

January 8, 2024

ASSEMBLY BILL NO. 2146
(Third Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2146 (Third Reprint) with my recommendations for reconsideration.

This bill would create a business assistance program ("the program") for socially and economically disadvantaged businesses. Additionally, the bill requires the Director of the Division of Purchase and Property (DPP), in the Department of Treasury ("the Treasury"), to establish contracting agency procurement goals for socially and economically disadvantaged businesses. It further requires each contracting agency to submit an annual report to the Treasury concerning the contracts the agency awards, allowing the State to measure whether progress is being made toward the objective of the legislation. According to the bill's statement, the objective of this bill is to recognize the need to encourage, nurture, and support the growth of socially and economically disadvantaged businesses, to foster their development, and to increase the number of qualified competitors in the marketplace.

I commend the sponsors of this bill for advancing legislation that promotes broader diversity and inclusivity in State procurement and endeavors to address past discriminatory practices in public contracting. The certification of socially and economically disadvantaged businesses will advance our shared goal of ensuring more businesses have the opportunity to fully participate in New Jersey's multi-billion-dollar supply chain. While I wholeheartedly endorse the goal and objective of this legislation, I am recommending several revisions to improve the administrability of the program and to provide more flexibility to implement the legislation within the confines of well-established constitutional principles.

My recommended changes will enable the Treasury to certify socially and economically disadvantaged businesses for participation in the program and better align the process with the current

certification process for Minority and Woman-Owned Business Enterprises ("MWBE"). In 2020, the Treasury adopted new MWBE regulations that created a streamlined and more business-friendly process for certifying MWBEs. By using the MWBE certification process as a model, my recommended changes will both make the bill less burdensome for the State to implement and simplify the certification process. Moreover, by eliminating some of the bill's more rigid requirements, my proposed revisions will ensure that the State has the flexibility to respond to fluctuating economic conditions and an evolving legal landscape.

Programs like the one contemplated in this legislation will be crucial as we continue to assess the procurement process to address disparities between the availability and utilization of small and disadvantaged business enterprises in particular market areas. I am optimistic that my recommendations today, coupled with the many other initiatives in this area that we have undertaken together, will accomplish the objective of the bill, align with the intent of its sponsors, and create a stronger and fairer New Jersey for all.

Therefore, I herewith return Assembly Bill No. 2146 (Third Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 1:</u>	Delete "State business assistance" and insert "a"
<u>Page 2, Title, Line 3:</u>	Delete "enterprises" and insert "owners"
<u>Page 2, Section 1, Line 10:</u>	After "authority," insert "instrumentality,"
<u>Page 2, Section 1, Line 10:</u>	After "State" insert "over which the Governor exercises executive authority"
<u>Page 2, Section 1, Lines 12-15:</u>	Delete in their entirety
<u>Page 2, Section 1, Line 18:</u>	Delete "in business" and insert "for State contracts"
<u>Page 2, Section 1, Line 23:</u>	Delete "director" and insert "department"
<u>Page 2, Section 1, Line 28:</u>	Delete "business assistance"
<u>Page 2, Section 1, Line 29:</u>	Delete "director" and insert "department"

Page 2, Section 1, Line 40:

Delete in its entirety

Page 2, Section 1, Line 41:

Delete "businesses, as determined by the director;"

Page 3, Section 2, Line 4:

Delete "The director shall establish a business assistance program for" and insert "a. The department shall establish a program for qualified business enterprise owners that are socially and economically disadvantaged and certified as qualified in accordance with this act, P.L. , c. (C.) (pending before the Legislature as this bill). To establish and implement the program, the department shall:

(1) establish a procedure through which a socially and economically disadvantaged business owner may apply for certification as a qualified business enterprise under the program, which certification shall be supported by available data and information;

(2) establish a system for accepting State-approved third-party certifications for the purpose of certifying qualified business enterprises;

(3) establish reasonable regulations appropriate for controlling the certification of socially and economically disadvantaged businesses as qualified business enterprises and for maintaining a list of such business enterprises;

(4) establish a procedure for annually reviewing the list of qualified business enterprises for the purpose of determining whether a business on the list is eligible to maintain its certification as a qualified business enterprise; and

(5) establish a procedure through which the certification of a business as a qualified business enterprise may be challenged by a third party.

b. Any procedures established pursuant to paragraphs (1), (4), and (5) of subsection a. of this section shall include notice to the business owner whose certification is at issue and an opportunity for a hearing before the department. The hearing shall not be considered a

contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)."

Page 3, Section 2, Lines 5-46:

Delete in their entirety

Page 4, Section 3, Line 1:

Delete "director" and insert "department"

Page 4, Section 3, Lines 5-8:

Delete ", in the case of a prime contract not directly designated for qualified business enterprises, by requiring that a portion of such a prime contract be subcontracted to a qualified business enterprise" and insert "by subcontracting, and in accordance with and supported by available data and information"

Page 4, Section 3, Line 10:

Delete "director" and insert "department"

Page 4, Section 4, Lines 17-36:

Delete in their entirety

Page 4, Section 5, Line 38:

Delete "5" and insert "4"

Page 5, Section 6, Lines 8-12:

Delete in their entirety

Page 5, Section 7, Lines 14-34:

Delete in their entirety

Page 5, Section 8, Line 36:

Delete "8" and insert "5"

Page 5, Section 9, Line 41:

Delete "9" and insert "6"

Page 5, Section 9, Line 41:

Delete "immediately" and insert "the 181st day next following enactment, except the State Treasurer may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor