring  
10 subrecipients, contractors, subcontractors, local education agencies,  
11 and vendors to post all job openings created pursuant to the  
12 contract, grant, or agreement on the State's Job Bank at least 14  
13 days before hiring is to commence. The clause shall state: "Since  
14 the funds supporting this contract, grant, or agreement are provided  
15 through the American Recovery and Reinvestment Act of 2009  
16 (ARRA), the subrecipient, contractor, subcontractor, local  
17 education agency, or vendor will post any jobs that it creates or  
18 seeks to fill as a result of this contract, grant, or agreement. The  
19 subrecipient, contractor, subcontractor, local education agency, or  
20 vendor shall post jobs to the New Jersey State Job Bank by  
21 submitting a job order using the form available on the Internet,  
22 notwithstanding any other posting the subrecipient, contractor,  
23 subcontractor, local education agency, or vendor might make. Any  
24 advertisements posted by the subrecipient, contractor,  
25 subcontractor, local education agency, or vendor for positions  
26 pursuant to this contract, grant, or agreement must indicate that the  
27 position is funded with ARRA funds."

28 a. Posting shall not be required when the employer intends to  
29 fill the job opening with a present employee, a laid-off former  
30 employee, or a job candidate from a previous recruitment, when  
31 pre-existing, legally binding collective bargaining agreements  
32 provide otherwise, or when an exception has been granted to the  
33 reporting agency by the Department of Labor and Workforce  
34 Development.

35 b. Nothing in this act, P.L. , c. (C. )(pending before the  
36 Legislature as this bill), shall be interpreted to require the  
37 employment of apprentices if such employment may result in the  
38 displacement of journey workers employed by any employer,  
39 contractor or subcontractor.

40  
41 9. All local government entities and local education agencies  
42 that have received or will receive directly from a federal agency  
43 federal economic recovery funds are encouraged but not mandated  
44 to require their contractors and subcontractors to post job openings  
45 on the State's Job Bank at least 14 days before hiring is to  
46 commence.

47 All New Jersey employers that enter into contracts funded with  
48 funds from the American Recovery and Reinvestment Act of 2009  
49 received by a local government entity or a local education agency

1 directly from a federal agency are encouraged but not mandated to  
2 post job openings created pursuant to the American Recovery and  
3 Reinvestment Act of 2009.

4  
5 10. The Division of Minority and Women Business  
6 Development shall send to the reporting agencies required  
7 contractual language. The Division of Minority and Women  
8 Business Development shall work with each reporting agency to  
9 ensure the reporting of and compliance with contract-specific  
10 contracting and subcontracting goals for the reporting agency that  
11 are consistent with the availability percentages set forth.

12  
13 11. Each reporting agency shall:

14 a. Inform the Division of Minority and Women Business  
15 Development of contracting opportunities at the same time that it  
16 advertises or otherwise posts public notices of such opportunities,  
17 via consistent and timely upload of all-inclusive information to the  
18 bid opportunities database services managed by the Division of  
19 Minority and Women Business Development. All pre-bid  
20 requirements shall be prominently advertised at the time of  
21 uploading to the Division of Minority and Women Business  
22 Development databases;

23 b. Actively and regularly use the databases and other on-line  
24 services managed and operated by the Division of Minority and  
25 Women Business Development to identify additional potential  
26 bidders. The ongoing use of these resources by buyers,  
27 procurement agents, and other purchasing staff shall be closely  
28 monitored by the reporting agency's senior management;

29 c. Contact the businesses identified in the Division of Minority  
30 and Women Business Development's databases and on-line services  
31 to provide them with notice of the contracting opportunities  
32 available through the reporting agency; and

33 d. Report to the Division of Minority and Women Business  
34 Development all payments and awards prime contractors have  
35 issued to subcontractors, identifying payments and awards to  
36 minority and women-owned businesses on at least a quarterly basis.

37  
38 12. To the maximum extent practicable, and when not restricted  
39 by any other State or federal law, each reporting agency shall  
40 incorporate the substance of required contractual language  
41 regarding small businesses into its contracts, while continuing to  
42 follow the State and federal laws and regulations governing its  
43 contracting and procurement practices.

44  
45 13. Each reporting agency shall, when substitution of  
46 subcontractors or sub-consultants is permitted, promulgate policies  
47 governing the circumstances under which contractors or consultants  
48 may substitute subcontractors or sub-consultants named in bid  
49 proposals or otherwise identified as small or women or minority-

1 owned business subcontractors, sub-consultants, or vendors. The  
2 substitution policies shall provide that:

3 a. The contractor or consultant shall notify and obtain approval  
4 from a small or women or minority-owned business subcontractor,  
5 sub-consultant, or vendor before including that contractor in a bid  
6 proposal or similar contract-related submission;

7 b. The contractor or consultant shall notify and obtain  
8 authorization from the reporting agency before it substitutes a small  
9 or women or minority-owned business subcontractor<sup>1</sup>, sub-  
10 consultant, or vendor<sup>1</sup> named in a bid proposal or other contract-  
11 related submission; and

12 c. If the substitution is approved, the contractor or consultant  
13 shall make a good faith effort to utilize another small or women or  
14 minority-owned business **'[contractor] subcontractor, sub-**  
15 **consultant, or vendor**<sup>1</sup> in place of the previous small or women or  
16 minority-owned business **'[contractor] subcontractor, sub-**  
17 **consultant, or vendor**<sup>1</sup>.  
18

19 14. Each reporting agency shall report to the Division of  
20 Minority and Women Business Development when it incorporates  
21 required language in its contracts. It shall also report to the  
22 Division of Minority and Women Business Development when it  
23 has adopted a substitution policy, when such policy is permitted.  
24 The Division of Minority and Women Business Development shall  
25 report on the number of reporting agencies that have modified their  
26 contracts and adopted a substitution policy at three-month intervals  
27 until all of the reporting agencies have completed incorporation of  
28 contractual language as may be required and promulgated and,  
29 when legally permitted, adoption of the substitution policy.  
30

31 15. The Department of Labor and Workforce Development shall  
32 work together with all other reporting agencies that will receive  
33 funding from the American Recovery and Reinvestment Act of  
34 2009 and with the representatives of the United States  
35 Environmental Protection Agency, the Federal Departments of  
36 Labor, Energy, Transportation, and Housing and Urban  
37 Development, and any other federal agencies distributing funds  
38 from the American Recovery and Reinvestment Act of 2009 to:

39 a. Coordinate with labor unions that will aggressively recruit  
40 minorities and women for apprenticeships and training  
41 opportunities;

42 b. Increase outreach to and enrollment of minorities and  
43 women in apprenticeship, training, and related programs; and

44 c. Ensure that, to the greatest extent possible under the law,  
45 minorities and women apprentices and trainees are working on State  
46 and ARRA-funded work sites.



1       16. The New Jersey Department of the Treasury and other  
2 departments, agencies, and independent authorities shall, consistent  
3 with law, take steps to increase their engagement of small, minority,  
4 or women-owned or controlled banks and credit unions to meet  
5 their financial services needs.  
6

7       17. Nothing in P.L. , c. (C. ) (pending before the Legislature  
8 as this bill) shall modify existing law, State or federal, or authorize  
9 a reporting agency to amend, modify, or otherwise alter pre-existing  
10 legal obligations. P.L. , c. (C. ) (pending before the Legislature  
11 as this bill) shall be interpreted consistently with the American  
12 Recovery and Reinvestment Act of 2009, and the federal  
13 regulations and guidelines governing its implementation, and in the  
14 event of a conflict between P.L. , c. (C. ) (pending before the  
15 Legislature as this bill) and federal law governing American  
16 Recovery and Reinvestment Act of 2009, P.L. , c. (C. ) (pending  
17 before the Legislature as this bill) shall be interpreted to comply  
18 with federal law.  
19

20       18. The **'[Contract Compliance and Audit Unit]** Division of  
21 Public Contracts Equal Employment Opportunity Compliance<sup>1</sup> shall  
22 promulgate rules and regulations to effectuate the purposes of this  
23 act, P.L. , c. (C. )(pending before the legislature as this bill),  
24 that are consistent with Executive Order No. 151 (2009) and its  
25 appendices.  
26

27       19. Within 90 days of the effective date of this act,  
28 P.L. , c. (C. )(pending before the Legislature as this bill), the  
29 Division of Minority and Women Business Development shall  
30 prepare a contracting guide identifying the management practices  
31 that have the greatest success in: increasing the number of small  
32 and minority and women-owned businesses made aware of  
33 contracting opportunities with the State; and increasing the number  
34 of such businesses competing for contracts with the State or  
35 subcontracts with entities contracting with the State. As soon as  
36 practicable thereafter, the Division of Minority and Women  
37 Business Development shall distribute the contracting guide to the  
38 reporting agencies.  
39

40       20. As soon as practicable after its receipt of the contracting  
41 guide, each reporting agency shall implement those provisions that  
42 it views as most likely to have the greatest impact in increasing  
43 contracting opportunities for small and minority and women-owned  
44 businesses.  
45

46       21. Within 15 months of the effective date of this act, P.L. , c.  
47 (C. )(pending before the Legislature as this bill), the Division of  
48 Minority and Women Business Development and the **'[Contract**

1 ~~Compliance and Audit Unit~~ Division of Public Contracts Equal  
2 Employment Opportunity Compliance<sup>1</sup> shall each prepare a report  
3 describing the reporting agencies' implementation of this act. The  
4 Division of Minority and Women Business Development and the  
5 <sup>1</sup>~~Contract Compliance and Audit Unit~~ Division of Public  
6 Contracts Equal Employment Opportunity Compliance<sup>1</sup> each shall  
7 prepare a second report within 12 months of issuing its first report.

8

9 22. This act shall take effect immediately.

# ASSEMBLY, No. 4323

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED DECEMBER 3, 2009

**Sponsored by:**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**SYNOPSIS**

Establishes standards and requirements set forth in Executive Order No. 151 (2009) for use of funds from American Recovery and Reinvestment Act of 2009.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT establishing certain standards and requirements for the use  
2 of funds from the federal American Recovery and Reinvestment  
3 Act of 2009 and supplementing Title 52 of the Revised Statutes.

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

7  
8 1. The Legislature finds and declares that all members of the  
9 public should be afforded the opportunity to benefit from the  
10 federal economic recovery funds provided through the American  
11 Recovery and Reinvestment Act of 2009 and associated State  
12 spending, and every public contract, whether for construction  
13 services, goods, or other services, should provide equal employment  
14 opportunities for women and minorities.

15  
16 2. For the purposes of the act, P.L. , c. (C. )(pending  
17 before the Legislature as this bill):

18 “ARRA” means the federal American Recovery and  
19 Reinvestment Act of 2009; and

20 “Reporting agencies” means the State entities whose  
21 performance is monitored by the Contract Compliance and Audit  
22 Unit within the Division of Purchase and Property in the  
23 Department of the Treasury.

24  
25 3. The Commissioners of the Departments of Community  
26 Affairs, Education, Environmental Protection, and Transportation,  
27 or their designees; the President of the Board of Public Utilities, or  
28 a designee; and the Chief Executive Officers of the Schools  
29 Development Authority and the Economic Development Authority,  
30 or their designees, shall meet with representatives of the Governor’s  
31 office, the Department of the Treasury, and the United States  
32 Department of Labor’s Office of Federal Contract Compliance  
33 Programs to ensure that those departments receiving the bulk of  
34 federal economic recovery funds provide the United States  
35 Department of Labor’s Office of Federal Contract Compliance  
36 Programs their complete cooperation in complying with its  
37 mandates.

38  
39 4. The Contract Compliance and Audit Unit within the  
40 Division of Purchase and Property in the Department of the  
41 Treasury shall be the entity within the Executive Branch responsible  
42 for determining whether minorities and women have been offered a  
43 fair opportunity for employment on State contracts. Executive  
44 Branch departments and agencies, independent authorities, and  
45 State colleges and universities are directed to cooperate fully with  
46 the Contract Compliance and Audit Unit’s enforcement efforts,  
47 consistent with law, and to award public contracts only to those  
48 businesses that agree to comply with equal employment opportunity  
49 and affirmative action requirements.

1       5. The Contract Compliance and Audit Unit shall work  
2 cooperatively with the United States Department of Labor's Office  
3 of Federal Contract Compliance Programs, including sharing its  
4 workforce data to the maximum extent permitted by law, to assist  
5 the United States Department of Labor's Office of Federal Contract  
6 Compliance Programs in its enforcement efforts.

7  
8       6. When not restricted by any other State or federal law, the  
9 Contract Compliance and Audit Unit shall determine whether each  
10 of the State entities whose performance it monitors have properly  
11 allocated and released to the Department of Labor and Workforce  
12 Development, as authorized by law, one-half of one percent of the  
13 total cost of a construction contract of \$1,000,000 or more, to be  
14 used by the department for the New Jersey Builders Utilization  
15 Initiative for Labor Diversity program to train minorities and  
16 women for employment in construction trades. This provision shall  
17 apply to those construction contracts when the funding for the  
18 contract consists entirely of appropriated funds or a combination of  
19 funds from appropriated funds and other sources.

20  
21       7. All construction contracts entered into and funded, in whole  
22 or in part, by the State shall include mandatory equal employment  
23 opportunity and affirmative action contract language that requires  
24 contractors to make a good faith effort to recruit and employ  
25 minorities and women as required by the provisions of the  
26 regulations promulgated in the New Jersey Administrative Code,  
27 including but not limited to N.J.A.C.17:27-3.6 to 3.8, and 17:27-7.3  
28 and 7.4. As to the portion of each contract that is State funded, the  
29 language of the contract shall provide that payment may be  
30 withheld for failure of the contractor to demonstrate to the  
31 satisfaction of the reporting agency that the required good faith  
32 effort was made. Failure of a contractor to satisfy the good faith  
33 effort requirement of its contract may also subject it to assessments  
34 imposed pursuant to findings of the Contract Compliance and Audit  
35 Unit, in accordance with administrative regulation N.J.A.C. 17:27-  
36 10.

37  
38       8. Except as described in subsections a. and b. of this section,  
39 each Executive Branch agency that is a recipient of federal  
40 economic recovery funds pursuant to the American Recovery and  
41 Reinvestment Act of 2009 shall include in any contract, grant, or  
42 agreement funded in whole or in part with funds from the American  
43 Recovery and Reinvestment Act of 2009 a clause requiring  
44 subrecipients, contractors, subcontractors, local education agencies,  
45 and vendors to post all job openings created pursuant to the  
46 contract, grant, or agreement on the State's Job Bank at least 14  
47 days before hiring is to commence. The clause shall state: "Since  
48 the funds supporting this contract, grant, or agreement are provided  
49 through the American Recovery and Reinvestment Act of 2009

1 (ARRA), the subrecipient, contractor, subcontractor, local  
2 education agency, or vendor will post any jobs that it creates or  
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5 vendor shall post jobs to the New Jersey State Job Bank by  
6 submitting a job order using the form available on the Internet,  
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9 advertisements posted by the subrecipient, contractor,  
10 subcontractor, local education agency, or vendor for positions  
11 pursuant to this contract, grant, or agreement must indicate that the  
12 position is funded with ARRA funds."

13 a. Posting shall not be required when the employer intends to  
14 fill the job opening with a present employee, a laid-off former  
15 employee, or a job candidate from a previous recruitment, when  
16 pre-existing, legally binding collective bargaining agreements  
17 provide otherwise, or when an exception has been granted to the  
18 reporting agency by the Department of Labor and Workforce  
19 Development.

20 b. Nothing in this act, P.L. , c. (C. )(pending before the  
21 Legislature as this bill), shall be interpreted to require the  
22 employment of apprentices if such employment may result in the  
23 displacement of journey workers employed by any employer,  
24 contractor or subcontractor.

25  
26 9. All local government entities and local education agencies  
27 that have received or will receive directly from a federal agency  
28 federal economic recovery funds are encouraged but not mandated  
29 to require their contractors and subcontractors to post job openings  
30 on the State's Job Bank at least 14 days before hiring is to  
31 commence.

32 All New Jersey employers that enter into contracts funded with  
33 funds from the American Recovery and Reinvestment Act of 2009  
34 received by a local government entity or a local education agency  
35 directly from a federal agency are encouraged but not mandated to  
36 post job openings created pursuant to the American Recovery and  
37 Reinvestment Act of 2009.

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39 10. The Division of Minority and Women Business  
40 Development shall send to the reporting agencies required  
41 contractual language. The Division of Minority and Women  
42 Business Development shall work with each reporting agency to  
43 ensure the reporting of and compliance with contract-specific  
44 contracting and subcontracting goals for the reporting agency that  
45 are consistent with the availability percentages set forth.

46  
47 11. Each reporting agency shall:  
48 a. Inform the Division of Minority and Women Business  
49 Development of contracting opportunities at the same time that it

1 advertises or otherwise posts public notices of such opportunities,  
2 via consistent and timely upload of all-inclusive information to the  
3 bid opportunities database services managed by the Division of  
4 Minority and Women Business Development. All pre-bid  
5 requirements shall be prominently advertised at the time of  
6 uploading to the Division of Minority and Women Business  
7 Development databases;

8 b. Actively and regularly use the databases and other on-line  
9 services managed and operated by the Division of Minority and  
10 Women Business Development to identify additional potential  
11 bidders. The ongoing use of these resources by buyers,  
12 procurement agents, and other purchasing staff shall be closely  
13 monitored by the reporting agency's senior management;

14 c. Contact the businesses identified in the Division of Minority  
15 and Women Business Development's databases and on-line services  
16 to provide them with notice of the contracting opportunities  
17 available through the reporting agency; and

18 d. Report to the Division of Minority and Women Business  
19 Development all payments and awards prime contractors have  
20 issued to subcontractors, identifying payments and awards to  
21 minority and women-owned businesses on at least a quarterly basis.  
22

23 12. To the maximum extent practicable, and when not restricted  
24 by any other State or federal law, each reporting agency shall  
25 incorporate the substance of required contractual language  
26 regarding small businesses into its contracts, while continuing to  
27 follow the State and federal laws and regulations governing its  
28 contracting and procurement practices.  
29

30 13. Each reporting agency shall, when substitution of  
31 subcontractors or sub-consultants is permitted, promulgate policies  
32 governing the circumstances under which contractors or consultants  
33 may substitute subcontractors or sub-consultants named in bid  
34 proposals or otherwise identified as small or women or minority-  
35 owned business subcontractors, sub-consultants, or vendors. The  
36 substitution policies shall provide that:

37 a. The contractor or consultant shall notify and obtain approval  
38 from a small or women or minority-owned business subcontractor,  
39 sub-consultant, or vendor before including that contractor in a bid  
40 proposal or similar contract-related submission;

41 b. The contractor or consultant shall notify and obtain  
42 authorization from the reporting agency before it substitutes a small  
43 or women or minority-owned business subcontractor named in a bid  
44 proposal or other contract-related submission; and

45 c. If the substitution is approved, the contractor or consultant  
46 shall make a good faith effort to utilize another small or women or  
47 minority-owned business contractor in place of the previous small  
48 or women or minority-owned business contractor.

1       14. Each reporting agency shall report to the Division of  
2       Minority and Women Business Development when it incorporates  
3       required language in its contracts. It shall also report to the  
4       Division of Minority and Women Business Development when it  
5       has adopted a substitution policy, when such policy is permitted.  
6       The Division of Minority and Women Business Development shall  
7       report on the number of reporting agencies that have modified their  
8       contracts and adopted a substitution policy at three-month intervals  
9       until all of the reporting agencies have completed incorporation of  
10      contractual language as may be required and promulgated and,  
11      when legally permitted, adoption of the substitution policy.

12

13      15. The Department of Labor and Workforce Development shall  
14      work together with all other reporting agencies that will receive  
15      funding from the American Recovery and Reinvestment Act of  
16      2009 and with the representatives of the United States  
17      Environmental Protection Agency, the Federal Departments of  
18      Labor, Energy, Transportation, and Housing and Urban  
19      Development, and any other federal agencies distributing funds  
20      from the American Recovery and Reinvestment Act of 2009 to:

21      a. Coordinate with labor unions that will aggressively recruit  
22      minorities and women for apprenticeships and training  
23      opportunities;

24      b. Increase outreach to and enrollment of minorities and  
25      women in apprenticeship, training, and related programs; and

26      c. Ensure that, to the greatest extent possible under the law,  
27      minorities and women apprentices and trainees are working on State  
28      and ARRA-funded work sites.

29

30      16. The New Jersey Department of the Treasury and other  
31      departments, agencies, and independent authorities shall, consistent  
32      with law, take steps to increase their engagement of small, minority,  
33      or women-owned or controlled banks and credit unions to meet  
34      their financial services needs.

35

36      17. Nothing in P.L. , c. (C. ) (pending before the Legislature  
37      as this bill) shall modify existing law, State or federal, or authorize  
38      a reporting agency to amend, modify, or otherwise alter pre-existing  
39      legal obligations. P.L. , c. (C. ) (pending before the Legislature  
40      as this bill) shall be interpreted consistently with the American  
41      Recovery and Reinvestment Act of 2009, and the federal  
42      regulations and guidelines governing its implementation, and in the  
43      event of a conflict between P.L. , c. (C. ) (pending before the  
44      Legislature as this bill) and federal law governing American  
45      Recovery and Reinvestment Act of 2009, P.L. , c. (C. ) (pending  
46      before the Legislature as this bill) shall be interpreted to comply  
47      with federal law.



1 18. The Contract Compliance and Audit Unit shall promulgate  
2 rules and regulations to effectuate the purposes of this act,  
3 P.L. , c. (C. )(pending before the legislature as this bill), that  
4 are consistent with Executive Order No. 151 (2009) and its  
5 appendices.

6  
7 19. Within 90 days of the effective date of this act,  
8 P.L. , c. (C. )(pending before the Legislature as this bill), the  
9 Division of Minority and Women Business Development shall  
10 prepare a contracting guide identifying the management practices  
11 that have the greatest success in: increasing the number of small  
12 and minority and women-owned businesses made aware of  
13 contracting opportunities with the State; and increasing the number  
14 of such businesses competing for contracts with the State or  
15 subcontracts with entities contracting with the State. As soon as  
16 practicable thereafter, the Division of Minority and Women  
17 Business Development shall distribute the contracting guide to the  
18 reporting agencies.

19  
20 20. As soon as practicable after its receipt of the contracting  
21 guide, each reporting agency shall implement those provisions that  
22 it views as most likely to have the greatest impact in increasing  
23 contracting opportunities for small and minority and women-owned  
24 businesses.

25  
26 21. Within 15 months of the effective date of this act,  
27 P.L. , c. (C. )(pending before the Legislature as this bill), the  
28 Division of Minority and Women Business Development and the  
29 Contract Compliance and Audit Unit shall each prepare a report  
30 describing the reporting agencies' implementation of this act. The  
31 Division of Minority and Women Business Development and the  
32 Contract Compliance and Audit Unit each shall prepare a second  
33 report within 12 months of issuing its first report.

34  
35 22. This act shall take effect immediately.

36

37

38

#### STATEMENT

39

40 This bill codifies Executive Order No. 151 (2009), issued by  
41 Governor Jon S. Corzine on August 28, 2009.

42 The bill requires the Contract Compliance and Audit Unit within  
43 the Division of Purchase and Property in the Department of the  
44 Treasury to determine whether each of the State entities whose  
45 performance it monitors have properly allocated and released to the  
46 Department of Labor and Workforce Development, as authorized by  
47 law, one-half of one percent of the total cost of a construction  
48 contract of \$1,000,000 or more, to be used by the department for the  
49 New Jersey Builders Utilization Initiative for Labor Diversity

1 program to train minorities and women for employment in  
2 construction trades.

3 All construction contracts entered into and funded, in whole or in  
4 part, by the State must include mandatory equal employment  
5 opportunity and affirmative action contract language that requires  
6 contractors to make a good faith effort to recruit and employ  
7 minorities and women. Failure of a contractor to satisfy the good  
8 faith effort requirement of its contract may subject it to assessments  
9 imposed pursuant to findings of the Contract Compliance and Audit  
10 Unit.

11 Each Executive Branch agency that is a recipient of federal  
12 economic recovery funds pursuant to American Recovery and  
13 Reinvestment Act of 2009 (ARRA) must include in any contract,  
14 grant, or agreement funded in whole or in part with ARRA funds a  
15 clause requiring subrecipients, contractors, subcontractors, local  
16 education agencies, and vendors to post all job openings created  
17 pursuant to the contract, grant, or agreement on the State's Job  
18 Bank at least 14 days before hiring, with limited exceptions.

19 All local government entities and local education agencies that  
20 have received or will receive directly from a federal agency federal  
21 economic recovery funds may require their contractors and  
22 subcontractors to post job openings on the State's Job Bank at least  
23 14 days before hiring is to commence. All New Jersey employers  
24 that enter into contracts funded with ARRA funds received by a  
25 local government entity or a local education agency directly from a  
26 federal agency may also require the posting of job openings created  
27 pursuant to the ARRA.

28 The bill requires the Contract Compliance and Audit Unit to be  
29 responsible for determining whether minorities and women have  
30 been offered a fair opportunity for employment on State contracts  
31 with regard to funds from the ARRA.

32 Each reporting agency, defined as a State entity whose  
33 performance is monitored by the Contract Compliance and Audit  
34 Unit, will:

35 inform the Division of Minority and Women Business  
36 Development of contracting opportunities at the same time that it  
37 advertises or otherwise posts public notices of such opportunities;

38 actively and regularly use the databases and other on-line  
39 services managed and operated by the division to identify additional  
40 potential bidders;

41 contact the businesses identified in the division's databases and  
42 on-line services to provide them with notice of the contracting  
43 opportunities available through the reporting agency; and

44 report to the division all payments and awards prime contractors  
45 have issued to subcontractors, identifying payments and awards to  
46 minority and women-owned businesses on at least a quarterly basis.

47 Each reporting agency must promulgate, under certain  
48 conditions, substitution policies governing the circumstances under  
49 which contractors or consultants may substitute subcontractors or

1 sub-consultants named in bid proposals or otherwise identified as  
2 small or women or minority-owned business subcontractors, sub-  
3 consultants, or vendors.

4 The division will report on the number of reporting agencies that  
5 have modified their contracts and adopted a substitution policy at  
6 three-month intervals until all of the reporting agencies have  
7 completed incorporation of required contractual language and, when  
8 legally permitted, adoption of the substitution policy.

9 This bill is to be interpreted consistently with the ARRA, and the  
10 federal regulations and guidelines governing its implementation,  
11 and in the event of a conflict between this bill and federal law  
12 governing ARRA, the bill will be interpreted to comply with federal  
13 law.

14 Within 90 days of the effective date, the division will prepare a  
15 contracting guide identifying the management practices that have  
16 the greatest success in: increasing the number of small and minority  
17 and women-owned businesses made aware of contracting  
18 opportunities with the State; and increasing the number of such  
19 businesses competing for contracts with the state or subcontracts  
20 with entities contracting with the state. The division will distribute  
21 the contracting guide to the reporting agencies and each reporting  
22 agency will implement those provisions that it views as most likely  
23 to have the greatest impact in increasing contracting opportunities  
24 for small and minority and women-owned businesses.

25 Within 15 months of the effective date, the division and the  
26 Contract Compliance and Audit Unit will each prepare a report  
27 describing the reporting agencies' implementation of this bill.

28 The New Jersey Department of Labor and Workforce  
29 Development will work together with all other reporting agencies  
30 that will receive ARRA funding and with the representatives of the  
31 United States Environmental Protection Agency, the Federal  
32 Departments of Labor, Energy, Transportation, and Housing and  
33 Urban Development, and any other federal agencies distributing  
34 ARRA funds to:

35 coordinate with labor unions to aggressively recruit minorities  
36 and women for apprenticeships and training opportunities;

37 increase outreach to and enrollment of minorities and women in  
38 apprenticeship, training, and related programs; and

39 ensure that, to the greatest extent possible under the law,  
40 minorities and women apprentices and trainees are working on State  
41 and ARRA-funded work sites.

42 The Department of the Treasury and other departments, agencies,  
43 and independent authorities are to take, consistent with law, steps to  
44 increase their engagement of small, minority, or women-owned or  
45 controlled banks and credit unions to meet their financial services  
46 needs.

# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4323

# STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly State Government Committee reports favorably Assembly Bill No. 4323.

This bill codifies Executive Order No. 151 (2009), issued by Governor Jon S. Corzine on August 28, 2009.

The bill requires the Contract Compliance and Audit Unit within the Division of Purchase and Property in the Department of the Treasury to determine whether each of the State entities whose performance it monitors have properly allocated and released to the Department of Labor and Workforce Development, as authorized by law, one-half of one percent of the total cost of a construction contract of \$1,000,000 or more, to be used by the department for the New Jersey Builders Utilization Initiative for Labor Diversity program to train minorities and women for employment in construction trades.

All construction contracts entered into and funded, in whole or in part, by the State must include mandatory equal employment opportunity and affirmative action contract language that requires contractors to make a good faith effort to recruit and employ minorities and women. Failure of a contractor to satisfy the good faith effort requirement of its contract may subject it to assessments imposed pursuant to findings of the Contract Compliance and Audit Unit.

Each Executive Branch agency that is a recipient of federal economic recovery funds pursuant to American Recovery and Reinvestment Act of 2009 (ARRA) must include in any contract, grant, or agreement funded in whole or in part with ARRA funds a clause requiring subrecipients, contractors, subcontractors, local education agencies, and vendors to post all job openings created pursuant to the contract, grant, or agreement on the State's Job Bank at least 14 days before hiring, with limited exceptions.

All local government entities and local education agencies that have received or will receive directly from a federal agency federal economic recovery funds may require their contractors and subcontractors to post job openings on the State's Job Bank at least 14 days before hiring is to commence. All New Jersey employers that enter into contracts funded with ARRA funds received by a local government entity or a local education agency directly from a federal

agency may also require the posting of job openings created pursuant to the ARRA.

The bill requires the Contract Compliance and Audit Unit to be responsible for determining whether minorities and women have been offered a fair opportunity for employment on State contracts with regard to funds from the ARRA.

Each reporting agency, defined as a State entity whose performance is monitored by the Contract Compliance and Audit Unit, will:

inform the Division of Minority and Women Business Development of contracting opportunities at the same time that it advertises or otherwise posts public notices of such opportunities;

actively and regularly use the databases and other on-line services managed and operated by the division to identify additional potential bidders;

contact the businesses identified in the division's databases and on-line services to provide them with notice of the contracting opportunities available through the reporting agency; and

report to the division all payments and awards prime contractors have issued to subcontractors, identifying payments and awards to minority and women-owned businesses on at least a quarterly basis.

Each reporting agency must promulgate, under certain conditions, substitution policies governing the circumstances under which contractors or consultants may substitute subcontractors or sub-consultants named in bid proposals or otherwise identified as small or women or minority-owned business subcontractors, sub-consultants, or vendors.

The division will report on the number of reporting agencies that have modified their contracts and adopted a substitution policy at three-month intervals until all of the reporting agencies have completed incorporation of required contractual language and, when legally permitted, adoption of the substitution policy.

