

SENATE, No. 2571

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 15, 2020

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

SYNOPSIS

Establishes division in Department of Treasury to oversee and enforce equal employment opportunity requirements with regard to public work contracts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning equal employment opportunity requirements for
2 public works contracts and amending and supplementing
3 P.L.1975, c.127.

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

7
8 1. (New section) a. There is established in the Department of
9 the Treasury, a Division of Equal Employment Opportunity in Public
10 Contracts. The division shall establish and oversee the
11 administration, compliance, and enforcement of an equal
12 employment opportunity program for the hiring of minorities and
13 women in the performance of public works contracts and ensure
14 equal employment opportunity in awarded public works contracts
15 consistent with P.L.1975, c.127 (C.10:5-31 et seq.) and the “Law
16 Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et. seq.). The
17 State Treasurer shall promulgate rules and regulations, pursuant to
18 the authority granted under subsection k. of section 6 of
19 P.L.1975, c.127 (C.10:5-36), to effectuate the purposes of this
20 section. The division shall have complete oversight authority,
21 including the authority to review and revise any action of a public
22 body awarding a public works contract, with regard to the
23 enforcement of equal employment opportunity laws, rules, and
24 regulations. To ensure effective implementation of the equal
25 employment opportunity program, the division shall maintain liaison
26 with the federal government and public bodies in this State;
27 contractors; labor unions or representatives of workers with which
28 contractors have collective bargaining agreements or other contracts
29 or understandings; and minority and women groups.

30 As used in this section, “public body” means the State; counties,
31 municipalities, and other political subdivisions of the State; or an
32 agency of, or authority created by, any of the foregoing.

33 b. The division, or a public body that awards public works
34 contracts, may initiate a review of compliance with equal
35 employment opportunity laws, rules, and regulations by contractors
36 awarded public works contracts. If the division or a public body,
37 upon the division’s or body’s own initiative or upon the complaint of
38 a member of the public, determines that a contractor awarded a public
39 works contract has failed to comply the applicable equal employment
40 opportunity laws, rules or regulations, the division or body shall
41 require the contractor to demonstrate that it has made a good faith
42 effort to comply. A good faith effort shall include, but need not
43 limited to, those acts set forth in the rules and regulations
44 promulgated in accordance with subsection a. of this section. The
45 rules and regulations promulgated pursuant to subsection a. of this

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 section shall set forth those acts that constitute a good faith effort to
2 comply, including requesting qualified minorities and women from a
3 labor union, or a representative of workers with which a contractor
4 has a collective bargaining agreement, or other contract or
5 understanding with whom the contractor has an exclusive hiring or
6 referral arrangement; and using approved minority and women
7 referral, training and outreach agency for each region. The rules and
8 regulations in this regard shall be consistent with those used by the
9 Office of Federal Contract Compliance Programs in the United States
10 Department of Labor in requiring a good faith effort.

11 c. A public body shall comply with the rules and regulations
12 promulgated by the State Treasurer pursuant to subsection a. of this
13 section with respect to their obligation to assist with the compliance
14 and enforcement efforts of the division. A public body shall:

15 cooperate fully with the division in the establishment and
16 implementation of guidelines for determining whether a contractor
17 has failed to provide equal employment opportunity in the hiring of
18 minorities and women on public works contracts;

19 ensure the inclusion of mandatory equal employment opportunity
20 language in advertisements, bids, specifications, and contracts of the
21 public body;

22 include in a contract the intent of the public body to carry out its
23 responsibilities requiring equal employment opportunity by
24 contractors; and the contractor's obligations under the law and the
25 relevant rules and regulations and the consequences of failure to do
26 so;

27 provide a contractor with a written description of the equal
28 employment opportunity law and the relevant rules and regulations
29 and a copy of the described law and rules and regulations;

30 require a contractor awarded public works contracts to certify that
31 it is in compliance with the equal employment opportunity
32 requirements;

33 include in a public contract a provision that requires a contractor
34 and any subcontractors to make a good faith effort to provide equal
35 employment opportunity for minorities and women and that provides
36 that a failure to make a good faith effort to hire minorities and women
37 will result in the assessment of fines and penalties by the division;

38 provide to the division information that indicates that a contractor
39 is not in compliance with equal employment opportunity laws, rules,
40 and regulations; and

41 provide to the division such information as it may request and as
42 may be necessary to enable the division to fulfill its mission.

