

WHITE PAPER

Addressing Disparities in State Contracting: A Call to Advance A4586 and S3639 for Minority and Women-Owned Businesses

Overview

New Jersey Bills A4586 (Assembly) and S3639 (Senate), collectively titled the **"Minority and Women-Owned Businesses State Contractor Remedies Act"**, aim to rectify systemic disparities faced by Minority-Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) in state contracting. Despite long-standing affirmative action policies, these businesses continue to be underrepresented in public procurement opportunities. These companion bills seek to establish enforceable remedies to improve equity, transparency, and accountability in state contracting.

Background and Problem Statement

New Jersey has historically relied on aspirational goals for participation of MWBEs in public contracts. However, a 2022 disparity study revealed persistent underutilization of MWBEs, especially Black-, Hispanic-, and Asian-American-owned firms, despite their availability. Current policies lack the legal teeth to enforce inclusion and provide limited recourse when goals are unmet.

Key Provisions of Bills A4586 and S3639

- **Creates a Legal Cause of Action:** Establishes statutory standing for certified MWBEs to file civil suits if state agencies fail to comply with procurement inclusion goals or engage in discriminatory practices.
- **Monitoring and Enforcement:** Requires the Division of Purchase and Property to collect and report data disaggregated by race, gender, and business size to assess compliance.
- **Remedial Action:** Empowers the Office of Diversity and Inclusion to mandate corrective action plans and penalties for noncompliance by state agencies and contractors.
- **Transparency Measures:** Mandates the publication of quarterly contracting reports for public review.

Disparities and Justification

The lack of enforceable remedies has perpetuated a disparity between MWBE availability and utilization. For instance, while MWBEs may constitute over 25% of qualified vendors in certain industries, they often receive less than 10% of contract dollars. Without statutory enforcement, agencies have little incentive to meet inclusion targets. These bills are designed not to impose quotas, but to ensure fairness and accountability through judicial and administrative recourse.

Support and Opposition

Supporters—including civil rights organizations, MWBE advocacy groups, and labor unions—argue these bills are essential to level the playing field and ensure equitable access to public funds. Opponents have expressed concern about litigation risk and administrative burden, yet these concerns are mitigated by the bills' clear thresholds and due process standards.

Conclusion and Recommendations

To close the opportunity gap in public procurement, New Jersey must move beyond aspirational goals to enforceable standards. A4586 and S3639 represent a crucial step forward in dismantling systemic barriers and promoting inclusive economic growth. The Legislature should prioritize swift passage and allocate appropriate resources for implementation and oversight.