This bill is to be interpreted consistently with the ARRA, and the federal regulations and guidelines governing its implementation, and in the event of a conflict between this bill and federal law governing ARRA, the bill will be interpreted to comply with federal law.

Within 90 days of the effective date, the division will prepare a contracting guide identifying the management practices that have the greatest success in increasing the number of (1) small and minority and women-owned businesses made aware of contracting opportunities with the State and (2) such businesses competing for contracts with the State or subcontracts with entities contracting with the State. The division will distribute the contracting guide to the reporting agencies and each reporting agency will implement those provisions that it views as most likely to have the greatest impact in increasing contracting opportunities for small and minority and women-owned businesses.

Within 15 months of the effective date, the division and the Contract Compliance and Audit Unit will each prepare a report describing the reporting agencies' implementation of this bill.

The New Jersey Department of Labor and Workforce Development will work together with all other reporting agencies that will receive ARRA funding and with the representatives of the United States Environmental Protection Agency, the Federal Departments of Labor, Energy, Transportation, and Housing and Urban Development, and any other federal agencies distributing ARRA funds to:

- coordinate with labor unions to aggressively recruit minorities and women for apprenticeships and training opportunities;

- increase outreach to and enrollment of minorities and women in apprenticeship, training, and related programs; and

- ensure that, to the greatest extent possible under the law, minorities and women apprentices and trainees are working on State and ARRA-funded work sites.

The Department of the Treasury and other departments, agencies, and independent authorities are to take, consistent with law, steps to increase their engagement of small, minority, or women-owned or controlled banks and credit unions to meet their financial services needs.

Assembly Bill No. 4323 is identical to Senate Bill No. 3107 of 2009.

**STATEMENT TO**  
**ASSEMBLY, No. 4323**

with Assembly Floor Amendments  
(Proposed by Assemblywoman WATSON COLEMAN)

ADOPTED: JANUARY 7, 2010

This floor amendment corrects the name of the agency responsible for monitoring the reporting agencies from the “Contract Compliance and Audit Unit” to the “Division of Public Contracts Equal Employment Opportunity Compliance”. It also clarifies who is to be included when there is a substitution of a subcontractor, sub-consultant or vendor in a bid proposal or similar contract-related submission.

# SENATE, No. 3107

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED DECEMBER 3, 2009

**Sponsored by:**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**Senator RICHARD J. CODEY**

**District 27 (Essex)**

**SYNOPSIS**

Establishes standards and requirements set forth in Executive Order No. 151 (2009) for use of funds from American Recovery and Reinvestment Act of 2009.

**CURRENT VERSION OF TEXT**

As introduced.





S3107 RICE, CODEY

2

1 AN ACT establishing certain standards and requirements for the use  
2 of funds from the federal American Recovery and Reinvestment  
3 Act of 2009 and supplementing Title 52 of the Revised Statutes.

4

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

7

8 1. The Legislature finds and declares that all members of the  
9 public should be afforded the opportunity to benefit from the  
10 federal economic recovery funds provided through the American  
11 Recovery and Reinvestment Act of 2009 and associated State  
12 spending, and every public contract, whether for construction  
13 services, goods, or other services, should provide equal employment  
14 opportunities for women and minorities.

15

16 2. For the purposes of the act, P.L. , c. (C. )(pending  
17 before the Legislature as this bill):

18 "ARRA" means the federal American Recovery and  
19 Reinvestment Act of 2009; and

20 "Reporting agencies" means the State entities whose  
21 performance is monitored by the Contract Compliance and Audit  
22 Unit within the Division of Purchase and Property in the  
23 Department of the Treasury.

24

25 3. The Commissioners of the Departments of Community  
26 Affairs, Education, Environmental Protection, and Transportation,  
27 or their designees; the President of the Board of Public Utilities, or  
28 a designee; and the Chief Executive Officers of the Schools  
29 Development Authority and the Economic Development Authority,  
30 or their designees, shall meet with representatives of the Governor's  
31 office, the Department of the Treasury, and the United States  
32 Department of Labor's Office of Federal Contract Compliance  
33 Programs to ensure that those departments receiving the bulk of  
34 federal economic recovery funds provide the United States  
35 Department of Labor's Office of Federal Contract Compliance  
36 Programs their complete cooperation in complying with its  
37 mandates.

38

39 4. The Contract Compliance and Audit Unit within the  
40 Division of Purchase and Property in the Department of the  
41 Treasury shall be the entity within the Executive Branch responsible  
42 for determining whether minorities and women have been offered a  
43 fair opportunity for employment on State contracts. Executive  
44 Branch departments and agencies, independent authorities, and  
45 State colleges and universities are directed to cooperate fully with  
46 the Contract Compliance and Audit Unit's enforcement efforts,  
47 consistent with law, and to award public contracts only to those  
48 businesses that agree to comply with equal employment opportunity  
49 and affirmative action requirements.

S3107 RICE, CODEY

3

1 5. The Contract Compliance and Audit Unit shall work  
2 cooperatively with the United States Department of Labor's Office  
3 of Federal Contract Compliance Programs, including sharing its  
4 workforce data to the maximum extent permitted by law, to assist  
5 the United States Department of Labor's Office of Federal Contract  
6 Compliance Programs in its enforcement efforts.

7  
8 6. When not restricted by any other State or federal law, the  
9 Contract Compliance and Audit Unit shall determine whether each  
10 of the State entities whose performance it monitors have properly  
11 allocated and released to the Department of Labor and Workforce  
12 Development, as authorized by law, one-half of one percent of the  
13 total cost of a construction contract of \$1,000,000 or more, to be  
14 used by the department for the New Jersey Builders Utilization  
15 Initiative for Labor Diversity program to train minorities and  
16 women for employment in construction trades. This provision shall  
17 apply to those construction contracts when the funding for the  
18 contract consists entirely of appropriated funds or a combination of  
19 funds from appropriated funds and other sources.

20  
21 7. All construction contracts entered into and funded, in whole  
22 or in part, by the State shall include mandatory equal employment  
23 opportunity and affirmative action contract language that requires  
24 contractors to make a good faith effort to recruit and employ  
25 minorities and women as required by the provisions of the  
26 regulations promulgated in the New Jersey Administrative Code,  
27 including but not limited to N.J.A.C.17:27-3.6 to 3.8, and 17:27-7.3  
28 and 7.4. As to the portion of each contract that is State funded, the  
29 language of the contract shall provide that payment may be  
30 withheld for failure of the contractor to demonstrate to the  
31 satisfaction of the reporting agency that the required good faith  
32 effort was made. Failure of a contractor to satisfy the good faith  
33 effort requirement of its contract may also subject it to assessments  
34 imposed pursuant to findings of the Contract Compliance and Audit  
35 Unit, in accordance with administrative regulation N.J.A.C. 17:27-  
36 10.

37  
38 8. Except as described in subsections a. and b. of this section,  
39 each Executive Branch agency that is a recipient of federal  
40 economic recovery funds pursuant to the American Recovery and  
41 Reinvestment Act of 2009 shall include in any contract, grant, or  
42 agreement funded in whole or in part with funds from the American  
43 Recovery and Reinvestment Act of 2009 a clause requiring  
44 subrecipients, contractors, subcontractors, local education agencies,  
45 and vendors to post all job openings created pursuant to the  
46 contract, grant, or agreement on the State's Job Bank at least 14  
47 days before hiring is to commence. The clause shall state: "Since  
48 the funds supporting this contract, grant, or agreement are provided  
49 through the American Recovery and Reinvestment Act of 2009

1 (ARRA), the subrecipient, contractor, subcontractor, local  
2 education agency, or vendor will post any jobs that it creates or  
3 seeks to fill as a result of this contract, grant, or agreement. The  
4 subrecipient, contractor, subcontractor, local education agency, or  
5 vendor shall post jobs to the New Jersey State Job Bank by  
6 submitting a job order using the form available on the Internet,  
7 notwithstanding any other posting the subrecipient, contractor,  
8 subcontractor, local education agency, or vendor might make. Any  
9 advertisements posted by the subrecipient, contractor,  
10 subcontractor, local education agency, or vendor for positions  
11 pursuant to this contract, grant, or agreement must indicate that the  
12 position is funded with ARRA funds."

13 a. Posting shall not be required when the employer intends to  
14 fill the job opening with a present employee, a laid-off former  
15 employee, or a job candidate from a previous recruitment, when  
16 pre-existing, legally binding collective bargaining agreements  
17 provide otherwise, or when an exception has been granted to the  
18 reporting agency by the Department of Labor and Workforce  
19 Development.

20 b. Nothing in this act, P.L. , c. (C. )(pending before the  
21 Legislature as this bill), shall be interpreted to require the  
22 employment of apprentices if such employment may result in the  
23 displacement of journey workers employed by any employer,  
24 contractor or subcontractor.

25  
26 9. All local government entities and local education agencies  
27 that have received or will receive directly from a federal agency  
28 federal economic recovery funds are encouraged but not mandated  
29 to require their contractors and subcontractors to post job openings  
30 on the State's Job Bank at least 14 days before hiring is to  
31 commence.

32 All New Jersey employers that enter into contracts funded with  
33 funds from the American Recovery and Reinvestment Act of 2009  
34 received by a local government entity or a local education agency  
35 directly from a federal agency are encouraged but not mandated to  
36 post job openings created pursuant to the American Recovery and  
37 Reinvestment Act of 2009.

38  
39 10. The Division of Minority and Women Business  
40 Development shall send to the reporting agencies required  
41 contractual language. The Division of Minority and Women  
42 Business Development shall work with each reporting agency to  
43 ensure the reporting of and compliance with contract-specific  
44 contracting and subcontracting goals for the reporting agency that  
45 are consistent with the availability percentages set forth.

46  
47 11. Each reporting agency shall:

48 a. Inform the Division of Minority and Women Business  
49 Development of contracting opportunities at the same time that it

1 advertises or otherwise posts public notices of such opportunities,  
2 via consistent and timely upload of all-inclusive information to the  
3 bid opportunities database services managed by the Division of  
4 Minority and Women Business Development. All pre-bid  
5 requirements shall be prominently advertised at the time of  
6 uploading to the Division of Minority and Women Business  
7 Development databases;

8 b. Actively and regularly use the databases and other on-line  
9 services managed and operated by the Division of Minority and  
10 Women Business Development to identify additional potential  
11 bidders. The ongoing use of these resources by buyers,  
12 procurement agents, and other purchasing staff shall be closely  
13 monitored by the reporting agency's senior management;

14 c. Contact the businesses identified in the Division of Minority  
15 and Women Business Development's databases and on-line services  
16 to provide them with notice of the contracting opportunities  
17 available through the reporting agency; and

18 d. Report to the Division of Minority and Women Business  
19 Development all payments and awards prime contractors have  
20 issued to subcontractors, identifying payments and awards to  
21 minority and women-owned businesses on at least a quarterly basis.

22  
23 12. To the maximum extent practicable, and when not restricted  
24 by any other State or federal law, each reporting agency shall  
25 incorporate the substance of required contractual language  
26 regarding small businesses into its contracts, while continuing to  
27 follow the State and federal laws and regulations governing its  
28 contracting and procurement practices.

29  
30 13. Each reporting agency shall, when substitution of  
31 subcontractors or sub-consultants is permitted, promulgate policies  
32 governing the circumstances under which contractors or consultants  
33 may substitute subcontractors or sub-consultants named in bid  
34 proposals or otherwise identified as small or women or minority-  
35 owned business subcontractors, sub-consultants, or vendors. The  
36 substitution policies shall provide that:

37 a. The contractor or consultant shall notify and obtain approval  
38 from a small or women or minority-owned business subcontractor,  
39 sub-consultant, or vendor before including that contractor in a bid  
40 proposal or similar contract-related submission;

41 b. The contractor or consultant shall notify and obtain  
42 authorization from the reporting agency before it substitutes a small  
43 or women or minority-owned business subcontractor named in a bid  
44 proposal or other contract-related submission; and

45 c. If the substitution is approved, the contractor or consultant  
46 shall make a good faith effort to utilize another small or women or  
47 minority-owned business contractor in place of the previous small  
48 or women or minority-owned business contractor.

1       14. Each reporting agency shall report to the Division of  
2 Minority and Women Business Development when it incorporates  
3 required language in its contracts. It shall also report to the  
4 Division of Minority and Women Business Development when it  
5 has adopted a substitution policy, when such policy is permitted.  
6 The Division of Minority and Women Business Development shall  
7 report on the number of reporting agencies that have modified their  
8 contracts and adopted a substitution policy at three-month intervals  
9 until all of the reporting agencies have completed incorporation of  
10 contractual language as may be required and promulgated and,  
11 when legally permitted, adoption of the substitution policy.

12

13       15. The Department of Labor and Workforce Development shall  
14 work together with all other reporting agencies that will receive  
15 funding from the American Recovery and Reinvestment Act of  
16 2009 and with the representatives of the United States  
17 Environmental Protection Agency, the Federal Departments of  
18 Labor, Energy, Transportation, and Housing and Urban  
19 Development, and any other federal agencies distributing funds  
20 from the American Recovery and Reinvestment Act of 2009 to:

21       a. Coordinate with labor unions that will aggressively recruit  
22 minorities and women for apprenticeships and training  
23 opportunities;

24       b. Increase outreach to and enrollment of minorities and  
25 women in apprenticeship, training, and related programs; and

26       c. Ensure that, to the greatest extent possible under the law,  
27 minorities and women apprentices and trainees are working on State  
28 and ARRA-funded work sites.

29

30       16. The New Jersey Department of the Treasury and other  
31 departments, agencies, and independent authorities shall, consistent  
32 with law, take steps to increase their engagement of small, minority,  
33 or women-owned or controlled banks and credit unions to meet  
34 their financial services needs.

35

36       17. Nothing in P.L. , c. (C. ) (pending before the Legislature  
37 as this bill) shall modify existing law, State or federal, or authorize  
38 a reporting agency to amend, modify, or otherwise alter pre-existing  
39 legal obligations. P.L. , c. (C. ) (pending before the Legislature  
40 as this bill) shall be interpreted consistently with the American  
41 Recovery and Reinvestment Act of 2009, and the federal  
42 regulations and guidelines governing its implementation, and in the  
43 event of a conflict between P.L. , c. (C. ) (pending before the  
44 Legislature as this bill) and federal law governing American  
45 Recovery and Reinvestment Act of 2009, P.L. , c. (C. ) (pending  
46 before the Legislature as this bill) shall be interpreted to comply  
47 with federal law.