43 d. The division and public bodies shall use whatever means are
44 provided by law, rule, regulation, or contract, including suspension,
45 debarment, withholding payment, and termination of contract, to
46 ensure that a party to a public contract makes a good faith effort to
47 provide equal employment opportunity in the hiring of minorities and
48 women in public works contracts. Failure on the part of a contractor

1 to demonstrate a good faith effort shall be grounds for imposition of
2 penalties in accordance with subsection b. of section 5 of
3 P.L.1975, c.127 (C.10:5-35) or for the rejection of subsequent bids
4 made by that contractor. If the division or a public body determines
5 that a contractor has agreed to subcontract portions of a public works
6 contract to a contractor who has failed to make a good faith effort to
7 hire minorities and women, the division or public body may impose
8 a penalty on the contractor in accordance subsection b. of section 6
9 of P.L.1975, c.127 (C.10:5-35).

10
11 2. Section 1 of P.L.1975, c.127 (10:5-31) is amended to read as
12 follows:

13 1. As used in this act:

14 a. "Public works contract" means any contract to be performed
15 for or on behalf of the State or any county or municipality or other
16 political subdivision of the State, or any agency or authority created
17 by any of the foregoing, for the construction, alteration or repair of
18 any building or public work or for the acquisition of materials,
19 equipment, supplies or goods and services, including professional
20 services, with respect to which discrimination in the hiring of persons
21 for the performance of work thereunder or under any subcontract
22 thereunder by reason of race, creed, color, national origin, ancestry,
23 marital status, affectional or sexual orientation, nationality, gender
24 identity or expression, disability or sex is prohibited under R.S.10:2-
25 1.

26 b. "Equal employment opportunity" means equality in
27 opportunity for employment by any contractor, subcontractor or
28 business firm engaged in the carrying out of a public works project
29 including its development, design, acquisition, construction,
30 management and operation.

31 (cf: P.L.2006, c.100, s.12)

32
33 3. Section 7 of P. L.1975, c.127 (C.10:5-37) is amended to read
34 as follows:

35 7. Notwithstanding any provision of any State law, ordinance or
36 regulation to the contrary, there may be included in the costs of a
37 project or facility to which a public works contract relates any
38 expenses incurred by a public body or private firm or individual for
39 the purpose of furthering equal employment opportunities with
40 respect to such project or facility or for the purpose of complying
41 with the provisions of this act, and such expenses may be paid for or
42 financed by any method which may be used to pay or finance other
43 costs of development, acquisition or construction of such project or
44 facility.

45 If the total cost of a construction project that is the subject of one
46 or more construction contracts entered into by a State agency is equal
47 to or greater than \$1,000,000, or if the total cost of a construction

1 project entered into by any other public body as defined in subsection
2 a. section 1 of P.L. , c. (C.)(pending before the Legislature
3 as this bill) is equal to or greater than \$2,500,000, the State Treasurer
4 shall require that the public body allocate up to one half of one
5 percent of the value of the construction project to the financing of
6 minority and women worker outreach and training programs.
7 (cf: P.L.1975, c.127, s.7)

8
9 4. This act shall take effect immediately.

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12 STATEMENT

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14 This bill establishes the Division of Equal Employment
15 Opportunity in Public Contracts as a permanent division in the State
16 Department of the Treasury to oversee and enforce equal
17 employment opportunity requirements with regard to public works
18 contracts at all levels of government. It directs the Treasurer to
19 promulgate regulations to effectuate that purpose and requires public
20 bodies to take steps to ensure compliance with all equal employment
21 opportunity requirements when awarding and administering public
22 contracts.

23 In addition, the bill provides that if the total cost of a construction
24 project that is the subject of one or more construction contracts
25 entered into by a State agency is equal to or greater than \$1,000,000,
26 or if the total cost of a construction project entered into by any other
27 public body is equal to or greater than \$2,500,000, the State Treasurer
28 shall require that the public body allocate up to one half of one
29 percent of the value of construction project to the financing of
30 minority and women worker outreach and training programs.

31 The bill also broadens the definition of “public works contracts”
32 in the “Law Against Discrimination” to include professional services
33 contracts.