1 18. The Contract Compliance and Audit Unit shall promulgate  
2 rules and regulations to effectuate the purposes of this act, P.L. ,  
3 c. (C. )(pending before the legislature as this bill), that are  
4 consistent with Executive Order No. 151 (2009) and its appendices.  
5

6 19. Within 90 days of the effective date of this act, P.L. ,  
7 c. (C. )(pending before the Legislature as this bill), the Division  
8 of Minority and Women Business Development shall prepare a  
9 contracting guide identifying the management practices that have  
10 the greatest success in: increasing the number of small and minority  
11 and women-owned businesses made aware of contracting  
12 opportunities with the State; and increasing the number of such  
13 businesses competing for contracts with the State or subcontracts  
14 with entities contracting with the State. As soon as practicable  
15 thereafter, the Division of Minority and Women Business  
16 Development shall distribute the contracting guide to the reporting  
17 agencies.  
18

19 20. As soon as practicable after its receipt of the contracting  
20 guide, each reporting agency shall implement those provisions that  
21 it views as most likely to have the greatest impact in increasing  
22 contracting opportunities for small and minority and women-owned  
23 businesses.  
24

25 21. Within 15 months of the effective date of this act, P.L. ,  
26 c. (C. )(pending before the Legislature as this bill), the Division  
27 of Minority and Women Business Development and the Contract  
28 Compliance and Audit Unit shall each prepare a report describing  
29 the reporting agencies' implementation of this act. The Division of  
30 Minority and Women Business Development and the Contract  
31 Compliance and Audit Unit each shall prepare a second report  
32 within 12 months of issuing its first report.  
33

34 22. This act shall take effect immediately.  
35  
36

37 STATEMENT  
38

39 This bill codifies Executive Order No. 151 (2009), issued by  
40 Governor Jon S. Corzine on August 28, 2009.

41 The bill requires the Contract Compliance and Audit Unit within  
42 the Division of Purchase and Property in the Department of the  
43 Treasury to determine whether each of the State entities whose  
44 performance it monitors have properly allocated and released to the  
45 Department of Labor and Workforce Development, as authorized by  
46 law, one-half of one percent of the total cost of a construction  
47 contract of \$1,000,000 or more, to be used by the department for the  
48 New Jersey Builders Utilization Initiative for Labor Diversity

1 program to train minorities and women for employment in  
2 construction trades.

3 All construction contracts entered into and funded, in whole or in  
4 part, by the State must include mandatory equal employment  
5 opportunity and affirmative action contract language that requires  
6 contractors to make a good faith effort to recruit and employ  
7 minorities and women. Failure of a contractor to satisfy the good  
8 faith effort requirement of its contract may subject it to assessments  
9 imposed pursuant to findings of the Contract Compliance and Audit  
10 Unit.

11 Each Executive Branch agency that is a recipient of federal  
12 economic recovery funds pursuant to American Recovery and  
13 Reinvestment Act of 2009 (ARRA) must include in any contract,  
14 grant, or agreement funded in whole or in part with ARRA funds a  
15 clause requiring subrecipients, contractors, subcontractors, local  
16 education agencies, and vendors to post all job openings created  
17 pursuant to the contract, grant, or agreement on the State's Job  
18 Bank at least 14 days before hiring, with limited exceptions.

19 All local government entities and local education agencies that  
20 have received or will receive directly from a federal agency federal  
21 economic recovery funds may require their contractors and  
22 subcontractors to post job openings on the State's Job Bank at least  
23 14 days before hiring is to commence. All New Jersey employers  
24 that enter into contracts funded with ARRA funds received by a  
25 local government entity or a local education agency directly from a  
26 federal agency may also require the posting of job openings created  
27 pursuant to the ARRA.

28 The bill requires the Contract Compliance and Audit Unit to be  
29 responsible for determining whether minorities and women have  
30 been offered a fair opportunity for employment on State contracts  
31 with regard to funds from the ARRA.

32 Each reporting agency, defined as a State entity whose  
33 performance is monitored by the Contract Compliance and Audit  
34 Unit, will:

35 inform the Division of Minority and Women Business  
36 Development of contracting opportunities at the same time that it  
37 advertises or otherwise posts public notices of such opportunities;

38 actively and regularly use the databases and other on-line  
39 services managed and operated by the division to identify additional  
40 potential bidders;

41 contact the businesses identified in the division's databases and  
42 on-line services to provide them with notice of the contracting  
43 opportunities available through the reporting agency; and

44 report to the division all payments and awards prime contractors  
45 have issued to subcontractors, identifying payments and awards to  
46 minority and women-owned businesses on at least a quarterly basis.

47 Each reporting agency must promulgate, under certain  
48 conditions, substitution policies governing the circumstances under  
49 which contractors or consultants may substitute subcontractors or

1 sub-consultants named in bid proposals or otherwise identified as  
2 small or women or minority-owned business subcontractors, sub-  
3 consultants, or vendors.

4 The division will report on the number of reporting agencies that  
5 have modified their contracts and adopted a substitution policy at  
6 three-month intervals until all of the reporting agencies have  
7 completed incorporation of required contractual language and, when  
8 legally permitted, adoption of the substitution policy.

9 This bill is to be interpreted consistently with the ARRA, and the  
10 federal regulations and guidelines governing its implementation,  
11 and in the event of a conflict between this bill and federal law  
12 governing ARRA, the bill will be interpreted to comply with federal  
13 law.

14 Within 90 days of the effective date, the division will prepare a  
15 contracting guide identifying the management practices that have  
16 the greatest success in: increasing the number of small and minority  
17 and women-owned businesses made aware of contracting  
18 opportunities with the State; and increasing the number of such  
19 businesses competing for contracts with the state or subcontracts  
20 with entities contracting with the state. The division will distribute  
21 the contracting guide to the reporting agencies and each reporting  
22 agency will implement those provisions that it views as most likely  
23 to have the greatest impact in increasing contracting opportunities  
24 for small and minority and women-owned businesses.

25 Within 15 months of the effective date, the division and the  
26 Contract Compliance and Audit Unit will each prepare a report  
27 describing the reporting agencies' implementation of this bill.

28 The New Jersey Department of Labor and Workforce  
29 Development will work together with all other reporting agencies  
30 that will receive ARRA funding and with the representatives of the  
31 United States Environmental Protection Agency, the Federal  
32 Departments of Labor, Energy, Transportation, and Housing and  
33 Urban Development, and any other federal agencies distributing  
34 ARRA funds to:

35 coordinate with labor unions to aggressively recruit minorities  
36 and women for apprenticeships and training opportunities;

37 increase outreach to and enrollment of minorities and women in  
38 apprenticeship, training, and related programs; and

39 ensure that, to the greatest extent possible under the law,  
40 minorities and women apprentices and trainees are working on State  
41 and ARRA-funded work sites.

42 The Department of the Treasury and other departments, agencies,  
43 and independent authorities are to take, consistent with law, steps to  
44 increase their engagement of small, minority, or women-owned or  
45 controlled banks and credit unions to meet their financial services  
46 needs.



# SENATE STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### SENATE, No. 3107

# STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Senate State Government Committee reports favorably Senate Bill No. 3107.

This bill codifies Executive Order No. 151 (2009), issued by Governor Jon S. Corzine on August 28, 2009.

The bill requires the Contract Compliance and Audit Unit within the Division of Purchase and Property in the Department of the Treasury to determine whether each of the State entities whose performance it monitors have properly allocated and released to the Department of Labor and Workforce Development, as authorized by law, one-half of one percent of the total cost of a construction contract of \$1,000,000 or more, to be used by the department for the New Jersey Builders Utilization Initiative for Labor Diversity program to train minorities and women for employment in construction trades.

All construction contracts entered into and funded, in whole or in part, by the State must include mandatory equal employment opportunity and affirmative action contract language that requires contractors to make a good faith effort to recruit and employ minorities and women. Failure of a contractor to satisfy the good faith effort requirement of its contract may subject it to assessments imposed pursuant to findings of the Contract Compliance and Audit Unit.

Each Executive Branch agency that is a recipient of federal economic recovery funds pursuant to American Recovery and Reinvestment Act of 2009 (ARRA) must include in any contract, grant, or agreement funded in whole or in part with ARRA funds a clause requiring subrecipients, contractors, subcontractors, local education agencies, and vendors to post all job openings created pursuant to the contract, grant, or agreement on the State's Job Bank at least 14 days before hiring, with limited exceptions.

All local government entities and local education agencies that have received or will receive directly from a federal agency federal economic recovery funds may require their contractors and subcontractors to post job openings on the State's Job Bank at least 14 days before hiring is to commence. All New Jersey employers that enter into contracts funded with ARRA funds received by a local government entity or a local education agency directly from a federal

agency may also require the posting of job openings created pursuant to the ARRA.

The bill requires the Contract Compliance and Audit Unit to be responsible for determining whether minorities and women have been offered a fair opportunity for employment on State contracts with regard to funds from the ARRA.

Each reporting agency, defined as a State entity whose performance is monitored by the Contract Compliance and Audit Unit, will:

inform the Division of Minority and Women Business Development of contracting opportunities at the same time that it advertises or otherwise posts public notices of such opportunities;

actively and regularly use the databases and other on-line services managed and operated by the division to identify additional potential bidders;

contact the businesses identified in the division's databases and on-line services to provide them with notice of the contracting opportunities available through the reporting agency; and

report to the division all payments and awards prime contractors have issued to subcontractors, identifying payments and awards to minority and women-owned businesses on at least a quarterly basis.

Each reporting agency must promulgate, under certain conditions, substitution policies governing the circumstances under which contractors or consultants may substitute subcontractors or sub-consultants named in bid proposals or otherwise identified as small or women or minority-owned business subcontractors, sub-consultants, or vendors.

The division will report on the number of reporting agencies that have modified their contracts and adopted a substitution policy at three-month intervals until all of the reporting agencies have completed incorporation of required contractual language and, when legally permitted, adoption of the substitution policy.

This bill is to be interpreted consistently with the ARRA, and the federal regulations and guidelines governing its implementation, and in the event of a conflict between this bill and federal law governing ARRA, the bill will be interpreted to comply with federal law.

Within 90 days of the effective date, the division will prepare a contracting guide identifying the management practices that have the greatest success in: increasing the number of small and minority and women-owned businesses made aware of contracting opportunities with the State; and increasing the number of such businesses competing for contracts with the state or subcontracts with entities contracting with the state. The division will distribute the contracting guide to the reporting agencies and each reporting agency will implement those provisions that it views as most likely to have the greatest impact in increasing contracting opportunities for small and minority and women-owned businesses.

Within 15 months of the effective date, the division and the Contract Compliance and Audit Unit will each prepare a report describing the reporting agencies' implementation of this bill.

The New Jersey Department of Labor and Workforce Development will work together with all other reporting agencies that will receive ARRA funding and with the representatives of the United States Environmental Protection Agency, the Federal Departments of Labor, Energy, Transportation, and Housing and Urban Development, and any other federal agencies distributing ARRA funds to:

- coordinate with labor unions to aggressively recruit minorities and women for apprenticeships and training opportunities;

- increase outreach to and enrollment of minorities and women in apprenticeship, training, and related programs; and

- ensure that, to the greatest extent possible under the law, minorities and women apprentices and trainees are working on State and ARRA-funded work sites.

The Department of the Treasury and other departments, agencies, and independent authorities are to take, consistent with law, steps to increase their engagement of small, minority, or women-owned or controlled banks and credit unions to meet their financial services needs.

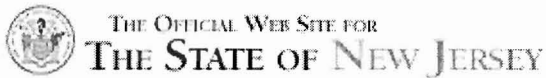
This bill is identical to Assembly Bill No.4323.

STATEMENT TO  
**SENATE, No. 3107**

with Senate Floor Amendments  
(Proposed by Senator RICE)

ADOPTED: JANUARY 7, 2010

This floor amendment corrects the name of the agency responsible for monitoring the reporting agencies from the “Contract Compliance and Audit Unit” to the “Division of Public Contracts Equal Employment Opportunity Compliance”. It also clarifies who is to be included when there is a substitution of a subcontractor, sub-consultant or vendor in a bid proposal or similar contract-related submission.



**State of New Jersey  
Executive Order #151  
Governor Jon S. Corzine**

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WHEREAS, New Jersey is one of the most racially, culturally, and ethnically diverse states in the United States, and this diversity is reflected in the leaders and owners of its businesses, in the leaders and members of the labor movement, and in the employees in every segment of the workforce; and

WHEREAS, the State's business community includes multi-national enterprises, industrial, commercial, and small business sectors; and

WHEREAS, the State's thousands of small businesses, each with fewer than 100 employees, together generate almost 40% of the jobs in the State; and

WHEREAS, small, minority, and women-owned business enterprises have historically been underrepresented in the receipt of State contract awards; and

WHEREAS, the State's workforce provides New Jersey's multinational enterprises, its industrial, commercial, and small business sectors, and its public and not-for-profit sectors with highly educated, highly skilled, and highly motivated employees, who contribute to the prosperity of the State while supporting their families; and

WHEREAS, in response to the current national recession, the United States Congress enacted the American Recovery and Reinvestment Act of 2009 (ARRA), which will increase federal spending at the State and local levels by approximately \$10 billion, and will fully fund certain work in the State, and partially fund other State projects; and

WHEREAS, given the recession and unemployment levels in New Jersey, it is imperative that every sector of the economy be offered the opportunity to benefit from the federal economic recovery funds and the State's own spending; and

WHEREAS, many of the State's businesses have significant public construction contracts and other contracts to provide goods or services to government and many others would like the opportunity to compete for these contracts to expand their businesses while serving the public; and

WHEREAS, residents of the State of New Jersey deserve a government that provides equal opportunity for all contractors to compete to submit winning bids on public contracts; and

WHEREAS, residents of the State of New Jersey, especially during these difficult economic times, deserve a government that does everything it can to expand job opportunities, particularly for men and women who are entering the workforce, who have experienced difficulties entering the workforce, or who have recently become unemployed or underemployed; and

WHEREAS, the State created an internet site, <http://www.recovery.nj.gov>, which outlines the allocation of New Jersey's share of economic recovery funds under the ARRA; and

WHEREAS, to spend ARRA funds transparently and ensure that those seeking work have a fair chance to obtain ARRA-funded employment, State agencies and entities should be required to post all State and ARRA-funded jobs on the State Job Bank internet site, <http://NJ.gov/JobCentralNJ>, to allow New Jersey residents to identify these employment opportunities; and

WHEREAS, the State must procure its construction services, goods, and other services as efficiently as possible, with transparency in the processing, selection, and awarding of public contracts; and

WHEREAS, robust competition for public contracts ensures that the government of the State of New Jersey obtains the construction services, goods, and other services it needs to perform its vital functions with maximum cost effectiveness; and

WHEREAS, broad and sustained efforts to notify all potential bidders of opportunities to contract with government should be encouraged to promote competition for public contracts, thus benefiting the public fisc; and

WHEREAS, the State of New Jersey commissioned the State of New Jersey Construction Services Disparity Study 2000 – 2002 (October 2005) and the State of New Jersey Disparity Study of Procurement in Professional Services, Other Services, and Goods and Commodities (June 2005), and both studies documented significant disparities between the firms ready, willing, and able to do business with the State, and those firms actually awarded contracts by State departments, agencies, authorities, colleges, and universities, as a result of which this Administration created through Executive Order No. 34 (2006) the Division of Minority and Women Business Development (“Division of M/W Business Development”); and

WHEREAS, Executive Order No. 34 charged the Director of the Division of M/W Business Development with monitoring programs to increase the participation of minority and women-owned businesses in the State’s purchasing and procurement processes; and

WHEREAS, since its inception, the Division of M/W Business Development, working with the Department of the Treasury’s Office of Supplier Diversity (“OSD”), has identified strategies to increase the number of small and minority and women-owned businesses interested in and eligible to benefit from state procurement activity; and

WHEREAS, the Division of M/W Business Development and OSD have increased outreach to and expanded the ability of these businesses to fulfill bid requirements for state contracts; and

WHEREAS, the Division of Public Contracts Equal Employment Opportunity Compliance in the Department of the Treasury (Division of Contract Compliance) monitors the employment of women and minorities with businesses that contract with government in an effort to ensure that contractors and vendors make good faith efforts to hire minorities and women in accordance with targeted goals based on the United States Census’ workforce availability statistics;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All members of the public should be afforded the opportunity to benefit from the federal economic recovery funds and associated state spending, and in particular, this Administration re-affirms the State’s commitment, expressed in statute and regulation, that every public contract, whether for construction services, goods, or other services, shall provide equal employment opportunity for women and minorities.

2. The Commissioners of the Departments of Community Affairs, Education, Environmental Protection, and Transportation; the President of the Board of Public Utilities; and the executive directors of the Schools





















